Court File No. 31-459200

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

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

and

Court File No. 31-2734090

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

# RESPONDENTS MOTION RECORD
**(returnable June 1, 2021)**

Date: May 14, 2021

**AIRD & BERLIS LLP**
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

**Harry Fogul (LSUC # 15152O)**
Tel: (416) 865-7773
Fax: (416) 863-1515
Email: hfogul@airdberlis.com

*Lawyers for YG Limited Partnership* and *YSL Residences Inc.*

**TO: ATTACHED SERVICE LIST**

Court File No. 31-459200

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

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

and

Court File No. 31-2734090

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

# I N D E X

5. Case Conference Brief of Applicants, 2583019 Ontario Incorporated, et al

6. Written Submissions of Timbercreek Mortgage Servicing Inc., et al

7. First Report to Court of KSV Restructuring as Proposal Trustee of YG Limited Partnership and YSL Residences Inc.

8. Endorsement of Gilmore, J. dated May 7, 2021

9. Service List

# Tab 1

Court File No. 31-459200

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

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

and

Court File No. 31-2734090

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

# AFFIDAVIT OF DAVID MANN
## (sworn May 12, 2021)

I, **David Mann**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the acting Chief Financial Officer for 9615334 Canada Inc., the general partner of YG Limited Partnership and of YSL Residences Inc. since January 2020 and, as such, I have knowledge of the matters contained in this my Affidavit and I have personal knowledge of the matters described below.

2. YG Limited Partnership and YSL Residences Inc. (collectively "YSL") are subject to a forbearance arrangement with their main lender Timbercreek Mortgage Servicing Inc. ("Timbercreek"). Attached as **Exhibit "A"** to this my Affidavit is a copy of the Consent

and Forbearance Agreement Amendment #4 effective as of April 30, 2021, which affects YSL.

3. The initial Forbearance Agreement provided in Section 6.1 a list of Forbearance Termination Events. Section 6.1(ee) of the Consent and Forbearance Agreement Amendment #4 provides that if payment of the Timbercreek debt is not paid by June 30, 2021 it constitutes a Forbearance Termination Event. Section 2.4. of the Consent and Forbearance Agreement Amendment #4 allows Timbercreek to proceed with its Application to appoint a Receiver. Timbercreek has scheduled its Receivership Application for July 12, 2021.

**SWORN** remotely by David Mann by videoconference, stated as being located at the City of Toronto, in the Province of Ontario, before me this 12th day of May, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for taking affidavits

**David Mann**

# Tab 1(a)

This is **Exhibit "A"** referred to in the

Affidavit of **David Mann**

Sworn before me this 12th day of May, 2021

A Commissioner for taking affidavits

B-1-8

**CONSENT AND FORBEARANCE AGREEMENT AMENDMENT #4**

**THIS CONSENT AND FORBEARANCE AGREEMENT AMENDMENT #4** (as amended, restated, supplemented or replaced from time to time, **"this Amendment Agreement**" or **"this Agreement"**) is made and effective as of this 30th day of April, 2021.

**A M O N G:**

**TIMBERCREEK MORTGAGE SERVICING INC.**
(hereinafter referred to as the "**Lender**")

-and-

**CRESFORD CAPITAL CORPORATION**
(hereinafter referred to as the "**Borrower**")

-and-

**YG LIMITED PARTNERSHIP**
(hereinafter referred to as the "**Beneficial Owner**")

-and-

**CRESFORD (ROSEDALE) DEVELOPMENTS INC.**
(hereinafter referred to as "**Rosedale**")

-and-

**YSL RESIDENCES INC.**
(formerly 2502295 Ontario Inc. and hereinafter referred to as "**YSL Residences**")

(Rosedale and YSL Residences are hereinafter collectively called the "**Guarantors**")

**RECITALS:**

**WHEREAS** the parties hereto entered into a forbearance agreement made as of March 26, 2020 in respect of the property municipally known as 363-385 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the **"Original Forbearance Agreement"**);

**AND WHEREAS** 2576725 Ontario Inc. (**"2576725"**) commenced a proceeding against, among others, YSL Residences in the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) under Court File No. CV-00642892-00CL claiming, among other things, an equitable mortgage against the Real Property securing the principal amount of $20,000,000 (the **"Equitable Mortgage Litigation"**) and the Court issued an order confirming an equitable mortgage in favour of 2576725 against the Real Property (the **"Equitable Mortgage Order"**);

**AND WHEREAS** the Security was delivered in favour of Computershare Trust Company of Canada as custodian and agent for and on behalf of the Lender (**"Computershare"**) and Computershare transferred and assigned all its right, title and interest in and to, and all of its obligations under, the Security to 2292912 Ontario Inc. (**"2292912"**) as replacement custodian and agent to hold the Security for and on behalf of the Lender;

**AND WHEREAS** 2292912 issued and delivered the Loan Parties (i) demand letters (the **"Demand Letters"**) demanding repayment of the Obligations and (ii) notices of intention to enforce security pursuant to Section 244 of the BIA (collectively the **"BIA Notices"**), in each case on June 18, 2020;

**AND WHEREAS** the parties hereto entered into Forbearance Agreement Amendment #1 made as of July 3, 2020 (**"Forbearance Amendment #1**) to amend certain terms and conditions of the Original Forbearance Agreement;

**AND WHEREAS** the Loan Parties delivered to the Lender an executed consent to receivership dated July 9, 2020 (the **"Consent to Receiver"**) pursuant to and in connection with Forbearance Amendment #1 to held by Lender and utilized in the event that a Forbearance Termination Event occurred (and for certainty other than the "Specified Forbearance Termination Events" as that term is defined in Forbearance Amendment #1) and/or the Forbearance Period terminated for any reason whatsoever; and Forbearance Termination Events occurred and the Forbearance Period was terminated and accordingly the Consent to Receiver is operative and binding on and enforceable against each of the Loan Parties.

**AND WHEREAS** the parties hereto entered into Forbearance Agreement Amendment #2 made as of November 12, 2020 (**"Forbearance Amendment #2**) to amend certain terms and conditions of the Original Forbearance Agreement as amended by Forbearance Amendment #1;

**AND WHEREAS** the Lender and 2292912 commenced an application against the Borrower, the Beneficial Owner, and YSL Residences with the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) (Court File No. CV-20-00650224-00CL) (the **"Receivership Application"**) (the Receivership Application includes, among other things, the draft order that the Lender and 2292912 are requesting the Court to issue, such draft order being referred to herein as the **"Draft Court Order"**) and a Court hearing for the Receivership Application was originally scheduled on Friday, November 13, 2020;

**AND WHEREAS** pursuant to the terms of Forbearance Amendment #2, the Loan Parties and the Lender agreed to adjourn the Court hearing for the Receivership Application from November 13, 2020 to the earliest date on which a Court hearing could be scheduled from and after November 30, 2020 (the **"First Adjourned Court Date"**), and such adjournment was consented to by the Court and the date for the Court hearing for the Receivership Application was adjourned to December 2, 2020 and then further adjourned to February 2, 2021 (the **"Second Adjourned Court Date"**);

**AND WHEREAS** the parties hereto entered into Forbearance Agreement Amendment #3 made as of January 28, 2021 and effective as of December 31, 2020 (**"Forbearance Amendment #3**) to amend certain terms and conditions of the Original Forbearance Agreement as amended by Forbearance Amendment #1 and Forbearance Amendment #2 (the Original Forbearance Agreement as amended by Forbearance Amendment #1, Forbearance Amendment #2 and Forbearance Amendment #3 is collectively called the **"Forbearance Agreement"**);

**AND WHEREAS** the date for the hearing for the Receivership Application was subsequently adjourned from Second Adjourned Court Date to April 21, 2021 and subsequently to July 12, 2021 (the **"July 12 Court Date"**);

**AND WHEREAS** the Loan Parties have requested that the Lender consent to the Beneficial Owner, 9615334 Canada Inc. (**"9615334"**, being the general partner of the Beneficial Owner) and YSL Residences (collectively, the **"Proposal Parties"**) filing a notice of intention to make a proposal pursuant to the BIA (the proposal to be made pursuant to the BIA being called the **"BIA Proposal"**) and for such proposal to be sponsored by Concord Properties Developments Corp. (the **"Proposal Sponsor"**), a

wholly owned subsidiary of Concord and in respect of which process KSV Restructuring Inc. (**"KSV"**) will act as the BIA proposal trustee and Davies Ward Phillips & Vineberg LLP (**"Davies LLP"**) as KSV's counsel in such role (the **"BIA Proposal Proceedings"**), and without the consent of the Lender to the BIA Consent Matters (as that term is defined in Section 1.6 of this Amendment Agreement), each of the BIA Consent Matters will constitute a Forbearance Termination Event;

**NOW THEREFORE** in consideration of the respective covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), each of the parties hereto hereby agrees as follows:

## ARTICLE 1
## INTERPRETATION AND GENERAL MATTERS

### 1.1 Definitions

Unless defined in this Amendment Agreement, all capitalized words and phrases shall have the same meanings ascribed thereto in the Forbearance Agreement. The definition of the term "Transaction Documents" defined in Section 1.1(k) of the Original Forbearance Agreement is deleted and replaced with the following: "**Transaction Documents**" means, collectively, the Loan Documents, the Guarantee, the Security and all documents, instruments or other agreements executed or delivered in connection with any of the foregoing by any one or more of the Loan Parties including without limitation the forbearance agreement between the Lender and the Loan Parties made as of the 26th day of March, 2020 (as same may be amended, restated or supplemented from time to time) and each amendment to such forbearance agreement, and "**Transaction Document**" means any one of them.

### 1.2 Entire Agreement

Except for the Transaction Documents, the Forbearance Agreement, as amended by this Amendment Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, relating to the subject matter hereof. This Amendment Agreement may not be amended or modified except by written agreement executed by all the parties. No provision of this Amendment Agreement or the Forbearance Agreement as amended by this Amendment Agreement (collectively, the **"Amended Forbearance Agreement"**) will be deemed waived by any course of conduct unless such waiver is in writing and signed by all the parties, specifically stating that it is intended to modify this Amendment Agreement or the Amended Forbearance Agreement. This Amendment Agreement constitutes a Transaction Document.

### 1.3 Incorporation by Reference and Reaffirmation of Forbearance Agreement

Sections 1.2, 1.3, 1.4, 1.7 and 1.8 in the Forbearance Agreement are incorporated by reference into this Amendment Agreement as if fully set out herein (except that all references to "this Agreement" in such sections shall be deemed to be references to "this Amendment Agreement") and do and shall be deemed to form part of this Amendment Agreement. The terms of Article 7 of the Forbearance Agreement are incorporated by reference into this Amendment Agreement as if fully set out herein (except that all references to "this Agreement" in Article 7 incorporated herein shall be deemed to be references to "this Amendment Agreement") and does and shall be deemed to form part of this Amendment Agreement. Each of the Loan Parties represents and warrants to the Lender and covenants and agrees to and in favour of the Lender that except as amended by this Amendment Agreement, all provisions of the Forbearance Agreement continue in full force and effect, and are reaffirmed by each of the Loan Parties. Each of the Loan Parties represents and covenants and agrees to and in favour of the

Lender that each of the Transaction Documents do and shall continue to constitute legal, valid and binding obligations of each of the Loan Parties enforceable against each of the Loan Parties in accordance with their respective terms.

**1.4 Acknowledgements by Loan Parties**

Each of the Loan Parties represents and warrants to the Lender that (i) no Forbearance Termination Event has occurred other than for the Forbearance Amendment #3 Specified Forbearance Termination Events and the Impending 2021 Monthly Interest Payment Defaults, and (ii) the representation and warranties contained in the Transaction Documents are true and correct.

Each of the Loan Parties acknowledges receipt of the Demand Letter and the BIA Notice issued and delivered to such Loan Party by the Lender, and further acknowledges and agrees that the ten (10) day notice period under Section 244 of the BIA has expired and the Lender is entitled to enforce all if its rights and remedies under the Transaction Documents and applicable law and in equity, subject to the terms of the Amended Forbearance Agreement.

Each of the Loan Parties acknowledges, confirms and covenants and agrees that the fees and disbursements of counsel to the Lender, the Proposed Receiver and counsel to the Proposed Receiver, in each case as billed prior to the date hereof, are fair and reasonable and the Loan Parties irrevocably waive and release any right to challenge any such amounts (and for certainty including without limitation taxing any of such legal fees and disbursements) or request the Lender to repay any of such amounts to the Loan Parties.

The Loan Parties represent, confirm and agree that the Consent to Receiver is and shall remain in full force and effect and binding on and enforceable against all of the Loan Parties, and in the event of a Forbearance Termination Event (excluding the Forbearance Amendment #3 Specified Forbearance Termination Events (as that term is defined in Forbearance Amendment #3) and the Impending 2021 Monthly Interest Payment Defaults), each of the Loan Parties irrevocably (i) consents to the Court issuing an order in the Receivership Application substantially in the form of the Draft Court Order (or with any changes required by the Court) and (ii) agrees that it shall not oppose or object to in any manner whatsoever the Receivership Application or the issuance by the Court of an order substantially in the form of the Draft Court Order (or with any changes required by the Court). Each of the Loan Parties confirms and agrees that a "Forbearance Termination Event" will automatically occur in the event that one or more of the Loan Parties becomes bankrupt for any reason or by whatever method whatsoever, and the definition of "Forbearance Termination Event" is hereby amended accordingly.

Each of the amendments to the Forbearance Agreement were signed by 9615334 as the general partner for and on behalf of the YG Limited Partnership as the Beneficial Owner (notwithstanding the signature block on such amendment agreements inadvertently referring to "YG Partnership") and are binding on the Beneficial Owner.

Each of the Loan Parties irrevocably covenants and agrees that it (i) consents to KSV (as receiver) and Davies LLP (as counsel for KSV) acting in connection with the Receivership Application notwithstanding any real or potential conflict of interest as a result of their respective roles in the proposed BIA Proposal Proceedings, (ii) waives any conflict of interest that may exist, and (iii) will not object to or oppose KSV or Davies LLP acting in connection with the Receivership Application for any reason whatsoever including without limitation in the event that the BIA Proposal Proceedings is unsuccessful for any reason. Each of the undersigned covenants and agrees that it will not make, assert, commence or participate in or support any claim, action or other proceeding against KSV, Davies LLP or

the Lender in connection with or as a result of KSV and Davies LLP acting and continuing to act in their respective roles in connection with the Receivership Application.

Each of the Loan Parties irrevocably acknowledges, agrees and consents to the following in connection with the LP Litigation (as that term is defined below in Section 2.1(f) of this Amendment Agreement): (i) the Lender intends to instruct its counsel to attend to each court attendance (including without limitation any scheduling conference) in respect of the LP Litigation to advise the Court that if the Court intends to grant (A) any of the requested relief listed in Section 6.1(dd)(i), (ii) or (iii) of the Amended Forbearance Agreement or (B) any other relief which is or may be adverse to the Lender in the Lender's sole discretion, then in either case the Lender requests that the Proposed Receiver be appointed by the Court pursuant to the Receivership Application and to the extent necessary the Receivership Application to be heard by the Court at such time; and (ii) if the requested relief in the LP Litigation, if granted by the Court, would cause Section 6.1(dd)(iv) of the Amended Forbearance Agreement to become operative, then in such case the Lender may (x) without any notice required to be provided to the Loan Parties or their counsel instruct the Lender's counsel to attend to any court attendance, as necessary, including without limitation in respect of the LP Litigation to advise the Court that if the Court intends to grant any of such relief, that the Lender requests that the Receivership Application be heard by the Court at such time and for the Proposed Receiver to be appointed by the Court pursuant to the Receivership Application (and for certainty in place of any receiver requested to be appointed by the Court pursuant to the LP Litigation) and/or (y) at any time when or after the Court grants any such relief, immediately request a Court hearing for the Receivership Application on the earliest date available after the occurrence of any such event (as the granting of such relief by the Court will automatically constitute a Forbearance Termination Event in accordance with Section 6.1(dd)(iv)), and each of the Loan Parties irrevocably (I) consents and agrees to any such action which may be taken by the Lender in such circumstances and (II) covenants and agrees to cause its counsel to cooperate with counsel for the Lender in rescheduling the Court hearing to such earlier date as necessary, and no Loan Party shall request an adjournment for such Court hearing scheduled on any such earlier date or object to or oppose the Receivership Application.

**1.5 Acknowledgement of Obligations**

(a) Each of the Loan Parties hereby acknowledges, confirms and agrees that the Obligations are unconditionally owing by the Borrower to the Lender as of the date hereof (and that the Loan (as that term has defined in the Loan Agreement) has matured without payment by the Borrower), without any right of setoff, defense, counterclaim or reduction of any kind, nature or description whatsoever by the Borrower or any other Loan Party, and the Loan Parties are estopped from disputing such Obligations. Each of the Loan Parties hereby further acknowledges, confirms and agrees that all amounts required to be paid by the Loan Parties to the Lender pursuant to the Amended Forbearance Agreement are fair and reasonable, have been earned by the Lender (or, if applicable, will automatically be earned by the Lender on such future dates), are due and owing by the Loan Parties to the Lender in full (or, if applicable, will automatically become due and owing to the Lender on such future dates), and each of the Loan Parties irrevocably releases and waives any claim or right to assert that such amounts (i) have not been or will not automatically be earned by the Lender or (ii) are not due and owing (or, if applicable, will not automatically become due and owing to the Lender on such future dates).

(b) The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the Obligations pursuant to the Transaction Documents.

1.6 **Lender Consent**

Concurrently with the delivery by the Lender or its counsel to the Loan Parties or their counsel of the Forbearance Amendment #4 Effectiveness Confirmation as contemplated by Section 3.1 of this Amendment Agreement, the Lender (a) consents to (i) the Loan Parties filing a filing of a BIA notice of intention to file a proposal or a BIA proposal specifically in respect of the BIA Proposal, (ii) the BIA Proposal, (iii) the BIA Proposal Proceedings and (iv) the implementation of the BIA Proposal (collectively, the **"BIA Consent Matters"**) (the **"Lender BIA Consent"**) and (b) confirms that the BIA Consent Matters shall not constitute a Forbearance Termination Event, but in all cases subject to (i) the other terms and conditions in the Amended Forbearance Agreement including without limitation the terms and conditions set out in Section 2.6 of this Amendment Agreement and (ii) the occurrence of any other Forbearance Termination Event including without limitation any other Forbearance Termination Event relating to, in connection with or arising in any way from the BIA Consent Matters. For certainty, the Lender BIA Consent is not and shall not (i) become operative or effective unless and until the Forbearance Amendment #4 Effectiveness Confirmation has been delivered in writing by the Lender or its counsel to the Loan Parties or their counsel or (ii) be or be deemed to be a consent by the Lender that the repayment of the Obligations to the Lender is permitted to be completed after June 30, 2021 (or such earlier date in the event that a Forbearance Termination Event occurs) notwithstanding that the BIA Proposal and/or the Proposal Sponsor Agreement may contemplate that the BIA Proposal may be completed after June 30, 2021.

**ARTICLE 2**

**AMENDMENTS TO AND ADDITIONAL PROVISIONS FOR THE FORBEARANCE AGREEMENT**

**2.1 Amendments**

(a) The following definition is inserted into Section 1.1 of the Amended Forbearance Agreement in the appropriate alphabetical location in Section 1.1:

**"Forbearance Amendment #4"** means Consent and Forbearance Agreement Amendment #4 made as of April 30, 2021 between the Lender and the Loan Parties, as same may be amended, restated or supplemented from time to time.

(b) The definition of **"Loan Parties"** contained in the recitals of the Original Forbearance Agreement is deleted the following definition is inserted into Section 1.1 of the Amended Forbearance Agreement in the appropriate alphabetical location in Section 1.1:

**"Loan Parties"** means the Borrower, the Beneficial Owner, the Guarantors, and 9615334, and **"Loan Party"** means any one of them;

(c) The date April 2, 2021 in Section 4.1(a) of the Forbearance Agreement is deleted and replaced with: June 30, 2021.

(d) A new Section 6.1(bb) of the Forbearance Agreement is inserted as follows:

(bb) on or before June 1, 2021, the Loan Parties shall not have delivered to the Lender a binding commitment letter for financing for the Property (the **"Take Out Financing"**) in a principal amount sufficient such that the net proceeds available to the Loan Parties after paying fees, costs, and expenses in connection with such financing transaction will be sufficient to repay the Obligations in full to the Lender and such commitment letter shall (x) be in form and substance and issued by a lender in each case satisfactory to the Lender in its sole discretion and (y) not subject to any property valuation/appraisal or other due diligence to be completed by the lender proposing to provide such Take Out Financing;

(e) A new Section 6.1(cc) of the Forbearance Agreement is inserted as follows:

(cc) on or before June 30, 2021 (i) the required creditors of the Proposal Parties pursuant to the BIA have not approved the BIA Proposal and (ii) the Court has not approved the BIA Proposal and BIA Proposal Proceedings without any conditions;

(f) A new Section 6.1(dd) of the Forbearance Agreement is inserted as follows:

(dd) the issuance of any order, direction or endorsement by the Court in connection with the application commenced with the Court by 2504670 Canada Inc., 8451761 Canada Inc. and Chi Long Inc. against certain of the Loan Parties and Daniel Casey or any other any action, application or other proceeding commenced by any one or more of the other limited partners of the Beneficial Owner (collectively, the **"Limited Partners"** and individually a **"Limited Partner"**) (collectively and individually the **"LP Litigation"**) that (i) appoints a receiver or receiver and manager of any Loan Party or any of the Property, (ii) prohibits the Proposal Parties (or any one or more of them) from filing a notice of intention to make a proposal or a proposal pursuant to the BIA or declares null or void any notice of intention to make a proposal or the process for the BIA Proposal, (iii) declares that 9615334 is terminated as the general partner of the Beneficial Owner or that 9615334 cannot exercise any powers of the general partner to bind the Beneficial Owner or otherwise restricts the ability of 9615334 to carry out the duties of the general partner of the Beneficial Owner, (iv) in the Lender's sole discretion could or may (w) adversely affect, impact or impair, directly or indirectly, the Lender's rights, remedies and/or entitlements under any Transaction Document, applicable law or otherwise including without limitation the right of the Lender or any receiver appointed pursuant to the Receivership Application to sell the Property, (x) adversely affect, impact or impair, directly or indirectly, the rights and/or entitlements of the Proposal Parties and the Sponsor to complete the BIA Proposal Proceedings and implement the BIA Proposal (including without limitation completing the proposed Take Out Financing and satisfying all conditions precedent in connection therewith) on or before June 30, 2021, or (y) adversely affect, impact or impair, directly or indirectly, the ability of the Loan Parties to repay the Obligations in full on or before June 30, 2021, or (z) interfere with or impair in any manner, directly or indirectly, with the actions, efforts, strategies or processes of the Loan Parties or the Lender or any court appointed receiver to sell the Property;

(g) A new Section 6.1(ee) of the Forbearance Agreement is inserted as follows:

(ee) any event or circumstance exists, arises or takes place in connection with any one or more of the Loan Parties which, in the Lender's sole discretion, may negatively affect or impair the ability of the Loan Parties to (i) implement the BIA Proposal on or before June 30, 2021 or (ii) repay the Obligations to the Lender in full on or before June 30, 2021.

**2.3 Monthly Forbearance Fees**

Without prejudice to all of the rights and remedies of the Lender in the Transaction Documents, in the event that the Loan Parties do not repay all of the Obligations in full on or before June 30, 2021, then in such case the Monthly Forbearance Fee (in a reduced amount of $80,000 for each calendar month) shall continue to be earned by the Lender and become due and owing by the Loan Parties in accordance the Amended Forbearance Agreement for each calendar month commencing July 2021 (the Monthly Forbearance Fee automatically being earned by the Lender and becoming due and owing by the Loan Parties on July 1, 2021 without any other action or notice required whatsoever); provided that for certainty, this Section 2.3 does not constitute and shall not be interpreted as any agreement or consent by the Lender that the Obligations are not required to be repaid to the Lender in full on or before the earlier to occur of (i) June 30, 2021 or (ii) the date on which a Forbearance Termination Event occurs. The Monthly Forbearance Fees constitute additional Obligations and interest shall accrue thereon in accordance with the terms of the Transaction Documents (for certainty and notwithstanding provisions to the contrary in any prior amendment to the Forbearance Agreement, none of the Monthly Forbearance Fees or any other forbearance fees contemplated by the Amended Forbearance Agreement were, are or shall be deemed to be added to the principal amount of the Obligations).

If the Loan Parties have not repaid the Obligations to the Lender on or before June 30, 2021 (or such earlier date as applicable in accordance with the terms hereof), then in such case the Loan Parties covenant and agree to pay to the Lender on or before 4 p.m. Toronto time on July 5, 2021 (collectively, the **"July 5 Payments"**) (w) the full amount of the July 2021 Monthly Forbearance Fee, (x) an amount equal to the amount of interest which will accrue on the Obligations for the period commencing on July 1, 2021 to and including July 31, 2021, and (y) an amount equal to the amount of the fees, disbursements and applicable taxes of (I) the Lender's counsel, (II) the Proposed Receiver, and (III) counsel for the Proposed Receiver, in each case to and including June 30, 2021, and (z) the other provisions in the Amended Forbearance Agreement in respect of the Monthly Forbearance Fees shall apply to any such additional Monthly Forbearance Fees.

Nothing contained in this Section 2.3 is or shall be deemed to be an agreement or consent by the Lender to the extension of any date or dates contained in the Forbearance Agreement (as amended by this Amending Agreement) or any agreement by the Lender to forbear from taking any enforcement action in the event of a Forbearance Termination Event (other than a Forbearance Amendment #3 Specified Forbearance Termination Event or the Impending 2021 Monthly Interest Payment Defaults) including without limitation seeking a Court hearing for the Receivership Application on the earliest date available after any such Forbearance Termination Event (other than a Forbearance Amendment #3 Specified Forbearance Termination Event or the Impending 2021 Monthly Interest Payment Defaults), and for certainty whether or not the Loan Parties have paid to the Lender some or all of the July 5 Payments, and in such circumstance, each of the Loan Parties irrevocably (x) consents and agrees to any such action which may be taken by the Lender in such circumstances and (y) covenants and agrees to cause its counsel to cooperate with counsel for the Lender in rescheduling the Court hearing to such earlier date, and no Loan Party shall request an adjournment for such Court hearing scheduled on any such earlier date or object to or oppose the Receivership Application. The Loan Parties acknowledge and agree that they have no right to extend the Forbearance Expiry Date.

**2.4 Court Date for the Receivership Application**

For certainty and notwithstanding the other terms of the Amended Forbearance Agreement (as same may hereafter be amended or restated from time to time), in the event that a Forbearance Termination Event (other than a Forbearance Amendment #3 Specified Forbearance Termination Event or the Impending 2021 Monthly Interest Payment Defaults) occurred before or occurs after the date of this Amendment Agreement, the Lender shall be entitled and shall have the right without any other action or notice required whatsoever to (i) proceed with the Court hearing for the Receivership Application by scheduling the Court hearing for the Receivership Application on the earliest available date on which such Court hearing can be scheduled with the Court (and for certainty prior to the July 12 Court Date), in which case the Loan Parties shall instruct their lawyers to cooperate with counsel for the Lenders to schedule the Court hearing accordingly, and no Loan Party shall request an adjournment for such Court hearing scheduled on any such earlier date.

**2.5 Covenants by Loan Parties Regarding LP Litigation and Threatened LP Litigation**

The Loan Parties covenant and agree to and in favour of the Lender as follows in connection with any LP Litigation which may be threatened or commenced by or against any one or more of the Loan Parties: (a) the Loan Parties will use best efforts to deliver or caused to be delivered to counsel for the Lender full and complete copies of any draft material proposed to be filed with the Court by any Limited Partner (to the extent that such drafts are received by the Loan Parties or their counsel) as soon as practicable after receipt of same by the Loan Parties or their counsel and in any event not later than the Business Day immediately following the date of receipt of same by the Loan Parties or their counsel; (b) the Loan Parties will use their best efforts to deliver or cause to be delivered to counsel for the Lender full and complete copies of any draft material proposed to be filed with the Court by any one or more of the Loan Parties as soon as practicable and if possible not less than not less than (2) Business Days prior to the date on which such material will be served by counsel to the Loan Parties or filed with the Court, and in any event the Loan Parties will deliver to cause to be delivered such served or filed material on the same Business Day on which such material is served by counsel to the Loan Parties or filed with the Court; (c) the Loan Parties consent to the Lender and counsel for the Lender attending each scheduling conference with the Court and each Court hearing, and the Loan Parties will cause their counsel to take reasonable steps to provide such access to the Lender and its counsel and to confirm to the Court the consent of the Loan Parties to same; and (d) the Loan Parties shall provide or cause their counsel to provide regular written (and on request by the Lender telephonic) update reports, such update reports to be in form and substance satisfactory to the Lender (the written reports shall be provided by the Loan Parties to the Lender not less frequently than two times per calendar month but for certainty, the Loan Parties will provide more frequent updates if there are any material developments), and the Loan Parties will attend on update phone calls with the Lender and its counsel as reasonably requested by the Lender from time to time.

**2.6 Covenants by Loan Parties Regarding the BIA Proposal and the BIA Proposal Proceedings**

The Loan Parties represent and warrant and covenant and agree as follows to and for the benefit of the Lender:

(a) the notice of intention to make a proposal pursuant to the BIA which will be issued and filed by the Loan Parties pursuant to the BIA is attached to this Amendment Agreement as Schedule “A”;

(b) the BIA Proposal to be filed by the Proposal Parties in respect of which the Proposal Parties will seek approval from the required creditors and the Court pursuant to the BIA and the sponsor agreement from the Proposal Sponsor which will be entered into by the Proposal Sponsor and filed in connection with the BIA Proposal Proceedings (the **"Proposal Sponsor Agreement"**) are attached hereto as Schedule "B";

(c) the Proposal Parties shall not amend the notice of intention to make a proposal pursuant to the BIA or the BIA Proposal, and the Proposal Sponsor shall not amend the Proposal Sponsor Agreement, in each case, without the prior written consent of the Lender in its sole discretion if any such amendment in any way affects or proposes to affect in any way the Lender, the Transactions Documents, the rights and remedies of the Lender thereunder, the Obligations, or the requirement of the Loan Parties to repay the Obligations to the Lender on the earlier to occur of June 30, 2021 and a Forbearance Termination Event (other than a Forbearance Amendment #3 Specified Forbearance Termination Event or the Impending 2021 Monthly Interest Payment Defaults); in the event of any amendment to the notice of intention to make a proposal, the BIA Proposal, or the Proposal Sponsor Agreement for which the consent of the Lender is not required by the foregoing provisions of this Section 2.6(c), then in such case the Loan Parties shall deliver or cause to be delivered to the Lender's counsel drafts of any and all such amendments as soon as practicable and in any event not less than one clear (1) Business Day before any such amendment is entered into or filed with the Court;

(d) the Proposal Parties shall provide and cause their counsel, the Proposal Trustee and its counsel to provide regular written and telephonic update reports to the Lender and its counsel regarding the status the BIA Proceedings and the expected date for the completion thereof, such update reports to be in form and substance satisfactory to the Lender (the written reports shall be provided by the Loan Parties to the Lender not less frequently than weekly but for certainty, the Loan Parties will provide more frequent updates if there are material developments); without limitation, the weekly reports referred to in the immediately preceding sentence shall include update summaries regarding votes received from creditors of the Proposal Parties for and against the BIA Proposal;

(e) the Proposal Parties shall deliver or cause to be delivered to the Lender's counsel on a timely basis drafts of all documents and agreements to be delivered or entered into to complete or otherwise relating to the BIA Proposal and BIA Proposal Proceedings;

(f) the Proposal Parties will deliver or cause to be delivered to counsel for the Lender full and complete copies of any draft material proposed to be filed with the Court by any one or more of the Proposal Parties in connection with the BIA Proposal Proceedings as soon as practicable and in any event not less than one Business Day prior to the date on which such material will be served by counsel to the Proposal Parties or filed with the Court, and the Proposal Parties agree to consider and cause their counsel to consider, acting reasonably, any comments provided by counsel to the Lender on behalf of the Lender; and

(g) the Proposal Parties consent to the Lender and counsel for the Lender attending each scheduling conference with the Court, each Court hearing and each creditors meeting in connection with the Proposal Proceedings, and to the Lender filing material with the Court and to making submissions to the Court on behalf of the Lender at any Court hearing in connection with the BIA Proposal Proceedings.

**ARTICLE 3**
**CONDITIONS PRECEDENT**

**3.1 Conditions Precedent**

The amendments to the Forbearance Agreement contained in Section 2.1 of this Amendment Agreement and Section 2.2 of this Amendment Agreement shall not be effective or of any force or effect unless:

(i) (a) all of the representations and warranties in this Agreement and the Amended Forbearance Agreement are true and correct in all respects as of the date on which the Lender or its counsel confirms in writing that the Forbearance Agreement Amendment #4 Condition Precedent have been satisfied (as contemplated by Section 3.1(iii) below), and (b) no Forbearance Termination Event shall have occurred (except for the Forbearance Amendment #3 Specified Forbearance Termination Events and the Impending 2021 Monthly Interest Payment Defaults);

(ii) the Lender shall have received (a) a copy of this Agreement fully executed by all of the Loan Parties, (b) a consent in form and substance satisfactory to the Lender executed by Westmount in whose favour a mortgage is registered on title to the Property (which mortgage (the **"Westmount Mortgage"**) was subordinated by Westmount to the Lender pursuant to the terms of an amended and restated priority agreement (as same may have been amended, restated or supplemented, the **"Westmount Priority Agreement"**) between Computershare Trust Company of Canada (as the then custodian for the Lender) and Westmount dated September 25, 2019), consenting to the terms of this Amendment Agreement and agreeing to such other matters as the Lender may require, (c) a consent and waiver by the Concord Pacific Guarantor and 2769746 to the Proposed Receiver, Davies LLP, the Lender, and 2292912 whereby the Concord Pacific Guarantor and 2769746 agree to KSV and Davies LLP acting in connection with the Receivership Application notwithstanding their proposed roles in the proposed BIA Proposal Proceedings, and (d) a confirmation agreement by the Concord Pacific Guarantor to the Lender acknowledging and consenting to this Amendment Agreement and confirming, among other things, that its guarantee to the Lender dated January 28, 2021 continues in full force and effect;

(iii) the Lender or its counsel has confirmed in writing (including by email) to the Loan Parties or their counsel that the conditions precedent listed in clauses (i) and (ii) of this Section 3.1 have been satisfied (the conditions precedent listed in Section 3.1(i), (ii) and (iii) are collectively called the **"Forbearance Agreement Amendment #4 Conditions Precedent"**, and individually a "**Forbearance Agreement Amendment #4 Condition Precedent"**); and

(vi) all of the Forbearance Agreement Amendment #4 Conditions Precedent have been satisfied on or before 4:00 p.m. Toronto time on April 30, 2021.

The Loan Parties acknowledge and agree that unless and until all of such Forbearance Agreement Amendment #4 Conditions Precedent have been satisfied to the satisfaction of the Lender in its sole discretion and such satisfaction has been confirmed in writing by the Lender or its counsel to the Borrower or its counsel as contemplated by clause (iii) above (the **"Forbearance Amendment #4 Effectiveness Confirmation"**), the Lender BIA Consent is and shall continue to be of no force or effect, and the filing of a BIA notice of intention to file a proposal or a BIA proposal by any one or more of the Loan Parties does and shall constitute an automatic Forbearance Termination Event in which case the Lender will be entitled to enforce all of its rights and remedies under the Transaction Documents and applicable law and in equity in connection therewith, including without limitation scheduling a hearing with the Court for the Receivership Application on the earliest date possible on which Receivership Application can be heard.


B-1-19

## ARTICLE 4
## GENERAL PROVISIONS

### 4.1 No Other Waivers; Reservation of Rights

The Lender reserves the right, in its sole and absolute discretion, to exercise any or all of its rights or remedies under any one or more of the Transaction Documents and the Amended Forbearance Agreement or applicable law or in equity, and the Lender has not waived any such rights or remedies, and nothing in this Agreement nor any delay on the part of the Lender in exercising any such rights or remedies, shall be construed as a waiver of any such rights or remedies. The rights and remedies of the Lender under this Agreement, the Amended Forbearance Agreement, and the other Transaction Documents are cumulative and not in substitution for any other rights or remedies available by applicable law, in equity or otherwise.

### 4.2 Execution in Counterparts and by Electronic Transmission

This Amendment Agreement may be executed in counterparts, each of which shall be deemed to be an original and which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original format or by any form of director electronic transmission including without limitation by portable document format ("**PDF**") or "DocuSign" and the parties adopt any signatures executed in such manner as original signatures of the parties.

### 4.3 Governing Law

This Amendment Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflicts of law or principles of comity.

### 4.4 Defined Terms

Any capitalized word or phrase used in this Amendment Agreement but not defined in the Amended Forbearance Agreement or this Amendment has the same meaning given to such word or term in Forbearance Amendment #1, Forbearance Amendment #2, or Forbearance Amendment #3 as applicable.

### 4.5 Release and Indemnity

In consideration of the agreements of the Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Loan Parties hereby absolutely, unconditionally and irrevocably waives, releases, remises and forever discharges the Lender, 2292912 and Computershare and each of their respective successors and assigns, participants, affiliates, subsidiaries, branches, divisions, predecessors, directors, officers, attorneys, employees, lenders, investors in the Obligations and other representatives and advisors (the Lender and all such other persons being hereinafter referred to collectively as the "**Releasees**" and individually as a "**Releasee**"), of and from all demands, actions, causes of action, suits, damages, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "**Claim**" and collectively, "**Claims**") of every name and nature, whether known or unknown, suspected or unsuspected, both arising at law and in equity, which any of the Loan Parties or any of their successors, heirs, executors, administrators, permitted assigns and legal representatives may now own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day

and date of this Amendment Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with, the Forbearance Agreement, any of the Transaction Documents or transactions thereunder or related thereto.

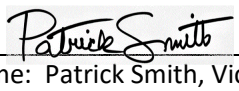
In consideration of the agreements of the Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Loan Parties hereby agrees to indemnify and hold harmless (absolutely, unconditionally and irrevocably) the Releasees from and against any and all Claims of every name and nature, whether known or unknown, both arising at law and in equity, suffered or incurred by any of the Loan Parties by reason of any matter or thing whatsoever incurred by or asserted against the Lender as a result of or in connection with any matter, thing, action, inaction, or transaction whatsoever contemplated by this Amendment Agreement, the Amended Forbearance Agreement, or any of the Transaction Documents, except in the event that any such Claim is caused directly by the gross negligence or willful misconduct of the Lender as proven by a court of competent jurisdiction pursuant to an order non-appealable order in respect which the period for any permitted appeal has expired.

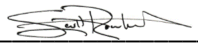
The releases and indemnities contained herein do and shall survive the expiry or other termination of the Forbearance Period and/or the Amended Forbearance Agreement and the repayment of the Obligations to the Lender.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the parties hereto have entered into this Amendment Agreement as of the date first written above.

**TIMBERCREEK MORTGAGE SERVICING INC.**

By: 
Name: Patrick Smith, Vice President
Authorized Signatory

By: 
Name: Scott Rowland, Vice President
Authorized Signatory

**CRESFORD CAPITAL CORPORATION**

By: _____
Name:
Authorized Signatory

**YG LIMITED PARTNERSHIP,**
**by its GENERAL PARTNER, 9615334 CANADA INC.**

By: _____
Name:
Authorized Signatory

**CRESFORD (ROSEDALE) DEVELOPMENTS INC.**

By: _____
Name:
Authorized Signatory

**YSL RESIDENCES INC.**

By: _____
Name:
Authorized Signatory

**IN WITNESS WHEREOF**, the parties hereto have entered into this Amendment Agreement as of the date first written above.

**TIMBERCREEK MORTGAGE SERVICING INC.**

By: _____
Name: Patrick Smith, Vice President
Authorized Signatory

By: _____
Name: Scott Rowland, Vice President
Authorized Signatory

**CRESFORD CAPITAL CORPORATION**

By: _____
Name: Daniel Casey
Authorized Signatory

**YG LIMITED PARTNERSHIP,**
**by its GENERAL PARTNER, 9615334 CANADA INC.**

By: _____
Name: Daniel Casey
Authorized Signatory

**CRESFORD (ROSEDALE) DEVELOPMENTS INC.**

By: _____
Name: Daniel Casey
Authorized Signatory

**YSL RESIDENCES INC.**

By: _____
Name: Daniel Casey
Authorized Signatory

**Schedule "A" – BIA Notice of Intention to Make a Proposal**

FORM 33

**Notice of Intention to Make a Proposal**
*[Subsection 50.4(1)]*

**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORM UNDER THE LAWS OF THE PROVINCE OF MANITOBA**

**TAKE NOTICE THAT:**

1. **YG Limited Partnership**, an insolvent person, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a proposal to its creditors.

2. **KSV Restructuring Inc.** of 150 King Street West, Suite 2308, Toronto, Ontario, a licensed trustee, has consented to act as trustee under the proposal and a copy of the consent is attached hereto.

3. A list of the names of the known creditors with claims amounting to $250 or more and the amounts of their claims is attached.

4. Pursuant to section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against YG Limited Partnership are stayed as of the date of filing this notice with the Official Receiver in its locality.

**DATED** at Toronto, Ontario this day of April, 2021.

**YG LIMITED PARTNERSHIP,**
**by its general partner**
**9615334 CANADA INC.**

Per: _____
Name:
Title:

**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORM UNDER THE LAWS OF THE PROVINCE OF MANITOBA**

**CONSENT TO ACT AS TRUSTEE**

**KSV RESTRUCTURING INC.** hereby consents to act as Trustee under the Notice of Intention to Make a Proposal and/or Proposal to be filed on behalf of YG Limited Partnership by its limited partner 9615334 Canada Inc.

**DATED** at Toronto, Ontario this day of April, 2021.

**KSV RESTRUCTURING INC.**

Per:_____
Name: Robert Kofman
Title: President

FORM 33

**Notice of Intention to Make a Proposal**
*[Subsection 50.4(1)]*

**IN THE MATTER OF THE PROPOSAL OF YSL RESIDENCES INC., A CORPORATION INCORPORATED PURSUANT TO THE LAWS OF ONTARIO**

**TAKE NOTICE THAT:**

1. **YSL Residences Inc.**, an insolvent person, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a proposal to its creditors.

2. **KSV Restructuring Inc.** of 150 King Street West, Suite 2308, Toronto, Ontario, a licensed trustee, has consented to act as trustee under the proposal and a copy of the consent is attached hereto.

3. A list of the names of the known creditors with claims amounting to $250 or more and the amounts of their claims is attached.

4. Pursuant to section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against YG Limited Partnership are stayed as of the date of filing this notice with the Official Receiver in its locality.

**DATED** at Toronto, Ontario this day of April, 2021.

**YSL RESIDENCES INC.**

Per: _____
Name:
Title:

**IN THE MATTER OF THE PROPOSAL OF YSL RESIDENCES INC., A CORPORATION INCORPORATED PURSUANT TO THE LAWS OF ONTARIO**

**CONSENT TO ACT AS TRUSTEE**

**KSV RESTRUCTURING INC.** hereby consents to act as Trustee under the Notice of Intention to Make a Proposal and/or Proposal to be filed on behalf of YSL Residences Inc.

**DATED** at Toronto, Ontario this day of April, 2021.

**KSV RESTRUCTURING INC.**

Per:_____
Name: Robert Kofman
Title: President

**Schedule "B" – BIA Proposal and Sponsor Agreement**

**DRAFT**
**04/30/21**

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. PURSUANT TO THE *BANKRUPTCY AND INSOLVENCY ACT***

# PROPOSAL

**WHEREAS**, upon delivery hereof, YSL Residences Inc. and 9615334 Canada Inc., as general partner of and on behalf of YG Limited Partnership (collectively, "**YSL**" or the "**Company**") have initiated proceedings under the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, B-3 as amended (the "**BIA**"), pursuant to Section 50(1) thereof;

**NOW THEREFORE** the Company hereby submits the following proposal under the BIA to its creditors (the "**Proposal**").

## ARTICLE I
## DEFINITIONS

### 1.01 Definitions

In this Proposal:

"**Administrative Fees and Expenses**" means the fees, expenses and disbursements incurred by or on behalf of the Proposal Trustee, the solicitors for the Proposal Trustee, the solicitors of the Company both before and after the Filing Date;

"**Affected Creditor Claim**" means a Proven Claim, other than an Unaffected Claim;

"**Affected Creditor Share**" means, subject to section 2.02(a)(i), the amount that is equal to 58% of the face value of an Affected Creditor Claim, subject to the Maximum Proposal Fund Amount which, if exceeded shall result in Affected Creditors receiving the Affected Creditor Pro Rata Share;

"**Affected Creditor Pro Rata Share**" means, in respect of an Affected Creditor Claim, (i) the face value of the Affected Creditor Claim, divided by (ii) the Maximum Proposal Fund Amount;

"**Affected Creditors**" means all Persons having Affected Creditor Claims, but only with respect to and to the extent of such Affected Creditor Claims;

"**Affected Creditors Class**" means the class consisting of the Affected Creditors established under and for the purposes of this Proposal, including voting in respect thereof;

"**Approval Order**" means an order of the Court, among other things, approving the Proposal;

"**Assumed Contracts**" means, subject to section 8.02(e), those written contracts entered into by or on behalf of the Company in respect of the Project listed in Schedule "B" hereto, which are to be assumed by the Proposal Sponsor upon Implementation with the consent of the applicable counterparty or otherwise pursuant to an order issued in pursuant to section 84.1 of the BIA;

"**BIA**" has the meaning ascribed to it in the recitals;

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;

"**Claim**" means any right or claim of any Person against the Company in connection with any indebtedness, liability, or obligation of any kind whatsoever in existence on the Filing Date (or which has arisen after the Filing Date as a result of the disclaimer or repudiation by the Company on or after the Filing Date of any lease or executory contract), and any interest accrued thereon to and including the Filing Date and costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against the Company with respect to any matter, cause or chose in action, but subject to any counterclaim, set-off or right of compensation in favour of the Company which may exist, whether existing at present or commenced in the future, which indebtedness, liability or obligation (A) is based in whole or in part on facts that existed prior to the Filing Date, (B) relates to a period of time prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA;

"**Company**" has the meaning ascribed to it in the recitals;

"**Conditions Precedent**" shall have the meaning given to such term in section 8.02 hereof;

"**Condo Purchase Agreement**" means an agreement of purchase and sale in respect of a residential condominium unit in the Project between the Company and a Condo Purchaser;

"**Condo Purchaser**" means a purchaser of a residential condominium unit in the Project pursuant to a Condo Purchase Agreement;

"**Condo Purchaser Claim**" means any Claim of a Condo Purchaser in respect of its Condo Purchase Agreement;

"**Construction Lien Claim**" means any Proven Claim in respect of amounts secured by a perfected lien registered against title to the Property and are valid in accordance with the *Construction Act* (Ontario);

"**Convenience Creditor**" means an Affected Creditor with a Convenience Creditor Claim;

"**Convenience Creditor Claim**" means (a) any Proven Claims of an Affected Creditor in an amount less than or equal to **[$10,000]**, and (b) any Proven Claim of an Affected Creditor in an amount greater than **[$10,000]** if the relevant Creditor has made a valid election for the purposes of this Proposal in accordance with this Proposal prior to the Convenience Creditor Election Deadline;

"**Convenience Creditor Consideration"** has the meaning ascribed to it in Section 3.04;

"**Convenience Creditor Election Deadline**" means 5:00 p.m. (Toronto time) on **[May 24]**, 2021;

"**Convenience Creditor Election Form**" means the form, substantially in the form attached hereto as Schedule C, pursuant to which an Affected Creditor that is not a Convenience Creditor may elect to be treated as a Convenience Creditor, in accordance with Section 3.04 herein;

"**Court**" means the Ontario Superior Court of Justice (Commercial List);

"**Court Approval Date**" means the date upon which the Court makes the Approval Order;

"**Creditors' Meeting**" means the meeting of the Affected Creditors called for the purpose of considering and voting upon the Proposal;

"**Creditors' Meeting Date**" means such date and time for the Creditors' Meeting as may be called by the Proposal Trustee, but in any event shall be no later than twenty-one (21) days following the filing of this Proposal with the Official Receiver;

"**Crown**" means Her Majesty in Right of Canada or of any Province of Canada and their agents;

"**Crown Claims**" means the Claims of the Crown set out in Section 60(1.1) of the BIA outstanding as at the Filing Date against the Company, if any, payment of which will be made in priority to the payment of the Preferred Claims and to distributions in respect of the Ordinary Claims, and specifically excludes any other claims of the Crown;

"**Disputed Claim**" means any Claim which has not been finally resolved as a Proven Claim in accordance with the BIA as at the Proposal Implementation Date;

"**Distributions**" means a distribution of funds made by the Proposal Trustee from the Proposal Fund to Affected Creditors in respect of Affected Creditor Claims, in accordance with Article V;

"**Effective Time**" means 12:00 p.m. (Toronto time) on the Proposal Implementation Date;

"**Equity Claim**" has the meaning ascribed to it in Section 2 of the BIA;

"**Existing Equity**" means the limited partnership units of YG LP;

"**Existing Equityholders**" means the holders of the Existing Equity immediately prior to the Effective Time;

"**Filing Date**" means [●], 2021, being the date upon which a Notice of Intention to Make a Proposal was filed by the Company with the Official Receiver in accordance with the BIA;

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Implementation**" means the completion and implementation of the transactions contemplated by this Proposal;

"**Implementation Certificate**" has the meaning ascribed to it in Section 8.02(j);

"**Maximum Proposal Fund Amount**" means [$●];

"**Official Receiver**" shall have the meaning ascribed thereto in the BIA;

"**Outside Date**" means July 31, 2021;

"**Permitted Encumbrances**" means those encumbrances on the Property listed in Schedule "A" hereto;

"**Person**" means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority and a natural person in such person's capacity as trustee, executor, administrator or other legal representative;

"**Preferred Claim**" means a Claim enumerated in Section 136(1) of the BIA outstanding as at the Filing Date against the Company, if any, the payment of which will be made in priority to distributions in respect of Affected Creditor Claims;

"**Project**" means the mixed-used office, retail and residential condominium development to be constructed on the Property currently consisting of approximately 1,100 residential condominium units and 170 parking units and known as Yonge Street Living Residences;

"**Property**" means the real property owned by the Company and municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, and legally described by PIN numbers 21101-0042 (LT) to 21101-0049 (LT), inclusive;

"**Proposal**" means this Proposal of the Company, and any amendments, modifications and/or supplements hereto made in accordance with the terms hereof;

"**Proposal Fund**" means the fund established by the Proposal Sponsor pursuant to and as described in Section 5.01;

"**Proposal Fund Amount**" means the amount necessary to pay each Affected Creditor its Affected Creditor Share, provided that such amount shall not exceed the Maximum Proposal Fund Amount;

"**Proposal Implementation Date**" means the date on which Implementation occurs, which shall occur following the satisfaction of the Conditions Precedent, and no later than the Outside Date;

"**Proposal Sponsor**" means Concord Properties Development Corp.;

"**Proposal Sponsor Agreement**" means that agreement entered into among the Proposal Sponsor and the Company as of April [●], 2021, as amended from time to time;

"**Proposal Trustee**" means KSV Restructuring Inc. in its capacity as trustee in respect of this Proposal, or its duly appointed successor;

"**Proposal Trustee's Website**" means the following website: www.ksvadvisory.com/insolvency-cases/case/[●];

"**Proven Claim**" means in respect of an Affected Creditor, the amount of a Claim as finally determined in accordance with the provisions of the BIA, provided that the Proven Claim of an Affected Creditor with a Claim in excess of $10,000.00 that has elected to be a Convenience Creditor by submitting a Convenience Creditor Election Form shall be valued for voting purposes as $10,000.00;

"**Released Claims**" means, collectively, the matters that are subject to release and discharge pursuant to Section 7.01;

"**Released Parties**" means, collectively, (i) the Company, (ii) each affiliate or subsidiary of the Company; (iii) the Proposal Sponsor, (iv) the Proposal Trustee, and (v) subject to section 7.01, each of the foregoing Persons' respective former and current officers, directors, principals, members, affiliates, limited partners, general partners, managed accounts or funds, fund advisors, employees, financial and other advisors, legal counsel, and agents, each in their capacity as such;

"**Required Majority**" means an affirmative vote of a majority in number and two-thirds in value of all Proven Claims in the Affected Creditors Class entitled to vote, who are present and voting at the Creditors' Meeting (whether online, in-person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the BIA;

"**Secured Claims**" means:

(a) The Claim of Timbercreek which is secured by, among other things a mortgage, charge, lien or other security validly charging or encumbering the Property;

(b) The Claim of 2576725 Ontario Inc. which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;

(c) All Construction Lien Claims but only to the extent of such Construction Lien Claims;

"**Secured Creditor**" means a Person holding a Secured Claim, with respect to, and to the extent of such Secured Claim;

"**Superintendent's Levy**" means the levy payable to the Superintendent of Bankruptcy pursuant to sections 60(4) and 147 of the BIA;

"**Timbercreek**" means, collectively, Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.;

"**Unaffected Claim**" means:

(a) the Administrative Fees and Expenses;

(b) the Claims of Timbercreek;

(c) the Claims of Westmount Guarantee Services Inc. which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;

(d) the Claims of 2576725 Ontario Inc., which is secured by, among other things, an equitable mortgage encumbering the Property;

(e) any Claim of the City of Toronto;

(f) all Condo Purchaser Claims;

(g) all Construction Lien Claims, but only to the extent such Claims are valid in accordance with the *Construction Act* (Ontario) and have been perfected by the Proposal Implementation Date; and

(h) such other Claims as the Company and Proposal Sponsor may agree with the consent of the Proposal Trustee;

"**Unaffected Creditor**" means a creditor holding an Unaffected Claim, with respect to and to the extent of such Unaffected Claim;

"**Undeliverable Distributions**" has the meaning ascribed to it in Section 5.04; and

"**YSL**" has the meaning ascribed to it in the recitals.

### 1.02 Intent of Proposal

This Proposal is intended to provide all Affected Creditors a greater recovery than they would otherwise receive if the Company were to become bankrupt under the BIA. More specifically, the Proposal will provide for a payment in full of Secured Claims and will provide a significant recovery in respect of Affected Creditor Claims. While the exact recovery cannot be determined until all Claims have been determined, and subject to the claims of contingent Affected Creditors, the Company expects Affected Creditors to receive a significant, albeit not a full recovery, on their

Claims and, in any event, a greater recovery than would occur if the Company were to become a bankrupt under the BIA.

In consideration for, among other things, its sponsorship of this Proposal, including the satisfaction of all Secured Claims, Preferred Claims and the establishment of the Proposal Fund, on the Proposal Implementation Date, title to the Property, subject only to the Permitted Encumbrances, as well as the Company's interests and obligations under the Assumed Contracts and Condo Purchase Agreements shall be acquired by the Proposal Sponsor, or its nominee in accordance with the terms hereof.

**1.03 Date for Any Action**

In the event that any date on which any action is required to be taken under this Proposal by any of the parties is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

**1.04 Time**

All times expressed in this Proposal are local time in Toronto, Ontario, Canada unless otherwise stipulated. Time is of the essence in this Proposal.

**1.05 Statutory References**

Except as otherwise provided herein, any reference in this Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

**1.06 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors, and assigns of any Person named or referred to in the Proposal.

**1.07 Currency**

Unless otherwise stated herein, all references to currency and to "$" in the Proposal are to lawful money of Canada.

**1.08 Articles of Reference**

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

**1.09 Interpretation Not Affected by Headings**

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

**1.10 Numbers**

In this Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

## ARTICLE II
## CLASSIFICATION AND TREATMENT OF AFFECTED PARTIES

**2.01 Classes of Creditors**

For the purposes of voting on the Proposal, there will only be one class of creditors, being the Affected Creditors Class. For the purposes of voting on the Proposal, each Convenience Creditor shall be deemed to be in and shall be deemed to vote in and as part of, the Affected Creditors Class.

**2.02 Treatment of Affected Creditors**

(a) As soon practicable after the Proposal Implementation Date, and after taking an adequate reserve in respect of any Disputed Claims:

(i) all Affected Creditor Claims (other than Convenience Class Creditors) shall receive, in respect of such Affected Creditor Claim, its Affected Creditor Share, net of the Superintendent's Levy, made by the Proposal Trustee from the Proposal Fund from time to time in accordance with Article V hereof; provided, however if the aggregate Affected Creditor Share amount payable to all Affected Creditors exceeds the Maximum Proposal Fund Amount, then Affected Creditors with Proven Claims shall receive, in respect of such Proven Claim, its Affected Creditor Pro Rata Share; and

(ii) all Convenience Class Creditors shall receive in respect of such Convenience Creditor Claims, the Convenience Creditor Consideration, net of the Superintendent's Levy;

(b) On the Proposal Implementation Date, each Affected Creditor Claim shall, and shall be deemed to have been irrevocably and finally extinguished, discharged and released, and each Affected Creditor shall have no further right, title or interest in or to its Affected Creditor Claim.

**2.03 Existing Equityholders and Holders of Equity Claims**

Holders of Equity Claims shall not be entitled to vote in respect of their Equity Claims at the Creditors Meeting and shall not receive any distribution under this Proposal on account of their Equity Claims. Subject to Section 7.01, all Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred for no consideration on the Proposal Implementation Date in accordance with Section 5.01(g).

**2.04 Application of Proposal Distributions**

All amounts paid or payable hereunder on account of the Affected Creditor Claims (including, for greater certainty, any securities received hereunder) shall be applied as follows: (i) first, in respect of the principal amount of the Affected Creditor Claim, and (ii) second, in respect of the accrued but unpaid interest on the Affected Creditor Claim.

**2.05 Full Satisfaction of All Affected Creditor Claims**

All Affected Creditors shall accept the consideration set out in Section 2.02 hereof in full and complete satisfaction of their Affected Creditor Claims, and all liens, certificates of pending litigation, executions, or other similar charges or actions or proceedings in respect of such Affected Creditor Claims will have no effect in law or in equity against the Property, or other assets and undertaking of the Company. Upon the Implementation of the Proposal, any and all such registered liens, certificates of pending litigation, executions or other similar charges or actions brought, made or claimed by Affected Creditors will be and will be deemed to have been discharged, dismissed or vacated without cost to the Company and the Company will be released from any and all Affected Creditor Claims of Affected Creditors, subject only to the right of Affected Creditors to receive Distributions as and when made pursuant to this Proposal.

**2.06 Undeliverable Distributions**

Undeliverable Distributions shall be dealt with and treated in the manner provided for in the BIA and the directives promulgated pursuant thereto.

## ARTICLE III
## MEETING OF AFFECTED CREDITORS

**3.01 Meeting of Affected Creditors**

On the Creditors' Meeting Date, the Company shall hold the Creditors' Meeting in order for the Affected Creditors to consider and vote upon the Proposal.

**3.02 Time and Means of Creditors' Meeting**

The Creditors' Meeting shall take place at 10 a.m. (Toronto time) on **[May 25]**, 2021. Due to COVID-19, the Creditors' Meeting shall be held online at the following website: **[●]**.

**3.03 Quorum and Conduct of Creditors' Meeting**

A quorum shall be constituted for the Creditors' Meeting or any adjournment thereof if there is one Affected Creditor, entitled to vote, present in person (virtually) or by proxy, or if one Affected Creditor, entitled to vote, has submitted a voting letter in accordance with the provisions of the BIA and this Proposal. If the requisite quorum is not present at the Creditors' Meeting or if the Creditors' Meeting has to be postponed for any reason, then the Creditors' Meeting shall be adjourned by the Proposal Trustee to such date, time and place or online meeting platform as determined by the Proposal Trustee. For greater certainty, the Creditors' Meeting may be adjourned one or more times.

**3.04 Voting at the Meeting**

Each Affected Creditor will be required to submit a proof of claim to the Proposal Trustee. Each Affected Creditor shall be entitled to a single vote valued in the full amount of its Proven Claim. In order to vote at the Creditors' Meeting, the proof of claim must be submitted to the Proposal Trustee no later than 5:00 p.m. (Toronto time) on the day that is one (1) Business Day prior to the commencement of the Creditors' Meeting. Any Person asserting a Construction Lien Claim that has not been perfected in accordance with the *Construction Act* (Ontario) is required to file a proof of claim in accordance with this paragraph.

The only Persons entitled to attend and speak at the Creditors' Meeting are representatives of the Company and its legal counsel and advisors, the Proposal Sponsor and its legal counsel and advisors, the Proposal Trustee and its legal counsel and advisors, and all other Persons entitled to vote at the Creditors' Meeting and their respective legal counsel and advisors. Any other Person may be admitted to the Creditors' Meeting on invitation of the Proposal Trustee.

The provisions of section 135 of the BIA will apply to all proofs of claim submitted by Affected Creditors, including in respect of Disputed Claims. In the event that a duly submitted proof of claim has been disallowed or revised for voting purposes by the Proposal Trustee, and such disallowance has been disputed by the applicable Affected Creditor in accordance with Section 135(4) of the BIA, then the dollar value for voting purposes at the Creditors' Meeting shall be the dollar amount of such disputed claim set out in the proof of claim submitted by such Affected Creditor, without prejudice to the determination of the dollar value of such Affected Creditor's disputed claim for distribution purposes.

Notwithstanding the foregoing, each Convenience Creditor with a Proven Claim of $10,000.00 or less is irrevocably deemed to have voted the full amount of its Proven Claims in favour of the approval of the Proposal without requirement for such Convenience Creditor to file a proxy to vote in favour of the Proposal, in consideration for the Proposal providing for the full payment of their Proven Claim. An Affected Creditor with a Proven Claim in excess of $10,000.00 that wishes to be treated as a Convenience Creditor under the Proposal must deliver a duly completed and executed Convenience Creditor Election Form to the Proposal Trustee by no later than the Convenience Creditor Election Deadline, and upon doing so such Affected Creditor: (i) is irrevocably deemed to have voted the full amount of its Proven Claim in favour of the Proposal as a member of the Affected Creditors Class; and (ii) shall be treated as a Convenience Creditor for

all purposes and shall receive the lesser of (x) $10,000.00, and (y) the amount of its Proven Claim (either (x) or (y), being the applicable "**Convenience Creditor Consideration**").

### 3.05 Approval by Affected Creditors

In order to be approved, this Proposal must receive the affirmative votes of the Required Majority.

### 3.06 Modification to Proposal

Subject to the consent of the Proposal Trustee and the Proposal Sponsor, the Company reserves the right at any time prior to the Creditors' Meeting to file any modification of, amendment or supplement to the Proposal by way of supplementary proposal. Any such amended or supplementary proposal shall forthwith be posted on the Proposal Trustee's Website and filed with the Official Receiver as soon as practicable, in which case any such amended or supplementary proposal or proposals shall, for all purposes, be and be deemed to be a part of and incorporated in to this Proposal. At the Creditors' Meeting, the Company and/or the Proposal Trustee shall provide all Affected Creditors in attendance with details of any modifications or amendments prior to the vote being taken to approve the Proposal. Subject to the provisions of the BIA, after the Creditors' Meeting (and both prior to and subsequent to the Approval Order) and subject to the consent of the Proposal Trustee and the Proposal Sponsor, the Company may at any time and from time to time vary, amend, modify or supplement the Proposal.

## ARTICLE IV
## PREFERRED CLAIMS AND MANDATORY PAYMENTS

### 4.01 Crown Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Crown Claims, if any, will be paid by the Proposal Trustee, in full with related interest and penalties as prescribed by the applicable laws, regulations and decrees.

### 4.02 Preferred Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Preferred Claims, if any, will be paid in full by the Proposal Trustee.

## ARTICLE V
## ESTABLISHMENT OF PROPOSAL FUND AND DISTRIBUTIONS

### 5.01 Establishment of Proposal Fund

On the Plan Implementation Date, in accordance with the sequence set out in section 6.01 hereof, the Proposal Sponsor shall transfer to the Proposal Trustee, in trust, the Proposal Fund Amount, provided that such amount shall not exceed the Maximum Proposal Fund Amount, which funds shall be held in a specific trust account by the Proposal Trustee and used for the specific purposes set out in this Proposal, plus a reasonable reserve on account of Administrative Fees and Expenses,

and, subject to section 5.03, a reserve in respect of Disputed Claims (if any). All such cash transferred to the Proposal Trustee shall be held in trust by the Proposal Trustee in the Proposal Fund for the benefit of such Persons who are entitled to receive Distributions (including all Affected Creditors to the extent of their Proven Claims) pursuant to this Proposal. Any excess funds remaining in the Proposal Fund following the distribution of all amounts contemplated by the Proposal to those parties entitled to such disbursements shall be remitted directly to the Proposal Sponsor, or as it may direct.

**5.02 Distributions**

As soon as possible after the Proposal Implementation Date and the payments contemplated by Sections 4.01 and 4.02, the Proposal Trustee shall make a Distribution to Affected Creditors with Proven Claims as follows:

(a) If the aggregate amount necessary to satisfy the Affected Creditor Share payable to all Affected Creditors with Proven Claims does not exceed the Maximum Proposal Fund Amount, the Proposal Trustee shall make a Distribution to each Affected Creditor with a Proven Claim in the amount of its Affected Creditor Share, net of the Superintendent's Levy; or

(b) If the aggregate amount necessary to satisfy the Affected Creditor Share payable to all Affected Creditors with Proven claims exceeds the Maximum Proposal Fund Amount, then, after reserving an amount necessary in respect of unresolved Disputed Claims in accordance with Section 5.03, the Proposal Trustee shall make a Distribution of all funds available for distribution in the Proposal Fund to each Affected Creditor with a Proven Claim in the amount of its Affected Creditor Pro Rata Share, net of the Superintendent's Levy. The Proposal Trustee may make more than one distribution to Affected Creditors of the Affected Creditor Pro Rata Share amount as Disputed Claims are resolved.

**5.03 Reserves for Unresolved Disputed Claims**

Prior to making any Distribution to Affected Creditors pursuant to Section 5.02, the Proposal Trustee shall set aside in the Proposal Fund sufficient funds to pay all Affected Creditors with Disputed Claims the amounts such Affected Creditors would be entitled to receive in respect of that particular Distribution pursuant to this Proposal, in each case as if their Disputed Claim had been a Proven Claim at the time of such Distribution. Upon the resolution of each Disputed Claim in accordance with the BIA, any funds which have been reserved by the Proposal Trustee to deal with such Disputed Claim but which are not required to be paid to the Affected Creditor shall remain in the Proposal Fund and become available for further Distributions to Affected Creditors in respect of their Proven Claims.

**5.04 Method of Distributions**

Unless otherwise agreed to by the Proposal Trustee and an Affected Creditor, all Distributions made by the Proposal Trustee pursuant to this Proposal shall be made by cheque mailed to the address shown on the proof of claim filed by such Affected Creditor or, where an Affected Creditor has provided the Trustee with written notice of a change of address, to such address set out in that

notice. If any delivery or distribution to be made pursuant to Article IV hereof in respect of an Affected Creditor Claim is returned as undeliverable, or in the case of a distribution made by cheque, the cheque remains uncashed (each an "**Undeliverable Distribution**"), no other crediting or delivery will be required unless and until the Proposal Trustee is notified of the Affected Creditor's then current address. The Proposal Trustee's obligations to the Affected Creditor relating to any Undeliverable Distribution will expire six months following the date of delivery or mailing of the cheque or other distribution, after which date the Proposal Trustee's obligations under this Proposal in respect of such Undeliverable Distribution will be forever discharged and extinguished, and the amount that the Affected Creditor was entitled to be paid under the Proposal shall be distributed to the Proposal Sponsor.

### 5.05 Residue After All Distributions Made

Residual funds, if any, in the Proposal Fund which are not required for Distribution under this Proposal shall be returned to the Proposal Sponsor, or as it may direct, by the Proposal Trustee immediately prior to the filing of the certificate by the Proposal Trustee referenced in section 13.02 hereof.

## ARTICLE VI
## IMPLEMENTATION

### 6.01 Proposal Implementation Date Transactions

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected, in the following order in five minute increments (unless otherwise indicated) and at the times and in the order set out in this Section 6.01 (or in such other manner or order or at such other time or times as the Company and the Proposal Sponsor may agree, each acting reasonably), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

(a) Either the Proposal Sponsor will, at its election, but subject to obtaining the consent of the applicable Secured Creditor, assume the Secured Claims, or on behalf of the Company, the Proposal Sponsor will make payment in full to Secured Creditors in respect of their Secured Claims;

(b) the releases in respect of Secured Claims referenced in section 7.01 shall become effective, and any registrations on title to the Property in respect of such Secured Claims shall be discharged from title to the Property;

(c) the Proposal Sponsor shall provide the Proposal Fund Amount to the Proposal Trustee in accordance with section 5.01 in full and final settlement of all Affected Creditor Claims;

(d) the Proposal Sponsor shall provide the Proposal Trustee with an amount necessary to satisfy the Administrative Fees and Expenses, including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated

to be incurred in connection with the administration of Distributions, resolution of any Disputed Claims, and the Proposal Trustee's discharge;

(e) title to the Property shall be registered in the name of the Proposal Sponsor, or its nominee, together with any charges applicable to security held by the lenders to the Proposal Sponsor in respect of the purchase of the Property and construction of the Project;

(f) the assumption of the Assumed Contracts by the Proposal Sponsor, or its nominee, shall become effective;

(g) all Affected Creditor Claims (including without limitation all Convenience Creditor Claims) shall, and shall be deemed to be, irrevocably and finally extinguished and the Affected Creditors shall have no further right, title or interest in and to their respective Affected Creditor Claims;

(h) subject to Section 7.01, all Equity Claims shall, and shall be deemed to be, irrevocably and finally extinguished and all Existing Equityholders shall have no further right, title or interest in and to their respective Equity Claims; and

(i) the releases in respect of Affected Creditor Claims referred to in Section 7.01 shall become effective.

## ARTICLE VII
## RELEASES

### 7.01 Release of Released Parties

At the applicable time pursuant to Section 6.01(b), in the case of Secured Claims, and Section 6.01(i), in respect of Affected Creditor Claims, each of the Released Parties shall be released and discharged from all present and future actions, causes of action, damages, judgments, executions, obligations, liabilities and Claims of any kind or nature whatsoever arising on or prior to the Proposal Implementation Date, including without limitation in connection with this Proposal and any proceedings commenced with respect to or in connection with this Proposal, the Project, the transactions contemplated hereunder, and any other actions or matters related directly or indirectly to the foregoing, provided that nothing in this paragraph shall release or discharge (i) any of the Released Parties from or in respect of their respective obligations under this Proposal or any order issue by the Court in connection with this Proposal or any document ancillary to any of the foregoing, (ii) any Released Party from liabilities or claims which cannot be released pursuant to s. 50(14) of the BIA, as determined by the final, non-appealable judgment of the Court, or (iii) any Released Party from any Secured Claim of Timbercreek. The foregoing release shall not be construed to prohibit a party in interest from seeking to enforce the terms of this Proposal, including with respect to Distributions, or any contract or agreement entered into pursuant to, in connection with or contemplated by this Proposal. Notwithstanding the forgoing, the directors and officers of the Company shall not be released in respect of any Equity Claim as defined in section 2 of the BIA or any analogous claim in respect of a partnership interest.

**7.02 Injunctions**

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Proposal Implementation Date, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever of any Person against the Released Parties, as applicable; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, guarantee, decree or order against the Released Parties; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of this Proposal or the transactions contemplated hereunder; provided, however, that the foregoing shall not apply to the enforcement of any obligations under this Proposal or any document, instrument or agreement executed to implement this Proposal.

## ARTICLE VIII
## CONDITIONS PRECEDENT

**8.01 Confirmation of Proposal**

Provided that the Proposal is approved by the Required Majority, the Proposal Trustee shall apply for the Approval Order no later than five (5) days following the Creditors' Meeting.

**8.02 Conditions Precedent**

This Proposal will take effect on the Proposal Implementation Date. The Implementation of this Proposal on the Proposal Implementation Date is subject to the satisfaction of the following conditions precedent (collectively, the "**Conditions Precedent**"):

(a) the Proposal is approved by the Required Majority;

(b) the Approval Order, in form and substance satisfactory to the Proposal Sponsor, has been issued, has not been stayed and no appeal therefrom is outstanding;

(c) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Authority, no application shall have been made to any Governmental Authority, and no action or investigation shall have been announced, threatened or commenced by any Governmental Authority, in consequence or in connection with the Proposal or the Project that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Proposal or any part thereof or the Project or any part thereof or requires or purports to require a variation of the Proposal or the Project;

(d) registrations in respect of all encumbrances, including without limitation any registrations in respect of Construction Lien Claims, but excluding the Permitted Encumbrances, shall have been deleted from title to the Property, provided that, should the Implementation of the Proposal not occur following the deletion of an

Affected Creditor's encumbrance pursuant to this provision, such Affected Creditor shall have the right to renew such registration;

(e) the Proposal Sponsor, or its nominee, shall have entered into assignment and assumption agreements in respect of all Assumed Contracts, or an assignment order pursuant to section 84.1 of the BIA shall have been issued, in each case in form and substance satisfactory to the Proposal Sponsor, provided that it shall be a condition of the assumption of each Assumed Contract that the written agreements set out in Schedule "B" hereto (as amended from time to time) represent the totality of the contractual arrangements between the Company and each applicable counterparty, and no verbal or extra-contractual arrangements will be recognized by the Proposal Sponsor;

(f) sufficient financing for the acquisition of the Property and completion of construction of the Project by the Proposal Sponsor, or its nominee, shall have been provided by Otera Capital Inc., on terms satisfactory to the Proposal Sponsor, and all material conditions precedent to such financing shall be capable of completion by the Proposal Sponsor prior to the Proposal Implementation Date;

(g) the Proposal Implementation Date shall occur on **[June 21]**, 2021, or such other date prior to the Outside Date as may be agreed by the Proposal Sponsor;

(h) any required resolutions authorizing the Company to file this Proposal and any amendments thereto will have been approved by the board of directors of the Company;

(i) the Proposal Sponsor Agreement shall not have been terminated by the Proposal Sponsor; and

(j) the Company shall have delivered a certificate to the Proposal Trustee that the conditions precedent to the Implementation of the Proposal have been satisfied or waived (the "**Implementation Certificate**").

Upon written confirmation of receipt from the Proposal Trustee of the Implementation Certificate, the Implementation of the Proposal shall have been deemed to have occurred and all actions deemed to occur upon Implementation of the Proposal shall occur without the delivery or execution of any further documentation, agreement or instrument.

## ARTICLE IX
## EFFECT OF PROPOSAL

### 9.01 Binding Effect of Proposal

After the issuance of the Approval Order by the Court, subject to satisfaction of the Conditions Precedent, the Proposal shall be implemented by the Company and shall be fully effective and binding on the Company and all Persons affected by the Proposal. Without limitation, the treatment of Affected Creditor Claims under the Proposal shall be final and binding on the Company, the

Affected Creditors, and all Persons affected by the Proposal and their respective heirs, executors, administrators, legal representatives, successors, and assigns. For greater certainty, this Proposal shall have no effect upon Unaffected Creditors.

### 9.02 Amendments to Agreements and Paramountcy of Proposal

Notwithstanding the terms and conditions of all agreements or other arrangements with Affected Creditors entered into before the Filing Date, for so long as an event of default under this Proposal has not occurred, all such agreements or other arrangements will be deemed to be amended to the extent necessary to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern and be paramount.

### 9.03 Deemed Consents and Authorizations of Affected Creditors

At the Effective Time each Affected Creditor shall be deemed to have:

(a) executed and delivered to the Company all consents, releases, assignments, and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;

(b) waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company that has occurred on or prior to the Proposal Implementation Date; and

(c) agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company as at the date and time of Court approval of the Proposal (other than those entered into by the Company on, or with effect from, such date and time) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly.

## ARTICLE X
## ADMINISTRATIVE FEES AND EXPENSES

### 10.01 Administrative Fees and Expenses

Administrative Fees and Expenses will be paid in cash by the Company on the Proposal Implementation Date together with a reserve in respect of the discharge of the Proposal Trustee.

## ARTICLE XI
## INDEMNIFICATION

### 11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Company for all personal liability arising from fulfilling any duties or exercising any powers or duties conferred upon it by this Proposal or under the BIA, except for any willful misconduct or gross negligence.

## ARTICLE XII
## POST FILING GOODS AND SERVICES

### 12.01 Payment of Payroll Deductions and Post Filing Claims

The following shall continue to be paid in the ordinary course by the Company prior to and after the Court Approval Date and shall not constitute Distributions or payments under this Proposal:

(a) all Persons, who may advance monies, or provide goods or services to the Company after the Filing Date shall be paid by the Company in the ordinary course of business;

(b) current source deductions and other amounts payable pursuant to Section 60(1.2) of the BIA, if applicable, shall be paid to Her Majesty in Right of Canada in full by the Company as and when due; and

(c) current goods and services tax (GST), and all amounts owing on account of provincial sales taxes, if applicable, shall be paid in full by the Company as and when due.

## ARTICLE XIII
## TRUSTEE, CERTIFICATE OF COMPLETION, AND DISCHARGE OF TRUSTEE

### 13.01 Proposal Trustee

KSV Restructuring Inc. shall be the Proposal Trustee pursuant to this Proposal and upon the making of the Distributions and the payment of any other amounts provided for in this Proposal, the Proposal Trustee will be entitled to be discharged from its obligations under the terms of this Proposal. The Proposal Trustee is acting in its capacity as Proposal Trustee under this Proposal, and not in its personal capacity and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business, liabilities or obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto.

The Proposal Trustee shall not incur, and is hereby released from, any liability as a result of carrying out any provisions of this Proposal and any actions related or incidental thereto, save and except for any gross negligence or willful misconduct on its part (as determined by a final, non-appealable judgment of the Court).

**13.02 Certificate of Completion and Discharge of Proposal Trustee**

Upon the Proposal Trustee receiving confirmation in writing from the Company that the transactions contemplated in Section 6.01 have been completed in the order and manner contemplated therein, and all Distributions to Affected Creditors have been administered in accordance with Article IV, the terms of the Proposal shall be deemed to be fully performed and the Proposal Trustee shall provide a certificate to the Company, the Proposal Sponsor and to the Official Receiver pursuant to Section 65.3 of the BIA and the Proposal Trustee shall be entitled to be discharged.

## ARTICLE XIV
## GENERAL

**14.01 Valuation**

For purposes of voting and Distributions, all Claims shall be valued as at the Filing Date.

**14.02 Preferences, Transfers at Undervalue**

In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal. As a result, all of the rights, remedies, recourses and Claims described therein:

(a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Proposal Trustee or any Affected Creditors against the Company, the Property, or any other Person whatsoever; and

(b) the Proposal Trustee and all of the Affected Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Property any other Person.

**14.03 Governing Law**

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

[*remainder of page left intentionally blank*]

Dated at Toronto, this [●] day of [●], 2021.

**YSL RESIDENCES INC.**

Per: _____
Name:
Title:
*I have the authority to bind the Corporation.*

**YG LIMITED PARTNERSHIP, by its general partner 9615334 CANADA INC.**

Per: _____
Name:
Title:
*I have the authority to bind the Corporation.*

**DRAFT**
**04/30/21**



**SCHEDULE A**

**PERMITTED ENCUMBRANCES**

**[NTD: SUBJECT TO CONFIRMATION]**

- Instrument No. AT5018709 being a charge in favour of Westmount Guarantee Services Inc.
- Instrument No. AT5117887 being a Notice of Agreement Amending Charge in respect of Instrument No. AT5018709.
- Instrument No. AT5247886 being a Notice of Agreement Amending Charge in respect of Instrument No. AT5018709.
- Instrument No. AT5142532 being a Postponement of Charge in respect of Instrument No. AT5018709.
- Instrument No. AT5246457 being a Postponement of Charge in respect of Instrument No. AT5018709.
- Instrument No. AT5142530 being a S.71 Notice re Heritage Easement Agreement in favour of the City of Toronto.
- Instrument No. AT5246455 being a S.71 Notice re Section 37 Agreement in favour of the City of Toronto.

**DRAFT**
**04/30/21**

**SCHEDULE B**

**ASSUMED CONTRACTS**

**[NTD: TO BE COMPLETED]**

**DRAFT**
**04/30/21**

**SCHEDULE C**

**CONVENIENCE CREDITOR ELECTION FORM**

**TO: KSV RESTRUCTURING INC., in its capacity as Proposal Trustee of YG Limited Partnership and YSL Residences Inc. (collectively, "YSL")**

---

In connection with the Proposal of YSL pursuant to the *Bankruptcy and Insolvency Act* (Canada) dated [●], 2021 (as amended, restated, modified and/or supplemented from time to time, the "**Proposal**"), the undersigned hereby irrevocably elects to be treated for all purposes under the Proposal as a Convenience Creditor and thereby to receive the lesser of (i) **[$10,000]**, and (ii) the amount of its Proven Claim in full and final satisfaction of the Proven Claim(s) of the undersigned, and hereby acknowledges that the undersigned shall be deemed to vote the full amount of its Proven Claim(s) in favour of the Proposal at the Creditors' Meeting.

For the purposes of this election, capitalized terms not defined herein shall have the meanings ascribed thereto in the Proposal.

**DATED** at _____ this _____ day of _____, 2021.

**AFFECTED CREDITOR'S SIGNATURE:**

_____
(Print Legal Name of Affected Creditor)

_____
(Print Legal Name of Assignee, if applicable)

_____
(Signature of the Affected Creditor/Assignee or an Authorized Signing Officer of the Affected Creditor/Assignee)

_____
(Print Name and Title of Authorized Signing Officer of the Affected Creditor/Assignee, if applicable)

_____
(Mailing Address of the Affected Creditor/Assignee)

_____
(Telephone Number and E-mail of the Affected Creditor/Assignee or Authorized Signing Officer of the Affected Creditor/Assignee)

# PROPOSAL SPONSOR AGREEMENT

THIS PROPOSAL SPONSOR AGREEMENT is dated as of April 29, 2021

AMONG:

**YSL RESIDENCES INC.**, a corporation incorporated under the laws of the Province of Ontario ("**YSL Residences**")

– and –

**YG LIMITED PARTNERSHIP**, a limited partnership formed under the laws of the Province of Manitoba ("**YG LP**")

– and –

**CRESFORD HOLDINGS LTD.**, a corporation incorporated under the laws of the Province of Ontario ("**CHL**")

– and –

**2574733 ONTARIO LIMITED**, a corporation incorporated under the laws of the Province of Ontario ("**257 Ontario**" and, together with YSL Residences, YG LP, 961 Canada, and CHL, collectively, "**YSL**")

– and –

**CONCORD PROPERTIES DEVELOPMENT CORP.** a corporation incorporated under the laws of the Province of Ontario (the "**Proposal Sponsor**")

**RECITALS:**

A. YSL Residences is the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (collectively, the "**Property**") acting as a bare trustee and nominee of for an on behalf of YG LP;

B. YG LP is the beneficial owner of the Property, and was formed for the purpose of developing the Property into a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, 190,000 square feet of commercial/retail/institutional space and 242 parking spaces, and known as Yonge Street Living Residences (the "**Project**");

C. CHL and 257 Ontario are entities within the Cresford Group of companies, a condominium development group involved in the development and financing of the Project;

D. The Proposal Sponsor is prepared to sponsor a court supervised restructuring of YSL which will result in the Proposal Sponsor or its affiliate acquiring the Property and the rights to the Project and the parties have therefore entered into this Proposal Sponsor Agreement.

**SECTION 1**
**THE TRANSACTION AND BIA PROPOSAL**

1.1 Subject to the terms hereof and as further described in Section 1.5, the parties agree to use commercially reasonable efforts to effect a financial restructuring of YSL that will result in the acquisition of the Property by the Proposal Sponsor together with YSL's rights, title and interests in and to such Project-related contracts as may be stipulated by the Proposal Sponsor (the "**Transaction**"), pursuant to a proposal substantially in the form attached hereto as Schedule "A" (as may be amended from time to time, the "**Proposal**"), in proceedings under the *Bankruptcy and Insolvency Act* (the "**BIA**"), and on the terms set out in and consistent in all material respects with this Agreement.

1.2 It is agreed that KSV Restructuring Inc. shall act as trustee in respect of the Proposal (in such capacity, the "**Proposal Trustee**").

1.3 The agreement of the parties is conditional upon the following procedural steps occurring on the following dates (and, in the case of court orders, not thereafter being appealed or if appealed, the appeal being disposed of on terms satisfactory to the parties):

(a) By April 30, 2021, YSL shall file a Notice of Intention to Make a Proposal with the Official Receiver;

(b) by May 4, 2021, the Proposal Trustee shall cause the Proposal and prescribed statement of affairs to be filed with the Official Receiver;

(c) by May 5, 2021, the Proposal Trustee shall deliver or cause to be delivered to affected creditors the materials contemplated by Section 51(1) of the BIA, all in form and substance satisfactory to the Proposal Trustee;

(d) by May 25, 2021, the Proposal Trustee shall convene a creditors' meeting for the purpose of voting on the Proposal;

(e) should the Proposal be accepted by creditors entitled to vote, by May 28, 2021, the Proposal Trustee shall serve an application pursuant to section 58 of the BIA, together with the Proposal Trustee's report in accordance with section 59 of the BIA, all in form and substance satisfactory to the Proposal Sponsor; and

(f) by June 9, 2021, the Proposal Trustee shall obtain an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), in form and substance satisfactory to the Proposal Sponsor, among other things, approving the Proposal pursuant to and in accordance with the BIA.

1.4 The obligations of the Proposal Sponsor to fund or continue funding its commitments are subject to following conditions precedent for the benefit of the Proposal Sponsor:

(a) the Proposal Sponsor shall have secured the support of the holders of at least two-thirds (2/3) in value of the aggregate unsecured debt of YSL as at the date of the filing of the Proposal;

(b) the execution of an agreement between the Proposal Sponsor (or its nominee) and Westmount Guarantee Services Inc. (or its nominee) providing for, among other things, the

maintenance of Westmount Guarantee Services Inc.'s existing security in respect of the Property, in form and substance satisfactory to the Proposal Sponsor;

(c) the Proposal Sponsor (or its nominee) shall have acquired the claims and security of 2576725 Ontario Inc. and 2574733 Ontario Limited;

(d) implementation of the Proposal ("**Closing**") will have occurred by no later than July 31, 2021 (the "**Outside Date**")

(e) upon Closing, the assignment of such agreements of purchase and sale in respect of residential condominium units in the Project as may be specified by the Proposal Sponsor to the Proposal Sponsor, or as it may direct;

(f) the disclaimer by YSL, without objection (or where objected to, such disclaimer is approved by the Court), of such contracts relating to the Project or otherwise to which YSL is a party as may be requested by the Proposal Sponsor;

(g) the Proposal Sponsor's sponsorship of the Proposal and continued support of YSL as set out in this Agreement and in the Proposal shall not cause or result in any event of default under any other agreement to which the Proposal Sponsor is a party;

(h) there shall have been no material adverse change to the Property or the Project prior to Closing;

(i) the business of YSL will be operated in the normal course, consistent with past practice, until Closing;

(j) all third-party approvals or consents or government or regulatory filings, permits or approvals required to implement the Proposal and the Project are received in a form satisfactory to the Proposal Sponsor;

(k) there shall be no material adverse change to the market conditions for the sale and construction of residential condominium developments in the Greater Toronto Area prior to Closing; and

(l) management of YSL will meet regularly with the Proposal Sponsor to ensure that YSL complies with the terms and conditions of this Agreement and conducts its day-to-day operations in collaboration with the Proposal Sponsor’s dedicated restructuring team in order to ensure the successful completion of the Transaction and ultimate completion of the Project.

1.5 Subject to the terms set out herein and the satisfaction or waiver, in the Proposal Sponsor's sole discretion, of the conditions set out herein, the Proposal Sponsor agrees to:

(a) provide YSL with such funds necessary to implement the Proposal proceedings, including with respect to the fees and disbursements of (i) legal counsel to YSL, (ii) the Proposal Trustee, and (iii) legal counsel to the Proposal Trustee, subject to the provision to the Proposal Sponsor of duly issued invoices in respect of same;

(b) provide YSL with an amount of money to be determined, to settle or acquire all Secured Claims and security, Crown Claims and Preferred Claims (as such terms are defined in the

Proposal), including without limitation the secured claims of Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.;

(c) provide YSL with an amount of money sufficient to fund the Proposal Fund up to the Maximum Proposal Fund Amount (as such terms are defined in the Proposal) to settle the unsecured claims against YSL pursuant the Proposal, which unsecured claims will be compromised and extinguished upon implementation of the Proposal. This funding will be provided by the Proposal Sponsor or its affiliate in consideration for the acquisition of the Property upon implementation of the Proposal;

(d) cooperate with YSL in good faith and use commercially reasonable efforts to complete, and to assist YSL in completing, the transactions and steps described in Sections 1.3 and 1.4 by the deadlines associated with those steps (where applicable);

(e) facilitate the payment of reasonably incurred construction costs necessary for the maintenance of the Property and the Project during the pendency of the Proposal proceedings, provided that invoices related to all such costs shall be furnished to the Proposal Sponsor for its review prior to any payment in respect thereof.

1.6 The Proposal Sponsor shall have the right to require that an approval and vesting order be obtained in respect of the acquisition of the Property by the Proposal Sponsor or its nominee, such order to be in form and substance satisfactory to the Proposal Sponsor.

1.7 If the Proposal fails because the required creditor approval is not obtained or if it is determined by the Proposal Sponsor that for any other reason it is no longer viable to implement the Transaction pursuant to the Proposal, then the Proposal Sponsor may, at its election, terminate this Agreement.

1.8 The Proposal Sponsor acknowledges and agrees that it is acquiring the Property pursuant to the Proposal on an "as is, where is" basis and on the basis that the Proposal Sponsor has conducted to its satisfaction an independent inspection, investigation and verification of the Property and all other relevant matters and has determined to proceed with the Transaction (subject to the conditions set out in this Agreement).

1.9 YSL covenants and agrees to take all steps as may be necessary or desirable to facilitate the Proposal and BIA proceedings in connection therewith, including executing such documents as may be reasonably requested by the Proposal Sponsor to give effect to the Proposal and the Transaction.

**SECTION 2**
**TERMINATION**

2.1 This Agreement may be terminated by notice given prior to the date of Closing:

(a) by YSL or the Proposal Sponsor if a material breach of any representation, warranty, covenant obligation or other provision of this Agreement has been committed by the other party, unless such breach is capable of being cured by the Outside Date and the other party is proceeding diligently to cure such breach following notification of such breach;

(b) by the Proposal Sponsor if a condition in Section 1.3 or Section 1.4 becomes impossible to satisfy by the Outside Date (other than through the failure of the Proposal Sponsor to

comply with its obligations under this Agreement) and the Proposal Sponsor has not waived such condition;

(c) by the Proposal Sponsor pursuant to Section 1.7; or

(d) by written agreement of the Proposal Sponsor and YSL.

2.2 In the event of any termination of this Agreement, the obligations of the parties under this Agreement that have not been performed shall come to an end without any further obligation and the Proposal Sponsor may enforce any rights it may have against YSL or, if applicable, its affiliates, including any rights assigned to it by secured lenders to YSL (in accordance with the terms of any applicable agreement and subject to the orders in the Proposal proceeding). Nothing in this Agreement shall prevent the exercise by the Proposal Sponsor at any time of its rights assigned to it by secured lenders to any members of YSL (in accordance with the terms of this Agreement and any applicable agreement and subject to the orders in the Proposal proceeding).

## SECTION 3
## REPRESENTATIONS AND WARRANTIES

3.1 Each of the parties hereby represents and warrants to the other parties hereto that it has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its respective obligations under, this Agreement.

3.2 Each of the parties hereto hereby represents and warrants to the other parties hereto that the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate action on its part.

3.3 YSL hereby represents and warrants, after making such investigations as it considers reasonably necessary to ensure its accuracy, that there is no matter, fact or event which is known to YSL which has not been disclosed to Proposal Sponsor in writing prior to execution of this Agreement which is likely to have a material adverse effect on the Project or the Proposal.

## SECTION 4
## EXCLUSIVITY

4.1 In consideration of the obligations of the Proposal Sponsor hereunder, YSL agrees that it will not, and shall not permit, to the extent legally possible, any officer, director, shareholder, affiliate, agent, representative or other person acting on its or their behalf to, directly or indirectly, continue, entertain, solicit or enter into any discussions, offers, agreements or negotiations with any other person (whether solicited or unsolicited), with respect to any offer or proposal from any person other than the Proposal Sponsor (or an affiliate of the Proposal Sponsor) relating to: (i) any sale or disposition (or any lease, license or other arrangement having the same economic effect as a sale of disposition) direct or indirect, through one more related transactions of the Property; (ii) any transaction, business arrangement or proposal the effect of which would be to modify the Project from its current conception as of the date of this Agreement; or (iii) any proposal, plan of arrangement, merger, amalgamation, consolidation, share exchange, business combination, reorganization, recapitalization, or other similar transaction or series of related transactions involving the Project or YSL, including any transaction similar to the Proposal, and shall suspend any existing activities or discussions with any parties other than the Proposal Sponsor and its representatives relating to a similar transaction unless such activities are contemplated by this Agreement.

**SECTION 5**
**GENERAL**

5.1 **Notices.** Any notice or communication to be delivered hereunder shall be in writing and shall reference this Agreement or, if filed, the Proposal, and may, subject as hereinafter provided, be made or given by registered mail, personal delivery or by means of electronic communication addressed to the recipient as follows:

(a) If to YSL Residences, YG LP, CHL or 257Ontario:

c/o Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9
Attention: Harry Fogul
hfogul@airdberlis.com

If to the Proposal Sponsor:

82 Queen's Wharf Road, 2nd Floor
Toronto, ON M5V 3Y2

Attention: Dennis Au-Yeung

And with a copy to:

Bennett Jones LLP
Suite 3400
One First Canadian Place
P.O. Box 130
Toronto, Ontario
M5X 1A4

Attention: David Gruber
gruberd@bennettjones.com
- and -
Jesse Mighton
mightonj@bennettjones.com

5.2 **Binding Obligation.** Each party hereto hereby represents and warrants to the other party that this Agreement is a legally valid and binding obligation of it, enforceable against it in accordance with the Agreement's terms, except as enforcement may be limited by applicable law.

5.3 **Further Assurances.** Each party hereto will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other parties may, either before or after the date of Closing, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

5.4 **Time of the Essence**. Time is of the essence of this Agreement.

5.5 **Fees, Commissions and other Costs and Expenses**. Except as otherwise expressly provided in this Agreement, each party shall pay its respective legal and accounting costs and expenses and any real estate or other commissions incurred in connection with the preparation execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any claim resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

5.6 **Entire Agreement**. This Agreement (including the agreements contemplated hereby) constitute the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby).

5.7 **Remedies Cumulative**. The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

5.8 **Good Faith**. Each party hereto agrees to cooperate in good faith with each other to facilitate the performance by the parties of their respective obligations hereunder and the purposes of this Agreement.

5.9 **Amendments**. Except as otherwise expressly provided herein, this Agreement shall not be amended, modified or supplemented, except in writing signed by each of the parties' signatories hereto.

5.10 **Governing Law**. This Agreement shall be governed by the laws of the Province of Ontario, without regard to any conflicts of law provision that would require the application of the law of any other jurisdiction.

5.11 **Specific Performance**. It is understood and agreed by the parties hereto that money damages would not be a sufficient remedy for any breach of this Agreement by any party and the non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as remedy for any such breach.

5.12 **Headings**. The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.

5.13 **Successors and Assigns**. This Agreement is intended to bind and inure to the benefit of the parties hereto and their respective successors and assigns. The agreements, representatives and obligations of the undersigned parties under this Agreement are, in all respects, several and not joint.

5.14 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page by electronic transmission shall be effective as delivery of a manually executed counterpart.

5.15 **Third Party Beneficiaries**. This Agreement shall be solely for the benefit of the parties hereto and, subject to Section 5.13 hereof, no other person or entity shall be a third-party beneficiary hereto.

*[Signatures on next pages]*

**CONCORD PROPERTIES DEVELOPMENT CORP.**

Per: _____
Name:

Title:

**YSL RESIDENCES INC.**

Per: _____
Name:

Title:

**YG LIMITED PARTNERSHIP, by its general partner 9615334 CANADA INC.**

Per: _____
Name:

Title:

**CRESFORD HOLDINGS LTD.**

Per: _____
Name:

Title:

**2574733 ONTARIO LIMITED**

Per: _____
Name:

Title:

**SCHEDULE "A'**

**PROPOSAL**

44239582.2

B-1-62

B-1-63

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC.**

B-1-63

Court File No. 31-459200
Court File No. 31-2734090

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

**AFFIDAVIT OF DAVID MANN**

**AIRD & BERLIS LLP**
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON M5J 2T9

**Harry Fogul (LSO # 15152O)**

Tel: (416) 865-7773
Fax: (416) 863-1515
Email: hfogul@airdberlis.com

*Lawyers for YG Limited Partnership* and *YSL Residences Inc.*

# Tab 2

Court File No. CV-21-00661386-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

BETWEEN:

**2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC.**

Applicants

and

**CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC., 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY**

Respondents

APPLICATION UNDER RULE 14.05(3)(d) OF THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194

Court File No. CV-21-00661530-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

BETWEEN:

**2583019 ONTARIO INCORPORATED as general partner of YONGESL INVESTMENT LIMITED, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION and TAIHE INTERNATIONAL GROUP INC.**

Applicants

and

**9615334 CANADA INC. as general partner of YG LIMITED PARTNERSHIP and YSL RESIDENCES INC.**

Respondents

APPLICATION UNDER s.101 of the *Courts of Justice Act*, RSO 1990, c C.43

# SCHEDULING SUBMISSIONS OF THE RESPONDENTS (returnable May 7, 2021)

**Background**

1. YSL Limited Partnership and YSL Residences Inc. (collectively, "YSL") is the owner and developer of an intended mixed-use office, retail and residential condominium project located at 363-385 Yonge Street, Toronto (the "YSL Project"). To date the only work completed is partial excavation and shoring.

2. The Limited Partners have limited partnership units in the YSL Limited Partnership. Lax, O'Sullivan, Lisus Gottlieb LLP (Shaun Laubman) acts for 3 Limited Partners and it issued an Application in the Superior Court of Justice (Commercial List) bearing Court File No. CV-21-0061386-00CL requesting among other relief terminating the General Partner and declaring any agreements that it entered into null and void.

3. Thornton Grout Finnigan LLP (Alexander Soutter) acts for 5 Limited Partners and it issued an Application in the Superior Court of Justice (Commercial List) bearing Court File No. CV-21-00661530-00CL requesting among other relief the appointment of a receiver and removing the General Partner.

4. The YSL Project has been in financial trouble since early 2020. The General Partner 9615334 Canada Inc. (the "GP") attempted to find a buyer for the YSL Project since January of 2020.

5. Due to financial difficulties YSL defaulted on its loan agreement with its main lender Timbercreek Mortgage Servicing Inc. ("Timbercreek") and it entered into a series of forbearance agreements with Timbercreek starting in March 2020. The last forbearance agreement requires that Timbercreek be paid in full by June 30, 2021 or Timbercreek will proceed with its Application to appoint a receiver that is scheduled to be heard on July 12, 2021.

6. YSL entered into a Term Sheet with Concord Properties Developments Corp. in November 2020 in which YSL would hand over management of the YSL Project to Concord entity. But the Concord entity had to obtain construction financing. The construction financier required substantial changes to the structure initially envisaged by the above referenced agreement. As a result Concord proposed that it would sponsor a proposal under the *Bankruptcy and Insolvency Act* ("BIA"), whereby all secured creditors

and registered construction lien claimants would be paid in full and the unsecured creditors would receive 58cents on the dollar.

7. In order to commence that process YSL Residences Inc. and the YG Limited Partnership filed Notices of Intention to file a Proposal ("NOI") on Friday, April 30, 2021.

**Issues**

8. Are the two Applications filed by the Limited Partners stayed by the filing of the NOIs?

9. Should the two Limited Partner Applications be heard before or after the YSL creditors vote on the Proposal?

**Position Issue No. 1**

10. The issue of a stay after an NOI is filed is dealt with in S. 69(1)(a) of the BIA.

**Stay of proceedings - notice of intention**

- **69 (1)** Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,
    - **(a)** no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

11. Up until the case of *Re Emergency Door Service Inc.* 2016 ONSC 5284 most of the Courts have looked at the closing words of the subsection "for recovery of a claim provable in bankruptcy". Mr. Justice Newbould took a broader view of the section in line with his and the Supreme Court of Canada's interpretation of the broader view of the BIA and *Companies' Creditors Arrangement Act*, which is to encourage restructurings and settlements with creditors and prevent actions that would negatively impact a debtor's ability to do so and the creditor's ability to make a choice. This is set out in paragraphs 28 and 29 of the decision.

12. Mr. Justice Newbould concentrates on the interpretation of the word "remedy" and cites the *Golden Griddle Corp*. case where the judge states that remedies which in any way

hinder or could impair the process are caught within the section and are stayed. See paragraph 30.

13. In this case the remedies sought in both Limited Partners Applications would interfere with the Proposal process and are therefore stayed. The creditors should have an opportunity to vote on the Proposal. So the issue of lifting the stay, if at all, needs to be addressed before anything else.

**Position Issue No. 2**

14. The Limited Partners want their Applications to be heard first in order to disrupt the YSL proposal process. They do not want the YSL Project to be sold to a Concord entity. They believe that YSL should be placed into receivership and the receiver should hold a public sales process to market the YSL Project. In order to succeed they need to show that the YSL creditors support their position and that they have evidence that the property if sold in a public sales process will generate more money than the proposal process.

15. The only evidence that the Limited Partners have of value is a 2019 Appraisal by CBRE. We advised Counsel for the Limited Partners that CBRE has recently completed a new Appraisal and it has been provided to KSV Restructuring Inc., the Trustee under the NOIs. The Trustee advised Counsel for the Limited Partners on Sunday May 2, 2021 that it was retaining a third party (now known to be Finnigan Marshall Inc.) to comment on the CBRE Appraisal.

16. If the Limited Partners' Applications are heard first and they succeed in having a receiver appointed, the creditors, who have priority over the Limited Partners, lose their opportunity to control their outcome, as they are entitled to do in the circumstances.

17. If the Limited Partners' Applications are either stayed or for practical reasons scheduled after the creditors' meeting, the Court will be in a better position to assess the best course of action for several reasons. Firstly, if the creditors reject the Proposal, YSL is bankrupt and Timbercreek will proceed to appoint a Receiver on July 12, 2021 and the Court will not have to hear the Applications of the Limited Partners. Secondly, if the creditors approve the Proposal the Court will know that the creditors believe that the anticipated 58 cents on the dollar recovery for unsecured creditors is better than bankruptcy and

receivership and a public sales process with uncertain timing and outcome, and with no certainty that the project will be completed. The creditors will be able to make that assessment by reviewing the Trustee's Report where the Trustee must recommend or not recommend the Proposal on its assessment of the bankruptcy alternative. The Trustee will have the current CBRE Appraisal and a Report from Finnigan Marshall Inc. that will be commenting on the CBRE Appraisal. The Proposal process provides a structure where the creditors get to exercise their vote on an informed basis having been advised by the Proposal Trustee about the economic consequences of their "yes" or "no" vote.

18. If the Limited Partners Applications are heard after the creditors' meeting the Court will have important information that would not be available if the Applications of the Limited Partners is heard first. In addition if the Applications of the Limited Partners is heard first and the Limited Partners succeed, there will be a default or breach in the forbearance agreement with Timbercreek and Timbercreek will appoint a Receiver and the creditors will have no say on their fate.

19. The Limited Partners are not prejudiced by having their Applications heard after the creditors' meeting if the Proposal is accepted by the creditors and the Courts will have more information on which to base its decision.

B-1-70

**2504670 CANADA INC., et al**

**2583019 ONTARIO INCORPORATED, et al**

Applicants

**CRESFORD CAPITAL CORPORATION, et al**

**9615334 CANADA INC., et al**

Respondents

B-1-70

Court File No. CV-21-00661386-00CL

Court File No. CV-21-00661530-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**SCHEDULING SUBMISSIONS OF THE RESPONDENTS**

**AIRD & BERLIS LLP**
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON M5J 2T9

**Harry Fogul (LSO # 15152O)**

Tel: (416) 865-7773
Fax: (416) 863-1515
Email: hfogul@airdberlis.com

*Lawyers for the Respondents*

# Tab 2(a)

**CITATION:** Re Emergency Door Service Inc., 2016 ONSC 5284
**COURT FILE NO.:** 32-2131211
**DATE:** 20160822

**SUPERIOR COURT OF JUSTICE – ONTARIO**
**COMMERCIAL LIST**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:
EMERGENCY DOOR SERVICE INC. PURSUANT TO THE
*BANKRUPTCY AND INSOLVENCY ACT*

EMERGENCY DOOR SERVICE INC.

Applicant

**BEFORE:** Newbould J.

**COUNSEL:** *Jordan Schultz*, for Rytec Corporation

*David Ullman*, for the debtor Emergency Door Service Inc.

*Robert A. Klotz*, for the Proposal Trustee

**HEARD:** August 3, 2016

**ENDORSEMENT**

[1] On June 3, 2016 Emergency Door Service ("EDS") filed a notice of intention to make a proposal under the BIA. On August 2, 2016 EDS filed its proposal with the Proposal Trustee and the Superintendent.

[2] Rytec Corporation ("Rytec") has commenced an action against EDS in the Federal Court and in the Court of Queen's Bench in Alberta in which it seeks in both actions an injunction against EDS. Rytec now moves for an order that the statutory stay of proceedings under section

69.3(1) of the BIA does not apply to a motion which it says it intends to bring in the Federal Court to prevent post-filing conduct on the part of EDS.[1]

[3] For the reasons that follow, the motion by Rytec is dismissed.

**Relevant facts**

[4] EDS is in the business of installing, selling and servicing industrial doors on commercial properties. It is a relatively small company, employing 17 people in its sole office in Mississauga Ontario. It has been in business for 23 years. It conducts its business mainly in Ontario.

[5] Among the products that are sold and installed by EDS are products sold to EDS by an entity known as Efaflex (Efaflex Tor-Und Sicherhaltssysteme GmbH & CO. KG) ("Efaflex"). Mr. Cornelius of EDS states in his affidavit that the doors which are sold and installed by EDS which it acquires from Efaflex are, to the best of EDS's knowledge, based on intellectual property owned by Efaflex. EDS has entered into a licence agreement with Efaflex for the sale of these doors.

[6] Rytec is a manufacturer of doors for industrial, commercial and cold-storage environments in North America. Rytec has been marketing high-speed doors bearing the mark Spiral® in Canada since at least 1996.

[7] Rytec claims under a series of agreements with Efaflex that it has the exclusive patent and trademark rights in respect of Spirals. It claims under several agreements as follows:

(a) On March 9, 2004, Rytec and Efaflex entered a new, non-cancellable "Technology License Agreement" in which Rytec agreed to assign the Rytec

[1] In its motion material, Rytec took the position that the applicability of the statutory stay under the BIA was to be determined in the Federal Court. This position was abandoned at the hearing of the motion.

Patents and Applications to Efaflex in exchange for the exclusive license to make, have made, use, sell and offer to sell, install, maintain and service Spirals in North America, including Canada.

(b) On April 15, 2004, Rytec assigned the Rytec Patents and Applications to Efaflex.

(c) In conjunction with the Technology License Agreement, Rytec and Efaflex entered into a purchase agreement that provided, among other things, that Efaflex would sell Spirals only and exclusively to Rytec for distribution in North America.

[8] EDS had a prior existing business relationship with Rytec, which included the sale of Rytec doors. The business relationship between Rytec and EDS ceased in 2014. Since November 2014, EDS has been in business in direct competition with Rytec in Canada.

[9] EDS claims under certain agreements with Efaflex as follows:

(i) On or about November 19, 2014, EDS and Efaflex entered into an agreement to co-operate in the sale and distribution of Efaflex products in North America. This agreement also granted EDS a licence to use Efaflex's intellectual property as necessary for the sale of Efaflex's products.

(ii) As part of this agreement, EDS was not entitled to purchase Efaflex products that were subject to Efaflex's agreements with Rytec until May 2015 at which time certain rights under Rytec's agreements with Efaflex terminated. EDS says it abided by this restriction in good faith and to the best of its knowledge, in accordance with instructions it received from Efaflex as to the scope of the agreements between Efaflex and Rytec.

[10] EDS began distributing Efaflex products on July 1, 2015. It says that it no longer sells or installs any doors bearing the Spiral trademark and has not done so since its relationship with Rytec ended in 2014. The doors it sells are Efaflex branded doors.

[11] Rytec and Efaflex are much larger companies than EDS. According to the Rytec website: "…there are over 100,000 Rytec doors in operation today. Rytec corporate offices and manufacturing operations are headquartered in Jackson, Wisconsin. Customer support is provided through a national network of local dealers and installers throughout North America." Efaflex's website advises that there are over 1,000,000 Efaflex doors sold through dealer network, which extends over all five continents, in addition to subsidiaries in Germany, Austria, Switzerland, Great Britain, Slovenia, Czech Republic, Poland, Netherlands, Belgium and Russia.

[12] Mr. Cornelius states that EDS is very much caught in a tug of war between these two giant competitors. I accept that, which is clear from the litigation that is taking place.

[13] On January 25, 2016 Rytec commenced an action in the Federal Court against EDS and Efaflex claiming that both defendants had breached the *Trade-marks Act* and the *Copyright Act*. The claim for relief includes interim, interlocutory and/or permanent injunctions against both defendants prohibiting the selling of Efaflex doors and damages of $325,000. On the same day Rytec commenced an action in the Alberta Court of Queen's Bench against EDS based on the same agreements pleaded in the Federal Court claiming various torts including a claim that EDS has induced Efaflex to breach its agreements with Rytec. Damages of $325,000 are claimed.

[14] Although issued on January 25, 2016, the statement of claim in the Federal Court was not served until the end of March, 2016. On May 9, 2016, Rytec served a notice of motion in the Federal Court proceedings to seek an interlocutory injunction against EDS to prohibit its sale and installation of Efaflex products and to require the destruction of such doors as are in its inventory. Rytec initially made that motion returnable on June 13, 2016. Later it amended the motion to make it returnable on a date to be appointed by the Judicial Administrator. No affidavits or supporting evidence have been served in that injunction proceeding. Efaflex was not

named in the injunction motion although its interests would clearly be affected if Rytec were successful in obtaining the injunctive relief it seeks.



**Does the stay of proceedings in the BIA apply?**

[15] Section 69 (1)(a) of the BIA provides for an automatic stay of proceedings once a notice of intention to file a proposal has been filed, as follows:

> **69(1) Stay of proceedings — notice of intention**
>
> Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,
>
> > (a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,…

[16] Rytec takes the position that injunctive relief for post-filing conduct of EDS is not caught by the stay as relief sought in the injunction motion is not aimed at recovery of any monetary claims against EDS but rather seeks to enjoin EDS from further behaviour that harms Rytec. It says that the injunction is not in relation to collection or enforcement of a debt, liability, or obligation, nor is it possible to attach a monetary value to the injunction. It further says that the relief sought in the injunction motion is relief in respect of the ongoing conduct of EDS and therefore necessarily relates to conduct that continues to occur after the filing of the NOI. The behaviour that the injunction motion seeks to curtail would, absent an injunction, not result in a claim provable in bankruptcy as any claim would be a post-filing matter, the enforcement of which is not stayed.

[17] EDS takes the position that the stay in section 69 (1)(a) is intended to prohibit all remedies against an insolvent person, or an insolvent person's property, including an injunction. It says that the purpose of a proposal is to try to achieve a restructuring of the business and that if an injunction proceeding would detrimentally affect its ability to proceed with its proposal, the purpose of the proposal provisions in the BIA would be frustrated. It says further that under a CCAA stay an injunction motion would ordinarily be stayed and that the two statutes should be read harmoniously to reach similar results.

[18] The issue involves the interpretation of 69.(1)(a) of the BIA. In interpreting statutes, there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. See *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21.

[19] Rytec contends that a grammatical and ordinary reading of section 69(1)(a) indicates that the phrase "for the recovery of a claim provable in bankruptcy" modifies the entirety of "any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings".

[20] Rytec relies on a decision in *Canadian Petcetera Ltd Partnership v 2876 R Holdings Ltd.* (2010), 10 B.C.L.R. (5th) 235 (B.C.C.A.). In that case, a landlord sought to terminate a lease after the debtor filed a notice of intention to file a proposal for failure of the debtor to pay rent when due and failure to pay post-filing rent. It was held that section 65.1 of the BIA, which deals specifically with a landlord's rights after a tenant has filed a notice of intention to file a proposal, applied and that the landlord had the right to terminate the lease. It was argued by the trustee of the debtor who had gone bankrupt by the time of the appeal that the stay provided for in section 69.1(a) of the BIA prevented the landlord from terminating the lease. Justice Tysoe in the Court of Appeal held that section 69.1 did not apply to the situation as leases were expressly dealt with in section 65.1. He held however that section 69.1 could not prevent termination of the lease as

the termination was not the exercise of a remedy for the recovery of a claim provable in bankruptcy. Tysoe J.A. stated:

> **29** In my opinion, s. 69(1) does not stay the termination of leases because the phrase "for the recovery of a claim provable in bankruptcy" at the end of clause (a) modifies each of the earlier phrases in clause (a). I agree with counsel for the Landlord that this is confirmed by the placement of a comma after the word "proceedings" because there would be no comma if it was intended that the last phrase was to modify only the immediately preceding phrase. Thus, while the termination of a lease is an exercise of a remedy, it is not the exercise of a remedy for the recovery of a claim provable in bankruptcy.
>
> **30** The wording of s. 69(1), which came into effect in 1992, was taken from the stay provision applicable when a debtor becomes bankrupt, which is now contained in s. 69.3. The general purpose of s. 69.3 was discussed by the Supreme Court of Canada in *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005 at 1015-16, 78 C.B.R. (N.S.) 193, (when the provision was s. 49(1) of the *Bankruptcy Act*, R.S.C. 1970, c. B-3):
>
> > The aim of the section is to provide a means of maintaining control over the distribution of the assets and property of the bankrupt. In doing so, it reflects one of the primary purposes of the *Bankruptcy Act*, namely to provide for the orderly and fair distribution of the bankrupt's property among his or her creditors on a *pari passu* basis. See Duncan and Honsberger, *Bankruptcy in Canada* (3rd ed. 1961), at p. 4. The object of the section is to avoid a multiplicity of proceedings and to prevent any single unsecured creditor from obtaining a priority over any other unsecured creditors by bringing an action and executing a judgment against the debtor. This is accomplished by providing that no remedy or action may be taken against a bankrupt without leave of the court in bankruptcy, and then only upon such terms as that court may impose.

It was held in *Fitzgibbon* that the stay provision did not apply to the making of a compensation order under the Criminal Code. Similarly, it has been held the stay provision does not apply to proceedings for contempt of court because, although contempt is a remedy against a debtor, it does not result in the recovery of a claim provable in bankruptcy (see *Neufeld v. Wilson* (1997), 86 B.C.A.C. 109, 45 C.B.R. (3d) 180, and *Long Shong Pictures (H.K.) Ltd. v. NTC Entertainment Ltd*. (2000), 18 C.B.R. (4th) 223, 190 F.T.R. 257).

[21] As stated by Tysoe J.A., the wording of s. 69(1), which came into effect in 1992, appears to have been taken from the stay provision then in effect applicable when a debtor becomes bankrupt, which is now contained in s. 69.3, which provides:

> **69.3(1) Stays of proceedings — bankruptcies**
>
> Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

[22] Tysoe J.A. referred to and relied on a statement of Justice Cory in *R. v. Fitzgibbon* that the aim of section 69.3 (1) is to provide a means of maintaining control over the distribution of the assets and property of the bankrupt and reflects one of the primary purposes of the BIA, namely to provide for the orderly and fair distribution of the bankrupt's property among his or her creditors on a *pari passu* basis.

[23] I have difficulty, however, in applying that reasoning in a case of bankruptcy to a case dealing with a notice of intention to file a proposal. The purpose of a proposal is to give a debtor some breathing space to negotiate a compromise with the debtor’s creditors in the hopes of saving the debtor. Such a purpose does not exist in the case of a bankruptcy.

[24] Thus, while section 69(1)(a) dealing with a stay after a notice of intention to file a proposal has been made contains the same language as section 69.3 it is necessary in my view to construe it purposively taking into account the intent of proposal proceedings.

[25] Tysoe J.A. relied on the second comma in the section after the word “proceedings” to conclude that an injunction for post-filing conduct was not stayed as it was not for the recovery of a claim provable in bankruptcy. When one looks at the French version of the section, there is no such comma. The reasoning of Tysoe J.A. does not apply to it. It states:

> **Suspension des procédures en cas d’avis d’intention**

> **69 (1)** Sous réserve des paragraphes (2) et (3) et des articles 69.4, 69.5 et 69.6, entre la date du dépôt par une personne insolvable d'un avis d'intention aux termes de l'article 50.4 et la date du dépôt, aux termes du paragraphe 62(1), d'une proposition relative à cette personne ou la date à laquelle celle-ci devient un failli :
>
> **a)** les créanciers n'ont aucun recours contre la personne insolvable ou contre ses biens et ne peuvent intenter ou continuer aucune action, exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite;

[26] Both the English and French versions are official and authoritative. Neither version enjoys priority or paramountcy over the other. This is known as the equal authenticity rule. When the two versions of a bilingual enactment appear to say different things, the courts are obliged by the equal authenticity rule to read and rely on both versions. If an acceptable meaning common to both versions cannot be found, some way of dealing with the discrepancy must be found by some means other than a preference for a particular language. Reliance on a single version is totally unacceptable for any official interpretation. Any discrepancy between the two versions must be reconciled. See Sullivan *on the Construction of Statutes*, 6th ed. 2014 LexisNexis at §§5.7, 5.12, 5.17 and 5.19.

[27] In my view, the discrepancy between the two versions can be reconciled by interpreting the sections taking into account the purpose of the BIA involved in proposals made by a debtor.

[28] Taking into account the purposes of insolvency legislation was discussed by Justice Deschamps in *Century Services Inc. v. Canada (Attorney General),* [2010] 3 S.C.R. 379 in considering the CCAA. At para. 70 she stated:

> Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* -- avoiding the social and economic losses resulting from liquidation of an insolvent company.

[29] The direction to consider the remedial purpose of legislation is equally applicable to the BIA. The remedial purpose in proposal proceedings is to save a debtor form the social and economic losses resulting from a bankruptcy. Interpreting the word “remedy” in section 69(1)(a) to include injunctive relief sought against a debtor that has made a proposal would be a purposive interpretation that fulfills the aim of the legislation.

[30] In *Golden Griddle Corp. v. Fort Erie Truck & Travel Plaza Inc*. (2005), 29 C.B.R. (5th) 62, the same arguments made in this case by Rytec were made to Justice Lederman in a case in which a franchisor sought an injunction to prevent a franchisee who had filed a notice of intention to make a proposal from post-filing breaches of provisions of the franchise agreement and a lease. The same argument was made that because of the second comma in section 69(1)(a) of the BIA, as the injunctive relief sought was not for payment of money or collection of a debt or a liability provable in bankruptcy there was no automatic stay precluding it. Lederman J. did not accept that argument and stated:

> 11 While I agree that the word "remedy" in section 69(1)(a) should be given a broad interpretation it must be a purposive one that is in accord with the objectives of the BIA generally, and in particular, the specific purposes of the stay provisions against secured and unsecured creditors, giving, in the words of L.B. Leonard and R.G. Marantz in their article, "Debt restructuring under the *Bankruptcy and Insolvency Act*, June 1, 1995 - Stays of proceedings, under the *Bankruptcy and Insolvency Act*" (for the 1995 Insolvency Institute of Canada lectures), "a reorganizing debtor an opportunity to have some "breathing room" during which to negotiate with its creditors and hopefully put together a prospective financial restructuring which would meet their requirements."
>
> 12 A purposive definition of the word "remedy" in section 69(1)(a) would suggest that, remedies which in any way hinder or could impair that process are caught within the section and are stayed. The issue should be approached contextually on a case-by-case basis and the remedy sought should be considered in terms of its impact on the objectives of the statutory stay provision. It is the impact rather than the generic nature of the relief sought which should govern. Therefore, if the injunctive relief sought detrimentally affects or could impair the ability of the insolvent persons to put forth a proposal it should be stayed, whereas, if the nature of the injunction sought would have no effect whatsoever on the ability, it should not be stayed.

[31] There is much to say in favour of this principle enunciated by Lederman J. in *Golden Griddle.* It gives effect to the aim of the proposal provisions of the BIA to permit a debtor who had filed a notice of intention to file a proposal some space if needed to achieve a successful proposal.

[32] One of the exceptions in the stay provision in section 69(1)(a) of the BIA is section 69.6, which excepts regulatory proceedings. It provides:

> **69.6 (1) Meaning of "regulatory body" —** In this section, *regulatory body* means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.
>
> **(2) Regulatory bodies — sections 69 and 69.1 —** Subject to subsection (3), no stay provided by section 69 or 69.1 affects a regulatory body's investigation in respect of an insolvent person or an action, suit or proceeding that is taken in respect of the insolvent person by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.
>
> **(3) Exception —** On application by the insolvent person and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion
>
> (a) a viable proposal could not be made in respect of the insolvent person if that subsection were to apply; and
>
> (b) it is not contrary to the public interest that the regulatory body be affected by the stay provided by section 69 or 69.1.

[33] One may ask why an exception from the stay provisions in these broad terms was required for regulatory proceedings if not covered in sections 69 and 69(1). As an example, under provincial securities legislation, it is common for proceedings to be taken against a bankrupt who has contravened securities legislation for non-monetary claims such as orders preventing future access to the capital markets. If it is right that the stay in section 69(1) does not apply to such proceedings because they are not for the recovery of a claim provable in bankruptcy, the broad exception in section 69.6 would not be necessary. Moreover, one of the

exceptions in section 69.6(3) preventing regulatory proceedings from continuing if it can be established to the satisfaction of a court that a viable proposal could not be made in respect of the insolvent person, confirms the legislation's intent that non-monetary claims should not be permitted if they affect the chances of a successful proposal.

[34] Under section 11.02 (b) and (c) of the CCAA, a court may stay proceedings in any action, suit or proceeding against the company and may prohibit the commencement of any action, suit or proceeding against the company. This is the normal provision in initial orders under the CCAA.[2] There is a thrust under modern Canadian insolvency law to harmonize the statutory schemes contained in the CCAA and the BIA.

[35] In *Century Services Inc. v. Canada (Attorney General)* Justice Deschamps stated:

> **24** With parallel *CCAA* and *BIA* restructuring schemes now an accepted feature of the insolvency law landscape, the contemporary thrust of legislative reform has been towards harmonizing aspects of insolvency law common to the two statutory schemes to the extent possible and encouraging reorganization over liquidation…

[36] There is no reason in principle why a larger corporation with debts of $5 million or more would be entitled to a stay of proceedings against an injunction proceeding for post-filing activity under the CCAA while a smaller corporation with debts less than $5 million that would not able to file under the CCAA would not be entitled to a stay in an appropriate case under the proposal provisions of the BIA.

[37] In my view every attempt should be made to interpret the provisions of section 69(1)(a) in a harmonious way with section 11.02 of the CCAA, thus giving effect to the *Century City* principles. This can be done by interpreting the word "remedy" to include injunctive proceedings

[2] It is contained in the model order adopted in Ontario.

to prevent post-filing conduct of a debtor that has filed a proposal. If a debtor were to misuse this protection from a stay, an application could be made to lift the stay.

[38] I do not see the interpretation of section 69(1)(a) resting on the placement of the second comma in the English version as being a purposive interpretation of the section, particularly as the French version does not contain such a comma.

[39] The way to avoid that and to make a purposive interpretation of section 69(1)(a) is to interpret the word “remedy”, or in French le mot “recours”, to include injunctive proceedings to prevent post-filing conduct of a debtor. I thus interpret section 69(1)(a) of the BIA to stay an injunction proceeding taken to stop post-filing conduct of a debtor who has filed a notice of intention to file a proposal.

**Should the stay be lifted?**

[40] If the stay applies, the bankruptcy court has jurisdiction to lift the stay under section 69.4 which provides:

> **69.4 Court may declare that stays, etc., cease**
>
> A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied
>
> > (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
> >
> > (b) that it is equitable on other grounds to make such a declaration.

[41] Thus Rytec must establish to the satisfaction of the court that it is likely to be materially prejudiced by the stay or that it is equitable on other grounds to lift the stay. If it does, it is still a

matter of discretion for the court as the section provides that the court may lift the stay if so satisfied.

[42] In *Re Ma* (2001), 24 C.B.R. (4th) 68 (Ont. C.A.) the Court of Appeal set out the test for lifting the stay in the following:

> **2** The approach to be taken on s. 69.4 application was considered by Adams J. in *Re Francisco* (1995), 32 C.B.R. (3d) 29 at 29-30 (Ont. Gen. Div.), a decision affirmed by this court (1996), 40 C.B.R. (3d) 77 (Ont. C.A.):
>
> > In considering an application for leave, the function of a bankruptcy court is not to inquire into the merits of the action sought to be commenced or continued. Instead, the role is one of ensuring that sound reasons, consistent with the scheme of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, exist for relieving against the otherwise automatic stay of proceedings.
>
> **3** As this passage makes clear, lifting the automatic stay is far from a routine matter. There is an onus on the applicant to establish a basis for the order within the meaning of s. 69.4. As stated in *Re Francisco*, the role of the court is to ensure that there are "sound reasons, consistent with the scheme of the *Bankruptcy and Insolvency Act*" to relieve against the automatic stay. While the test is not whether there is a prima facie case, that does not, in our view, preclude any consideration of the merits of the proposed action where relevant to the issue of whether there are "sound reasons" for lifting the stay. For example, if it were apparent that the proposed action had little prospect of success, it would be difficult to find that there were sound reasons for lifting the stay.

[43] Mr. Grasso of Rytec says that Rytec is suffering from the actions of EDS and Efaflex in that “Efaflex and EDS continue to act together to sell Spirals in Canada” at below cost. What he means by “Spirals” in his affidavit are doors that contain the Spiral® trademark. Yet the evidence on the record is that EDS has not sold or installed any doors bearing the Spiral trademark since its relationship with Rytec ended in 2014.

[44] Mr. Grosso also states that Rytec has suffered and continues to suffer through loss of market share, loss of distinctiveness of Spirals, loss of customer goodwill, loss of profits and loss of Rytec’s investment in building the market and brand for Spiral doors in Canada. This results

in significant prejudice to Rytec's business in Canada and the U.S. He says that since EDS began competing with Rytec, the sales of Rytec Spirals has plummeted. There is little to support the assertions.

[45] The argument that Rytec will be materially prejudiced if it may not proceed with its injunction proceedings suffers from the absence of alacrity with which it has taken injunction proceedings. Its claims relate to actions taken by EDS and Efaflex since 2014. Rytec only commenced its claims in the Federal and Alberta courts on January 26, 2016 and did not serve them until late March. No injunction application was brought until May 9 and when served did not contain any sworn materials. Rytec then on its own adjourned its motion sine die on May 19. I accept that if Rytec were truly suffering material prejudice, it would have moved with far more haste.

[46] The claim by Rytec is essentially for lost market share and damages, which it has quantified in its claim against EDS and Efaflex in the Federal Court action at $325,000. This kind of claim usually does not attract injunctive relief. In this case, there is no issue of Efaflex being able to fund any such award if made.

[47] Mr. Cornelius of EDS states the difficulty caused to a restructuring if it is required to become immersed in injunction proceedings. He states that the business of EDS continues to operate and is generally on track for the projections set out in its cash flow in the NOI proceedings. He says that the restructuring plans of EDS are still being developed and that EDS is still in the process of considering its restructuring options and discussing them with counsel, the proposal trustee, and key stakeholders. It would be extremely distracting to those restructuring efforts for EDS to have to turn all its energy now to address this injunction. To be denied access to the products which are the subject of the injunction would have a material impact on EDS' business. Without access to these products, the restructuring would likely fail and the company would become bankrupt.

[48] Mr. Cornelius further states that EDS is continuing to take delivery of Efaflex doors which are the subject of the injunction, and it continues to market and sell those doors. The completion of the orders to which these doors relate are an essential part of the cash flow which the company filed with the Superintendent. In general, the business of selling and installing Efaflex doors represents approximately one half of the business of EDS. Without the Efaflex business, and certainly in the event of an abrupt and unplanned stop to that business, it is likely that the company would not be able to continue with its restructuring process.

[49] The Proposal Trustee states in its report to the Court that it is concerned that continuation of the injunction proceedings, even if the injunction is ultimately refused, will adversely affect EDS's ability to successfully restructure via this process. The EDS's cash flow will be needed to fund legal fees in that proceeding. Injunction proceedings normally require considerable time and resources. The Proposal Trustee states that it has reviewed the potential return to unsecured creditors in a bankruptcy scenario and based on its preliminary analysis, it would appear that the proposal that EDS filed on August 2, 2016 offers a larger return to the Company's unsecured creditors if accepted.

[50] I accept that the injunction proceedings would be a large negative at this time to a successful restructuring. EDS is a small company and without a stay, the cost and time involved in injunction proceedings would be very disrupting of its attempts to negotiate a successful restructuring of the business. It has not gone unnoticed that Rytec has chosen not to seek an injunction against Efaflex, the effect of which is that the cost of defending the injunction would be entirely at EDS' expense.

[51] There is evidence that Rytec is taking advantage of the proposal proceedings on EDS. Mr. Cornelius in his affidavit states on information and belief that he was told by Mr. Jakob Hess, a senior executive at Efaflex that on June 16, 2016, Mr. Grasso sent an email to the owners of Efaflex and advised that EDS was bankrupt and unable to continue to conduct business in Canada. As a result of these statements Efaflex threatened to place EDS on credit hold and stop the supply of doors which had been ordered prior to the commencement of the NOI process.

There is no affidavit from Mr. Grasso denying this evidence. I have little doubt that Rytec is quite prepared to see the failure of EDS if the injunction proceedings mean the end of the line for EDS.

[52] In the result and considering all of the evidence, I am not prepared to lift the automatic stay provided under section 69(1)(a) of the BIA.

**Costs**

[53] EDS is entitled to its costs. It claims costs on a partial indemnity scale totalling $19,058.85 all in. Rytec's cost outline claims costs on a partial indemnity scale totalling $10,140.33 all in. I note that EDS's rates for its partial indemnity cost claim are calculated at 70% of their actual rates. This is too high, the norm being 60% of reasonable actual costs. The actual rates charged to EDS appear reasonable. Reducing the partial indemnity rates to 60% of actual rates would reduce the cost claim by about $2500. I allow costs for EDS of $16,500 all in, to be paid by Rytec within 30 days..

[54] EDS is responsible for the costs of the Proposal Trustee. The Trustee prepared a report specifically in connection with the motion and its counsel attended court three times. EDS is entitled to be paid these costs of the Trustee. These should be agreed, but if not, brief submissions in writing by the parties may be made within 10 days.

Newbould J.

**Date:** August 22, 2016

# Tab 3

Estate/Court File Nos.: 31-459200
31-2734090

***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 NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LAWS OF MANITOBA CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AND**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC., A CORPORATION FORMED UNDER THE LAWS OF ONTARIO CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

---

# SCHEDULING SUBMISSIONS OF CONCORD PROPERTIES DEVELOPMENTS CORP.

---

(Returnable May 7, 2021)

Estate/Court File Nos.: 31-459200
31-2734090

***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 NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LAWS OF MANITOBA CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AND**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC., A CORPORATION FORMED UNDER THE LAWS OF ONTARIO CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**SCHEDULING SUBMISSIONS OF CONCORD PROPERTIES DEVELOPMENTS CORP.**
**(Returnable May 7, 2021)**

## A. INTRODUCTION

1. These submissions are filed on behalf of Concord Properties Developments Corp. and certain wholly-owned and affiliated entities within the Concord Adex group of companies (collectively, "**Concord**"), in accordance with the endorsement of Madame Justice Gilmore of May 3, 2021 in Court File Nos. CV-21-00661386-00CL and CV-21-00661530-00CL (the "**LP Applications**").

2. Both the LP Applications and these proceedings under the *Bankruptcy and Insolvency Act* ("**BIA**") involve a mixed-use high-rise development project at Yonge and Gerrard Streets in Toronto known as the Yonge Street Residences Living development project (the "**YSL Project**"). The YSL Project has been suffering insolvency on a cash flow basis since at least spring 2020, and construction was halted with excavation only partially completed.

3. In connection with the Notices of Intention to Make a Proposal filed April 30, 2021 (collectively, the "**NOIs**") by YSL Residences Inc. and YG Limited Partnership (collectively, "**YSL**") pursuant to the BIA, Concord has agreed to sponsor a proposal to be put forward to YSL's creditors (the "**Proposal**", and such proceedings, the "**Proposal Proceedings**").

4. In addition to its role as proposal sponsor in the Proposal Proceedings, Concord is also a secured lender to YSL, being a member of the first mortgage syndicate administered by Timbercreek Mortgage Servicing Inc. ("**Timbercreek**"). Additionally, Concord has contracted to acquire the debt of 2576725 Ontario Inc. secured by an equitable mortgage on YSL's real property.

5. These submissions address scheduling issues relating to the LP Applications. Critical to scheduling, and for the reasons set out below, the LP Applications are stayed pursuant to section 69(1)(a) of the BIA, and in any event, the relief sought by the LPs could never be obtained in light of the forbearance arrangements flowing from Timbercreek's secured rights and its undoubted right to appointment of a receiver to sell the YSL Project in the event of a forbearance termination event.

## B. LANDSCAPE OF YSL'S LONG TERM INSOLVENCY

6. As a result of its cash flow insolvency, YSL defaulted on its loan agreement with Timbercreek in the spring of 2020, and thereafter entered into a forbearance arrangement, which has been extended periodically, most recently to permit the commencement of the Proposal Proceedings, on the condition that the Proposal Proceedings have concluded by the forbearance termination date of June 30, 2021. A number of trade creditors, project consultants and unsecured creditors have been unpaid since that time and YSL has been unable to obtain additional financing.

7. YSL worked to address its cash flow insolvency crisis by seeking new development partners who could inject necessary liquidity into the YSL Project and provide the covenants necessary to obtain further project financing. Although the LPs take issue with how YSL approached this task (raising complaints about YSL's conduct, and questions about whose interests YSL has been serving), they

have not proposed any alternative solutions to redress YSL's cash flow insolvency or come forward with additional liquidity for the project.

8. Meanwhile, Concord has facilitated YSL's efforts by providing funds to facilitate Timbercreek's ongoing forbearance, and working with prospective new lenders to the YSL Project. To this end, Concord has secured the commitment of Otera Capital for complete financing of the YSL Project, on the condition that the debt and equity claims against YSL and the YSL Project be fully and finally addressed, and that the Cresford group not be involved in further development activities.

9. The Proposal represents the path to achieving these objectives, all while satisfying YSL's secured creditors and providing a return to YSL's unsecured creditors. Concord's sincere intention in sponsoring the Proposal Proceedings and assuming the financial liabilities described above is to resolve YSL's longstanding solvency crisis by fully and finally resolving claims against YSL, and in consideration for such commitment, Concord will acquire YSL's real property and assume those contractual obligations of YSL that will allow Concord to resume construction of the YSL Project and take it through to completion.

10. Absent the Proposal Proceedings, there is no source of funds that would pay out Timbercreek prior to the expiry of the forbearance period on June 30, 2021. Further, if granted, the relief sought by the LPs would cause the acceleration of the forbearance period, such that Timbercreek's pending receivership application would move forward. The substantive relief sought by the LPs is an impossibility.

11. There are only two possible outcomes in these circumstances: (a) the Proposal Proceedings move forward, and, if accepted by creditors and sanctioned by the Court, the Proposal is implemented, or (b) Timbercreek's receivership moves forward. YSL has pursued the Proposal Proceedings, with the consent of Timbercreek and its other secured creditors, because it believes the Proposal will result in a better outcome for stakeholders than a sale in receivership.

## C. THE LP APPLICATIONS ARE STAYED

12. In accordance with section 69(1)(a) of the BIA, the filing of the NOIs has the effect of staying any remedy against the debtor and its property. While the LPs argue that, as investors and not creditors, they are not bound by 69(1)(a), this argument has been rejected by this Court in the case of *Re Emergency Door Service Inc.*, where Justice Newbould held that "the remedial purpose in proposal proceedings is to save a debtor from the social and economic losses resulting from a bankruptcy [and] The aim of the proposal provisions of the BIA [is] to permit a debtor who had filed a notice of intention to file a proposal some space if needed to achieve a successful proposal."[1] Accordingly, the LP Applications are currently stayed, and the question of whether the stay of proceedings should be lifted is a gating question that needs to be addressed before the merits of the LPs' issues can be considered. This is the case whether the LP Applications are styled as against either YSL entity or the general partner of YG Limited Partnership, 9615334 Canada Inc. It is well recognized that "a general partner is responsible to defend proceedings against the limited partnership in the firm name."[2]

13. The LP's lift-stay motion should be heard within the Proposal Proceedings, prior to the underlying applications. This approach is consistent with the policy objective of a stay of proceedings to provide the debtor with the breathing room necessary to ensure the success of its restructuring, instead of expending time and money responding to collateral attacks.[3] If the LP Applications were scheduled to proceed on the merits on the timeline requested by the LPs, YSL's management team will be forced to participate in extensive litigation procedures, including examinations for discovery, documentary disclosure and preparation and review of extensive written materials.

14. YSL should be afforded an opportunity to consider the LPs' lift-stay arguments before deciding whether or not to consent; other stakeholders should be given an opportunity make submissions to

[1] 2016 ONSC 5284 at paras 29-31.
[2] *Covia Canada Partnership Corp. v. PWA Corp.*, 1993 CanLII 9429, at para 28, citing *Re Lehndorff General Partners Ltd.* (1992) 17 C.B.R. (3d) 24.
[3] See, e.g. *R. v. Fitzgibbon* [1990] 1 S.C.R. 1005 at 1015.

protect their interests that may be impacted by such a lift-stay order; and the Court should have the benefit of a fulsome record when making its determination.

## D. APPLICATIONS SHOULD BE HEARD AFTER THE CREDITORS' MEETING IF THE STAY IS LIFTED

15. If, following the issuance of a lift-stay order, this Court is inclined to permit the LP Applications to proceed (or if they are to be scheduled tentatively subject to the outcome of a lift-stay application), any such hearing should take place following a creditors' vote in the Proposal Proceedings so that the Court has the benefit of the information that will flow from that process, including specifically: (a) the proposal trustee's report on the Proposal prepared in accordance with section 58(d) of the BIA, and (b) the results of the creditor vote.

16. In a situation where a debtor has been insolvent for at least a year, equityholders cannot be permitted to prevent creditors from voting on the only alternative to a receivership sale. In the zone of insolvency, creditors rank ahead of equity,[4] and they are entitled to have their voice heard. Creditors will be able to make an informed decision when voting, as the proposal trustee is required to issue a report indicating whether the Proposal presents a better outcome than a bankruptcy. If the LPs' view on the valuation of the YSL Project were correct such that a receivership sale will likely result in a complete recovery for YSL's unsecured creditors, then that opinion would be expressed in the trustee's report, and creditors would presumably vote accordingly. If the creditors reject the Proposal, then the LP Applications are moot, as Timbercreek's receivership application will move forward in accordance with the terms of the forbearance arrangement.

17. Therefore, it would be both wrong in principle and a waste of scarce judicial resources to schedule the LP Applications in advance of the creditors' vote on the Proposal. It is anticipated that the creditors' meeting in the Proposal Proceedings will take place no later than June 11, 2021.

[4] BIA, s.60(1.7). See, e.g. *Re Sino-Forest Corporation*, 2012 ONCA 816 at para 30.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LAWS OF MANITOBA CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**
**AND**
**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC., A CORPORATION FORMED UNDER THE LAWS OF ONTARIO CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Estate/Court File Nos.: 31-459200, 31-2734090

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

Proceedings commenced in Toronto

# SUBMISSIONS OF CONCORD PROPERTIES DEVELOPMENTS CORP.
**(Returnable May 7 2021)**

**BENNETT JONES LLP**
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

**David Gruber** (LSO#43758V)
**Jesse Mighton** (LSO# 62291J)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for Concord Properties Developments Corp.

# Tab 4

Court File No. 21-00661386-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LISL**

B E T W E E N:

2504670 CANADA INC., 8451761 CANADA INC.
and CHI LONG INC.

Applicants

and

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC, 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY

Respondents

**SUBMISSIONS FOR SCHEDULING APPEARANCE**

**(Returnable May 7, 2021)**

May 6, 2021

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

**Shaun Laubman** LSO#: 51068B
slaubman@lolg.ca
Tel: 416 360 8481

**Sapna Thakker** LSO#: 68601U
sthakker@lolg.ca
Tel: 416 642 3132

Lawyers for the Applicants

**Overview of Issues**

1. The purpose of this chambers appointment is to schedule two applications, both aimed at preventing Cresford from continuing as the General Partner, and to address the sequencing of these applications in light of Cresford's recent filing on behalf of the YG Limited Partnership of Notices of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* (the "**Notices**").

2. The Applicants to this proceeding (CV-21-00661386-00CL) seek declaratory relief that Cresford has ceased to be the General Partner or should be removed from the role as a result of repeated breaches of its fiduciary and contractual duties. The application seeks a declaration that recent agreements that Cresford entered into to transfer the partnership's assets to Concord are invalid and the BIA process that has been initiated to implement the transfer should be set aside.

3. The Applicants request a one-day hearing within the next thirty days. Both pending applications can be addressed at that hearing (along with a pending receivership application by the partnership's primary lender Timbercreek). In addition, any motions to either impose or lift a stay pursuant to the BIA can be argued at the same time as the issues substantially overlap.

4. The urgency of these applications is the result of Cresford's conduct. It waited until April 14th to inform the limited partners that it had purportedly agreed on behalf of the partnership to make a proposal under the BIA that would transfer assets to Concord and cause the limited partners to lose their entire investment. After the Applicants objected and commenced proceedings to determine whether Cresford was legally capable of binding the partnership and unilaterally filing BIA Notices, Cresford proceeded to file the Notices anyway.

5. Cresford has confirmed it intends to press ahead with the bankruptcy proceeding despite the pending applications. After initially confirming that it could deliver responding material by Monday, May 10th, it now takes the position that the applications are either stayed or should not be

heard until after a creditor's meeting is held sometime in June. Cresford's position is aimed at avoiding a determination of whether it has any ongoing authority to act as General Partner and whether the Notices are valid. However, these are threshold issues that are determinative of whether the bankruptcy process should proceed at all.

6. If the requested relief in the applications is granted then the Notices and any subsequent steps will be a nullity and the costs spent on the bankruptcy process will have been wasted. On the other hand, if the applications are heard within the next 30 days and dismissed then the bankruptcy process can still proceed in a timely fashion.

**Background**

7. The Applicants are a group of limited partners to the YG Limited Partnership.

8. The Applicants seek an Order declaring that Cresford ceased to be the General Partner as a result of its breach of the parties' Limited Partnership Agreement, the *Partnership Act* (Manitoba) and its fiduciary duties. The Applicants also seek a declaration that Cresford did not have authority to act on behalf of the partnership and unilaterally file a Notice pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"). The primary grounds for relief are:

a. According to the LP Agreement, Cresford ceased to be General Partner as a result of consenting to Timbercreek's appointment of a receiver over the partnership and its assets;[1]
b. Even if it remained as General Partner, Cresford could not unilaterally initiate BIA proceedings to transfer the partnerships assets without the limited partners' consent, both as a matter of law[2] and contract[3]; and
c. Cresford breached its fiduciary duty to act in the limited partners' best interests and instead preferred its own self-interest in making the agreement with Concord and initiating the BIA process to implement that agreement.[4]

[1] Limited Partnership Agreement, section 11.2(b)(vii) and (viii), Tab 1 of Applicants' Compendium.
[2] *Tartan Gold Fish Farms Ltd., Re*, 1996 CanLII 5342 (NS SC) at para. 6, Tab 2 of Applicants' Compendium.
[3] Limited Partnership Agreement, section 10.14(a), Tab 1 of Applicants' Compendium.
[4] Limited Partnership Agreement, section 3.5(a), Tab 1 of Applicants' Compendium. *Tridelta Financial Partners Inc. v Zephyr Abl Ser-A 4.875% Jan 25,* 2020 ONSC 5211 (CanLII), Tab 3 of Applicants' Compendium.

9. Cresford's sudden announcement that it had reached a deal to transfer assets to Concord by way of a BIA proposal is the latest in a series of attempts to get the limited partners to agree to a deal that would require them to accept less than their contractual entitlements so that Cresford could receive payments it would not otherwise be entitled to. Cresford has been unable to make such a deal because the LP Agreement requires all of the limited partners' approval for any "sale or exchange of all or substantially all of the business or assets of the Partnership".

10. The Notices and BIA proposal represent an attempt by Cresford to circumvent the LP Agreement and the limited partners' consent rights for any "sale or exchange" of the partnership's assets. At the same time that the proposed transaction will cause the limited partners to lose their entire investment, Cresford will receive payments by characterizing amounts it claims to have put into the partnership as unsecured debt. Those amounts have been disputed by the limited partners.

11. In the weeks leading up to filing the Notices, Cresford purposefully kept the Applicants in the dark with respect to its negotiations with Concord. It informed the limited partners of the prospect of bankruptcy only after it reached a deal with Concord on April 14, 2021.

12. The Applicants immediately objected and demanded that Cresford take no further steps. The Applicants circulated the Notice of Application on April 22. On April 28, the full application record was served. On April 30th, Mr. Fogul confirmed that Cresford could deliver responding material by Monday, May 10.[5]

13. The next day, Mr. Fogul advised that Cresford had filed the Notices and took the position for the first time that the effect was to stay proceedings involving the YG Limited Partnership and YSL Residences Inc. (Cresford's nominee entity holding title to the lands).[6]

[5] Email of H. Fogul dated April 30, 2021, Tab 4 of Applicants' Compendium.
[6] Email of H. Fogul dated May 1, 2021, Tab 5 of Applicants' Compendium.

**The Application is Urgent**

14. The relief sought in the Application is urgent. The Application is being brought in the context of an impending receivership application, a timeline for completing the BIA proposal process, multiple defaults under financing agreements and breaches of the partnership agreement.

15. The nature of the relief sought is a threshold matter: the Court is being asked to determine, among other things, whether Cresford has authority to act as the General Partner and whether it had the authority to file the Notices. If the Applicants are successful, the nascent bankruptcy proposal will be a nullity. Therefore, to allow the bankruptcy process to continue in the face of this Application may result in wasted time and resources for the partnership and the limited partners.

16. The Respondents' position, which is to wait until after the creditors meeting so the Court can have full information, misses the point. The central question of the Application is whether Cresford even had the authority to file the Notices in the first place, and not whether the bankruptcy process is the preferred process for all stakeholders. In this regard, the Respondents' position is transparent. Cresford is attempting to force the bankruptcy forward to a creditors' meeting and attempting to distract from the threshold question.

17. The hearing of this application should occur prior to the creditors' meeting (tentatively planned for June 11, 2021). Scheduling the hearing for the end of May or early June does not prejudice the parties in any way. Counsel for Cresford previously advised that the Respondents' materials could be delivered by Monday, May 10, 2021. Cross-examinations and the exchange of facta can be scheduled during the weeks of May 17 and May 24.

**The Automatic Stay Does Not Apply**

18. The relief sought in the application is not subject to the stay pursuant to subsection 69(1)(a) of the BIA because it does not involve a "claim provable in bankruptcy".

19. A "claim provable in bankruptcy" is defined under section 121(1) of the BIA. The three essential requirements are as follows:

(i) There must be a debt, liability or obligation to a creditor;
(ii) The debt, liability or obligation must be incurred before the date of bankruptcy; and,
(iii) It must be possible to attach a monetary value to the debt, liability or obligation.[7]

20. The relief being sought in this Application is not a creditor claim nor is it seeking any monetary relief or payment of debt. It is not a "claim provable in bankruptcy" as defined by the BIA. Therefore, no motion to lift the BIA statutory stay is necessary.

21. This issue was considered in *Global Royalties,* leave to appeal denied 2016 ONCA 50, in which the bankrupt defendants argued that the plaintiffs' application for an injunctive and declaratory order and monetary claims were stayed under section 69 of the BIA. Justice Penny found that the claims for injunctive and declaratory relief were not stayed by operation of the BIA, because they were not "claims provable in bankruptcy". The Court found that no order lifting the stay was required. In its decision, the Court relied on the Divisional Court's interpretation of the BIA, which stated the effect of the stay "should be limited to the words of the provision; the stay operates as against *the recovery of a claim provable in bankruptcy.*"[8]

22. In any event, if the Court finds that the stay applies, or that the matter will need to be fully addressed at a later date, this issue can be heard together with the applications. Given the time constraints and overlapping facts and parties, hearing a motion to lift the stay together with the merits is the best use of limited judicial resources. There is no reason to delay the hearing of this matter or to require it to proceed over multiple stages.

---

[7] *Global Royalties Ltd., v. Brook*, 2015 ONSC 6277, para 6, [*Global Royalties*] citing *Armstrong, Re,* 2015 BCSC 1167 (B.C. S.C.), Tab 6.
[8] *Global Royalties Ltd., v. Brook*, para 8, citing *Niagara Neighbourhood Housing Co-operative Inc. v. Edward* [2006 CarswellOnt 3046 (Ont. Div. Ct.)], Tab 6.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6th day of May, 2021.

Lax O'Sullivan Lisus Gottlieb LLP

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

**Shaun Laubman** LSO#: 51068B
slaubman@lolg.ca
Tel: 416 360 8481
**Sapna Thakker** LSO#: 68601U
sthakker@lolg.ca
Tel: 416 642 3132

Lawyers for the Applicants

**SCHEDULE "A"**

***Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3)**

**Stay of proceedings — notice of intention**

- **69 (1)** Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,
    - **(a)** no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

**Claims provable**

- **121 (1)** All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

B-1-106

2504670 CANADA INC. et al.
Applicants

-and-

CRESFORD CAPITAL CORPORATION, et. al.
Respondents

B-1-106

Court File No. 21-00661386-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**APPLICANTS' SUBMISSIONS ON SCHEDULING**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

**Shaun Laubman** LSO#: 51068B
slaubman@lolg.ca
Tel: 416 360 8481
**Sapna Thakker** LSO#: 68601U
sthakker@lolg.ca
Tel: 416 642 3132

Lawyers for the Applicants

# Tab 4(a)

Court File No. 21-00661386-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

B E T W E E N:

2504670 CANADA INC., 8451761 CANADA INC.
and CHI LONG INC.

Applicants

and

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC, 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY

Respondents

# APPLICANTS' COMPENDIUM

**(Returnable May 7, 2021)**

May 7, 2021

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSO#: 32268B
mgottlieb@lolg.ca
Tel: 416 644 5353
**Shaun Laubman** LSO#: 51068B
slaubman@lolg.ca
Tel: 416 360 8481
**Sapna Thakker** LSO#: 68601U
sthakker@lolg.ca
Tel: 416 642 3132

Lawyers for the Applicants

# INDEX

**INDEX**

# TAB 1

**YG LIMITED PARTNERSHIP**

**AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT**

Effective August 4, 2017

**AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT**

THIS AGREEMENT is made and entered into effective as of the 4th day of August, 2017 (the "**Effective Date**")

**B E T W E E N:**

**9615334 CANADA INC.**, a corporation incorporated under the laws of Canada, and extra-provincially registered in Ontario

(the "**General Partner**")

- and -

**CRESFORD (YONGE) LIMITED PARTNERSHIP**, a limited partnership formed under the laws of the Province of Ontario

("**Cresford**")

- and -

**8451761 CANADA INC.**, a corporation incorporated under the laws of Canada

("**8451761**")

- and -

**2504670 CANADA INC.**, a corporation incorporated under the laws of Canada

("**2504670**")

- and -

Each party who from time to time is listed on the attached Schedule "A" or executes this Agreement, a counterpart hereof or a subscription form which is accepted by the General Partner and accordingly becomes a Limited Partner in accordance with the terms hereof

(hereinafter collectively called the "**New Limited Partners**" and individually a "**New Limited Partner**")

**WHEREAS** a declaration was registered on February 3, 2016 as required under *The Business Names Registration Act* (Manitoba) in order to create the Partnership and to afford the Limited Partners the limited liability provided under the MPA, and a limited partnership agreement respecting the Partnership so created was entered into made as of the 16th day of February, 2016, between the General Partner, Cresford and another Person (the "**Original Limited Partnership Agreement**");

(xxiii) to execute any and all other deeds, documents and instruments and to do all acts as may be necessary or desirable to carry out the intent and purpose of this Agreement.

### 3.3 Reimbursement of the General Partner

The General Partner is entitled to reimbursement by the Partnership for all reasonable third party costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business or other costs and expenses incidental to acting as general partner to the Partnership. All such expenses shall be otherwise paid by the Partnership.

### 3.4 Management Fees

The Partnership shall retain the Development Manager pursuant to the provisions of the Development Management Agreement to provide development management services to the Project, the Construction Manager pursuant to the provisions of the Construction Management Agreement to provide construction management services to the Project and the Sales Manager pursuant to the provisions of the Sales Management Agreement to provide marketing and sales services in respect of the sale of condominium units and other portions of the Project. The parties acknowledge that, under such agreements, the Partnership shall pay management fees and commissions to the Development Manager, the Construction Manager and the Sales Manager in connection with the management services performed by them in respect of the Project, plus any goods and services tax and/or harmonized sales tax payable thereon.

### 3.5 Duty of the General Partner

The General Partner covenants that:

(a) it shall exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interests of the Limited Partners and that it shall exercise the care, diligence and skill that a reasonably prudent operator of a business similar to that of the Partnership would exercise in comparable circumstances; and

(b) it shall maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or a Limited Partner, except to the extent that disclosure is required by law or is in the best interests of the Partnership, and it shall utilize the information and data only for the business of the Partnership; and

(c) it shall not engage in any business, other than acting as a general partner of the Partnership.

### 3.6 Restrictions upon the General Partner

The General Partner covenants that it shall not:

10.8 **Corporations which are Partners**

A Partner which is a corporation may appoint under seal, or otherwise an officer, director or other Person as its representative to attend, vote and act on its behalf at a meeting of Partners.

10.9 **Attendance of Others**

Any officer or director of the General Partner and representatives of the Accountants shall be entitled to attend any meeting of Partners.

10.10 **Chairman**

The General Partner may nominate an individual (who need not be a Partner) to be chairman of a meeting of Partners and the Person nominated by the General Partner shall be chairman of such meeting.

10.11 **Quorum**

A quorum at any meeting of Partners shall consist of two or more Persons present in person who collectively hold or represent by proxy more than 50% of all outstanding Units and who are entitled to vote on any resolution.

10.12 **Voting**

Every question submitted to a meeting shall be decided by a vote conducted in such fashion as the chairman of the meeting may decide. In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated. The chairman shall be entitled to vote in respect of any Unit held by him or for which he may be proxy holder. On any vote at a meeting of Partners, a declaration of the chairman concerning the result of the vote shall be conclusive.

10.13 **Resolutions Binding**

Any resolution passed in accordance with this Agreement shall be binding on all the Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Partner was present in person or voted against any resolution so passed.

10.14 **Powers Exercisable by Special Resolution**

None of the following actions shall be taken unless it has first been approved by Special Resolution:

(a) approving or disapproving the sale or exchange of all or substantially all of the business or assets of the Partnership;

(b) changing the fiscal year end of the Partnership;

entitled to vote in respect of such Units at the meeting or be entitled to execute the resolution circulated in respect of which such record date was fixed.

## ARTICLE 11 - RESIGNATION, REMOVAL, INCAPACITY OF THE GENERAL PARTNER

### 11.1 No Assignment

The General Partner shall not make any assignment of its obligations under this Agreement, except (a) to an Affiliate of the General Partner, in which event the General Partner shall be released from its obligations hereunder and (b) that the General Partner may substitute in its stead as General Partner any entity which has, by merger, amalgamation, consolidation or otherwise, acquired substantially all of its assets, without such consent.

### 11.2 Removal or Cessation of the General Partner

(a) The General Partner may be removed as General Partner without its consent only if a court of competent jurisdiction determines ultimately that the General Partner has engaged in fraud, wilful misconduct or gross negligence in the operations of the Partnership and that such fraud, wilful misconduct or gross negligence has a material adverse effect on the business or properties of the Partnership, provided that a successor General Partner is appointed to continue the business of the Partnership within 60 days of such removal.

(b) The General Partner shall cease to be the general partner of the Partnership if:

(i) the General Partner is dissolved,

(ii) an order for relief against the General Partner is entered under the *Bankruptcy and Insolvency Act* (Canada),

(iii) the General Partner makes a general assignment for the benefit of creditors,

(iv) the General Partner makes a voluntary application under the *Bankruptcy and Insolvency Act* (Canada),

(v) the General Partner files a petition or answer seeking for the General Partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation,

(vi) the General Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation,

(vii) the General Partner seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of the General Partner's properties,

(viii) within 60 days after the commencement of any proceeding against the General Partner commenced by any third Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or

(ix) within 60 days after the appointment without the General Partner's consent or acquiescence of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of the General Partner's properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

(c) The General Partner may resign as general partner by providing notice to the Limited Partners that it intends to resign, with an effective date no sooner than 90 days following such notice. Immediately prior to the effective date of such resignation, a successor General Partner shall be appointed by the General Partner to continue the business of the Partnership.

(d) If the General Partner is removed under Subsection 11.2(a) or ceases to be General Partner under Subsection 11.2(b), then the Limited Partners shall have the right to appoint a new general partner by Special Resolution.

(e) Any successor General Partner appointed to replace a General Partner pursuant to this Article 11 shall, beginning on the date of admission to the Partnership, have the same rights and obligations under this Agreement as the replaced General Partner would have had subsequent to such date if the replaced General Partner had continued to act as General Partner.

11.3 **Admission of a Successor General Partner**

(a) The admission of a successor General Partner pursuant to Section 11.2 shall be effective only if and after the following conditions are satisfied:

(i) the admission of such successor General Partner shall not adversely affect the classification of the Partnership as a limited partnership for income tax and corporate purposes; and

(ii) any Person designated as a successor General Partner pursuant to Section 11.2 shall have become a party to, and adopted all of the terms and conditions of, this Agreement.

(b) The appointment of any Person as a successor General Partner in accordance with the terms hereof shall occur, and for all purposes shall be deemed to have

# TAB 2

1995

Estate Nos. 054007 and 054008
Court Nos. 18816 and 18817

IN THE SUPREME COURT OF NOVA SCOTIA, IN BANKRUPTCY

IN THE MATTER OF:

The Bankruptcies of Tartan Gold Fish Farms Limited and Tartan Springs Fish Farms Limited

- and -

IN THE MATTER OF:

An application for directions pursuant to s. 34(1) of the ***Bankruptcy and Insolvency Act***, R.S.C. 1995, c. B-3, as amended



## DECISION

HEARD: Before Associate Chief Justice Ian H. M. Palmeter in Chambers, Halifax, Nova Scotia, the 10th day of September, A.D., 1996.

DECISION: Dated the 13th day of September, A.D., 1996.

COUNSEL: Tim Hill, Esq., Counsel for Ernst & Young, Inc., Trustees of the Estates of the Bankruptcies herein.

Robert J. Aske, Esq., Counsel for Karen Westhaver-Stevens, Royal Stevens and David MacNearney, Creditors.

Paul Radford, Esq., Counsel for limited partners and creditors of Aquaculture Components Plant III Limited Partnership and Aquaculture Components Plant V Limited Partnership.

**PALMETER, A.C.J.**

This is an application for directions made by the Trustee pursuant to s.34(1) of the ***Bankruptcy and Insolvency Act*** ("BIA"). Section 34(1) states as follows:

> "S.34(1) A Trustee may apply to the Court for directions in relation to any matter affecting the administration of the estate of a bankrupt, and the Court shall give in writing such directions, if any, as to it appear proper in the circumstances."

Counsel for the Trustee requested directions as to firstly, the validity of certain claims of Karen Westhaver-Stevens, Royal Stevens and David MacNearney and, secondly, the priority to be accorded to the claims of Karen Westhaver-Stevens, Royal Stevens and David MacNearney.

Counsel for the claimants claimed priority for the claims by virtue of certain orders made by the Directors of Labour Standards for the Province of Nova Scotia pursuant to the ***Labour Standard Code*** (the "Code"), for wages due the claimants by the bankrupts and limited partnerships, dated June 13, 1995 and June 26, 1995.

Counsel for the limited partners argued the claims of the claimants did not have priority over the other creditors because, among other things, the orders made under the ***Code*** were a nullity because of s.69.3(1) of the BIA which, in effect, provides a stay of proceedings after a bankruptcy, and for other reasons. Counsel for the Trustee, although asking for directions joined in this argument.

There were other matters raised by the limited partners relating to whether the claims were for wages and also relating to a possible counter-claim against the claimants. As these matters were not part of the application before me, I declined to determine or give directions thereon. Affidavits were filed by all parties to this application and ***viva voce*** evidence from certain affiants was heard.

The background surrounding these bankruptcies is well set forth in the brief of counsel for the Trustee. I will set it forth herein with some changes:

> "Tartan Gold was the general partner for Aquaculture Components Plant III Limited Partnership ('Plant III'). Tartan Springs was the general partner for Aquaculture Components Plant V Limited Partnership ('Plant V').
>
> On June 6, 1995 assignments in bankruptcy were executed on behalf of all four entities by Graham Johnson, President of both Tartan Springs and Tartan Gold.
>
> An issue arose as to the validity of the assignments made on behalf of Plant III and Plant V. On September 8, 1995 the Trustee made an application to this Honourable Court for directions under s. 34(1) of the BIA. The Trustee sought directions with respect to the validity of the assignments in bankruptcy of the two limited partnerships, and the status of the limited partnerships in light of the assignment in bankruptcy of their respective sole general partners. The Trustee also sought a determination of the ownership of the assets of the limited partnerships, and a determination as to the priority of claims of creditors of the limited partnerships among those creditors who were also limited partners and those creditors who were not.

> The application came on before Justice Jill Hamilton on September 7, 1995. An oral decision was given September 8, 1995. A written release of the oral decision followed on October 19, 1995.
>
> The Court found that the assignments in bankruptcy of Plant III and Plant V were invalid as only the general partners had signed the assignments, and the assignments were not executed by each of the limited partners as required by law. The Court ordered that the assignments in bankruptcy of Plants III and V be annulled.
>
> The Court went on to find that the assets of each limited partnership vested in the Trustee of the respective general partners by operation of law upon the assignment in bankruptcy of the general partner.
>
> The Court further found that the assets of the limited partnerships should be distributed in accordance with the *Limited Partnerships Act*.
>
> On the issue of priorities among creditors generally and creditors who were also limited partners, the Court found that both groups should share *pari passu*.
>
> As indicated, the Court found that the assets of Plant III and Plant V vested in the Trustee. The Trustee went on to liquidate the bulk of the assets. Court approval for the sale of the assets was approved by order of this Honourable Court dated January 25, 1996.
>
> A summary of the disposition of the assets is to be found in exhibits 'A' and 'B' to the affidavit of Brian Jennings for the Trustee. Mr. Jennings has deposed that it was not possible to distinguish whether assets held by Tartan Springs or Tartan Gold were held by those companies in some personal capacity, or as assets of the limited partners."



The orders issued under the ***Code*** can be summarized as follows. The first order is dated June 13, 1995 and is in favour of the claimants in the total amount of $67,225.26. The second order is dated June 26, 1995 and is in favour of the claimants in the same amount. It is clear that the second order covers the same amounts of money, the same claimants and is apparently a duplication or correction of the first order. Some argument was made as to the alleged incorrect name of the employers on each of the orders, but I am not convinced that this error, if in fact it is an error, would nullify the orders.

It is clear, however, that both the orders were made after the date of assignment in bankruptcy of the four entities, that is the two general partners and the two limited partnerships.

Section 69.3(1) of the BIA states as follows:

> "69.3(1) Subject to subsection (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the Trustee has been discharged."

The claims for wages, which were the subject of the orders under the ***Code*** were provable in

bankruptcy and, in fact, the claimants each made Proofs of Claim for wages to the Trustee under the bankruptcies. In my opinion the claims made under the ***Code*** were "continued" subsequent to the assignments in bankruptcy, by virtue of the orders.

In my opinion, and I so hold, the orders of the Director of Labour Standards should not stand in priority to other creditors of Tartan Gold and Tartan Springs, which bankruptcies are still in full force and effect.



The argument is whether the orders should stand in priority to other creditors in the Estates of Plant III and Plant V, which bankruptcies were annulled by Justice Hamilton on September 8, 1995 pursuant to s. 181 of the BIA. None of the parties were able to provide me with any case law on this point although ***Houlden & Morawetz*****,** 1996 Annotated Bankruptcy and Insolvency Act, D. 32(4) would seem to indicate that subject to payments made or acts done, an order for annulment has the effect of placing the bankrupt in its original position.

Although argued by counsel for the claimants, I can find no precedent to support the proposition that an annulment of the bankruptcy means that the bankruptcy is void ***ab initio***. Section 181(2) of the BIA would seem to suggest the opposite, because it specifically does not nullify any sales, dispositions of property or acts done by the Trustee, etc. Those acts are specifically not nullified. The section reads as follows:

> "Section 181(2) Effect of annulment of bankruptcy - Where an order is made under subsection (1), all sales, dispositions of property, payments duly made and acts done theretofore by the trustee or other person acting under his authority, or by the court, are valid, but the property of the bankrupt shall vest in such person as the court may appoint, or, in default of any appointment, revert to the bankrupt for all the estate or interest of the trustee therein on such terms and subject to such conditions, if any, as the court may order."

In my opinion the bankruptcies of Plant III and Plant V were valid until they were annulled, and the provisions of the BIA would apply during such period including the provisions of s.69.3(1) thereof. Therefore, I would find the orders made under the ***Code*** to be a nullity.

Accordingly, I would direct that the orders of the Director of Labour Standards should not have priority over the other creditors and that the claimants shall share ***pari passu*** with the other creditors.

An interesting argument was raised by counsel for the limited partners, and that is the provision of s. 82(a) of the ***Labour Standards Code*****,** which reads as follows:

> "82 Subject to Section 83A, where the Director has received a complaint from an employee and the Director is satisfied
>
> > (a) that the employee is proceeding with or has commenced or was successful in an action for the recovery of the unpaid pay,
>
> he shall not entertain the application."

I would like to comment on this argument briefly.

Attachments to affidavits filed on this application show that Karen Westhaver-Stevens and Royal Stevens commenced an action for recovery of wages in the Supreme Court of Nova Scotia on November 23, 1994, and that the claimant, MacNearney, commenced a similar action for wages in the same Court on December 1, 1994.

***Viva voce*** evidence of Royal Stevens on this hearing indicated that he and Karen Westhaver-Stevens had advised the Labour Standards Officer, one MacDonald, that they had commenced an action to recover their wages. This was before the orders of the Director in June of 1995.

Counsel for the limited partners submit the orders of the Director were a nullity because his department was aware that actions had been commenced, that the actions were for the same unpaid wages as claimed under the ***Code*** and that s.82 of the ***Code*** is mandatory, that is, the Director "shall" not entertain such an application.

Although I have not decided this application on this point, I am inclined to agree with the argument of counsel for the limited partners that the orders of the Director may very well be a nullity on this ground also. I would, of course, like to hear further argument on this point before making a final determination.

Associate Chief Justice Ian H. M. Palmeter

Halifax, Nova Scotia

# TAB 3

**CITATION:** Tridelta Financial Partners Inc. v Zephyr Abl Ser-A 4.875% Jan 25, 2021 GP INC 2020 ONSC 5211
**COURT FILE NO.:** CV-19-625186-00CL
**DATE:** 20200901

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**Commercial List**



**RE:** TRIDELTA FINANCIAL PARTNERS INC.,
TRIDELTA FIXED INCOME FUND,
TRIDELTA HIGH INCOME BALANCED FUND, 2679518 ONTARIO INC. and
ZEPHYR ABL SER-A 4.875% JAN 25, 2021 LIMITED PARTNERSHIP

Applicants

- and –

ZEPHYR ABL SER-A 4.875% JAN 25, 2021 GP INC. and
SQUARE CAPITAL MANAGEMENT INC.

Respondents

**BEFORE:** **Koehnen J.**

**COUNSEL:** *C. Naudie and L. Tomasich* for the applicants

*H. Book and A. Young* for the respondents.

**HEARD:** July 15, 2020

## ENDORSEMENT

[1] The applicants invested $7.5 million into Zephyr ABL SER-A 4.875% JAN 25, 2021 Limited Partnership (the "Partnership"). The Partnership was managed by its general partner, the respondent Zephyr ABL SER-A 4.875% JAN 25, 2021 GP Inc. ("Zephyr"). The applicant seeks a declaration to the effect that Zephyr was validly removed as the general partner effective as of February 7, 2019 and for related ancillary relief.

[2] The applicants allege that Zephyr should be removed as general partner because of a number of breaches of fiduciary duty.

[3] Zephyr submits that there were no breaches of fiduciary duty to begin with and that, in the alternative, if there were any such breaches, they caused no harm and were cured within 30 days of Zephyr being advised of the breach. The Limited Partnership Agreement provides for the removal of the general partner only if it has committed a breach which remains uncured for 30 days.

[4] Shortly after the hearing I advised the parties that I would grant the declaration the applicants seek with reasons to follow. These are those reasons.



## The Parties

[5] The TriDelta applicants act as the manager and trustee of two funds which invest on behalf of others. For ease of reference I will refer to the TriDelta applicants collectively as TriDelta. In January 2018, TriDelta invested $7.5 million into the Partnership in exchange for 75,000 Series A units of the Partnership. The purpose of the Partnership was to invest in real estate mortgages. The units provide TriDelta with interest of 4.875% per year until January 2021 at which time the units mature and are to be redeemed.

[6] Zephyr acted as general partner of the Partnership from January 2018 onward. Mr. Sutha Kunam is an officer, director, and controlling shareholder of Zephyr. The two other directors of Zephyr are Mr. Asif Khan and Mr. Ranier De Lambert.

[7] Square Capital Management, Inc ("SCM") is the only other limited partner of the Partnership and holds 10 Series B units, which required a contribution of $1,000 to the Partnership. Kunam is the sole shareholder, officer and director of SCM.

## The Breaches of Fiduciary Duty

### (i) Related Party Agreements

[8] Section 8.9 of the Limited Partnership Agreement requires Zephyr to obtain a resolution passed by a majority of the limited partners before entering into any agreement with an affiliate. TriDelta complains that Zephyr entered into agreements with affiliates without obtaining the approval of the limited partners.

[9] The principal investment of the Partnership was a loan to Kuber Mortgage Investment Corporation.

[10] Mr. Kunam is the Chief Executive Officer, a director and the controlling principal of Kuber (Mr. De Lambert is also its Chief Operating Officer). This makes Kuber an affiliate of Zephyr. The Limited Partnership Agreement defines "affiliate" as having the meaning ascribed to that term under the *Ontario Business Corporations Act*, RSO 1990, c B.16. Section 1 (4) of the *OBCA* defines affiliate as:

> "For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person."

[11] Given Mr. Kunam's position and controlling interest in both Zephyr and Kuber, it is clear that Zephyr and Kuber are controlled by the same person and are affiliates. The loan to Kuber was not, however, put to a vote of the limited partners.

[12] Under the Kuber loan agreement, the Partnership agreed to lend Kuber up to $7.5 million at 9.25% per year interest. TriDelta earned only 4.875% on that investment. The balance was retained by Zephyr.

[13] Moreover, when the funds were advanced to Kuber, there was no loan agreement in place. A loan agreement was not prepared until several months later in April 2018. This arguably falls afoul of the obligation in section 8.5 of the Limited Partnership Agreement to safeguard the Partnership's assets.

[14] The agreement pursuant to which Zephyr retained SCM was also never put to the limited partners for approval even though SCM was an affiliate of Zephyr . On this application, SCM asserts a claim against the Partnership for all outstanding management fees to the end of its tenure as envisaged under the SCM agreement.

[15] Zephyr submits that the SCM agreement was disclosed in the Limited Partnership Agreement because section 6.3 of that agreement refers to an Administration Services Agreement. In addition, Zephyr points to a resolution of the general partner approving the SCM agreement. Both submissions miss the point. The issue is not whether the general partner is entitled to enter into an administration services agreement, the issue is not even whether the general partner can enter into such an agreement with an affiliate. The issue is whether any agreement with an affiliate has been approved by the limited partners as required by the Limited Partnership Agreement. TriDelta says there was no such approval. Zephyr has not produced any evidence to the contrary.

[16] In addition, Zephyr rented office premises from a numbered company owned by Mr. De Lambert. Partnership assets were used to pay for the condominium fees, renovation and decorating expenses associated with the office space. The rental agreement was never put to the

limited partners for approval. Even if not strictly speaking and affiliate because Mr. De Lambert does not control Zephyr, the rental agreement demonstrates a disregard of common law fiduciary duties and demonstrates a general disregard of the separation of interest required by common law principles of fiduciary duty.

[17] Shortly after TriDelta paid the $7.5 million, Mr. Kunam arranged for $444,937.50 of those funds to be paid to Millwood Real Estate Inc., a company controlled by Mr. Khan who is also a director of Zephyr. After TriDelta became aware of this advance and began asking questions about it, the principal was repaid without interest on April 6, 2018. The Millwood loan was not put to the limited partners for approval. Once again, even if Millwood not technically an affiliate because Mr. Khan does not control Zephyr, the loan demonstrates a further disregard for common law principles of fiduciary duties and the separation of interests those duties require.

[18] The respondents defend the Millwood loan on the basis that Mr. Khan was a friend of Ed Jong, a former employee of TriDelta who was responsible for the TriDelta investment into the Partnership. Zephyr submits that it was Mr. Jong who asked that Mr. Kahn be made a director of Zephyr so that someone associated with TriDelta would be involved in the general partner. Even this is the case, it does not relieve Zephyr of its fiduciary duties. Mr. Khan was clearly a director of Zephyr. As a fiduciary, Zephyr should not be making investments into companies controlled by its own directors without the approval of the beneficiaries of those fiduciary duties.

[19] The obligations of a fiduciary go beyond personal friendships or relationships. Zephyr knew or ought to have known that the money it received did not belong to Mr. Khan. The fact that Mr. Kahn might have been a friend of a TriDelta employee does not mean that Zephyr can ignore its fiduciary obligations to TriDelta and benefit Mr. Khan at whim.

[20] On cross-examination, Mr. Kunam sought to defend the lack of interest on the Millwood advance by arguing that, if the funds had remained unallocated in a Zephyr account, they would not have earned interest either. That too misses the point. The point is that the funds were not sitting unallocated in a Zephyr account. They had been given to another party without interest or security. During his cross-examination, Mr. Kunam also suggested that the amounts advanced to Millwood were somehow subject to a 90 day interest-free "holiday period" during development. I was not directed to any documentation to establish that this was in fact the case. Nor was I otherwise directed to documentation that established the purpose of the Millwood advance.

### (ii) Co-mingling of Partnership Funds

[21] Section 8.5 of the Limited Partnership Agreement provides:

> "The General Partner is responsible for the safekeeping and use of all funds and assets of the Partnership whether or not in its immediate possession or control and will not employ or permit

> another to employ the funds or assets except for the exclusive benefit of the Partnership."

[22] Section 8.8(c) restricts the General Partner from co-mingling Partnership funds "with the funds of the General Partner, its Affiliates or any third party."

[23] Zephyr maintained a single bank account for the partnership in its own name. It also set up a Visa card in its own name and used Partnership funds to pay for all expenses on that card.

[24] Kunam and Zephyr used the single bank account and Visa card to pay personal expenses including first class travel, meals at high-end restaurants, nearly daily uber-eats and uber-rides, multiple cell phone bills (including the cell phone of Mr. De Lambert's wife), personal car expenses, personal transponder expenses, an engagement party and a 400-person wedding party for Mr. De Lambert's daughter at the Royal York Hotel.

[25] The respondents submit that these expenses were legitimate because they were paid to entertain and travel to investors who would potentially take out the TriDelta investment on maturity. The respondents explained that the engagement and wedding came about because the partnership had reserved space at the Royal York Hotel for investor presentations that ultimately did not occur. When the investor presentations fell through, Messrs. Kunam and De Lambert decided to use the Royal York for the engagement and the wedding celebrations rather than losing the deposit they had paid for the investor presentation. The respondents have not produced any documentation to support visits or presentations to investors or to support the assertion that the Royal York reservation was originally for an investor presentation.

[26] Zephyr further submits that the co-mingling of accounts was appropriate because the general partner was "just a flow-through" and did not have its own assets. Zephyr suggests that they had accounting advice to this effect. No one, however, directed me to any clear accounting advice to that effect. Even if such advice had been received, Zephyr does not appear to have been used as a "flow-through". Zephyr received partnership funds. That same Zephyr account was used to pay purely personal expenses of Mr. Kunam and Mr. DeLambert. If the Zephyr account was indeed a "flow-through" account, presumably the flow had to be through to some sort of legitimate partnership expense. That might be to a service provider to the partnership or a payment pursuant to the distributions contemplated by the Limited Partnership Agreement. Partnership assets are not, however, intended to flow-through to pay for wedding expenses.

### (iii) Use of Partnership Funds for Legal Expenses

[27] It appears that Kunam, Zephyr and SCM have used Partnership funds to pay their personal legal counsel on this Application. The purpose of that legal retainer was to represent their personal interests in maintaining their tenure and to recover SCM's management fees from the Partnership. Respondent's counsel on this application has not performed any services for the Partnership. Rather the purpose of the engagement is to advance the personal interests of Zephyr and SCM.

## Zephyr's Defences

[28] Zephyr defends itself on a number of bases.

[29] First, it argues that the application has arisen because Mr. Jong has left TriDelta and that TriDelta's CEO, Ted Rechtshaffen has tried to obtain a different business deal than the one Mr. Jong agreed to. While Zephyr does not say so expressly, the suggestion is that the special resolutions terminating Zephyr as general partner were only passed after Mr. Rechtschaffen's efforts to obtain a different business deal failed.

[30] That argument is of no assistance. Even if I assume it is correct, it would only underscore the importance of a fiduciary adhering strictly to its duties. Adhering to fiduciary duties will protect the fiduciary from opportunistic efforts to renegotiate a transaction. The failure to adhere to fiduciary duties may well expose a fiduciary to efforts to renegotiate a transaction. There may in fact be nothing wrong with trying to renegotiate a transaction once it is discovered that a fiduciary has breached its duties. At the end of the day, I am not concerned with whether someone has tried to or not tried to renegotiate a transaction, the question before me is whether Zephyr did or did not breach its fiduciary duties.

[31] Second, Zephyr argues that TriDelta has continued to receive its interest payments as provided for in the Limited Partnership Agreement and has suffered no harm. In my view, this also misses the point. Limited partners are entitled to have fiduciaries manage the limited partnership in accordance with strict observance to their fiduciary duties. A general partner who does not adhere to fiduciary duties changes the risk profile that investors have agreed to accept and places them at greater risk of future harm. Investors who are given the protection of a fiduciary expect the fiduciary to protect them from the risk of future harm, not expose them to it.

[32] Moreover, as TriDelta submits, the expenditure of partnership assets on improvident, self-interested contracts or on personal expenses, reduces the general assets of the Partnership. This increases the risk that future monthly payments might not be paid or would be paid at a reduced amount or that the principal under the limited partnership units will not be repaid.

[33] In response, Zephyr submits that it underpaid SCM on the management agreement as a result of which it was entitled to take Partnership assets and that under the distribution waterfalls in the Limited Partnership Agreement, the funds would have been payable to other parties in any event. The short answer to that submission is that if the principals of Zephyr or others believed they had an entitlement to Partnership assets under the waterfall arrangements in the Limited Partnership Agreement, those arrangements should have been followed. Following those arrangements may or may not have given TriDelta an argument to the effect that the distributions were improper under the waterfall arrangement. Even if TriDelta had no such argument, the essence of a fiduciary duty is to maintain a strict division between the affairs and interests of the fiduciary and those of the limited partners the fiduciary has agreed to protect. Co-mingling those interests by ignoring the distinctions breaches a core element of the fiduciary's duty.

## The Resolutions Removing Zephyr as General Partner

[34] Section 8.10 of the Limited Partnership Agreement provides:

> In addition, the General Partner may be removed and a substitute general partner appointed by Special Resolution in the event of the default by the General Partner in the Performance of its obligations under this Agreement, which default remains unremedied for a period in excess of thirty (30) days after the Limited Partners have given written notice of such default to the General Partner following passage of a Special Resolution to consider such default and authorize such notice.

[35] On December 13, 2018, TriDelta passed a special resolution removing Zephyr as general partner. The defaults on which TriDelta relied when passing the special resolution included: retaining related party entities without the approval of the limited partners, commingling Partnership assets with its own assets, and using Partnership assets to pay personal expenses.

[36] TriDelta notified Zephyr of the special resolution on January 4, 2019 and gave Zephyr thirty days' notice to remedy the defaults set out in the special resolution.

[37] While Zephyr ultimately repaid some of the impugned expenses, it did not repay all of them and continued to do business through related entities without putting those arrangements to a vote of the limited partners.

[38] On February 7, 2019, TriDelta passed a further special resolution removing Zephyr and appointing TriDelta GP as the general partner.

[39] Zephyr refused to accept its termination as a result of which, TriDelta brought this Application.

[40] In my view, the court should respect the resolutions passed by the limited partners removing Zephyr as general partner. As the B.C. Supreme Court held when dealing with similar circumstances in *Naramalta Development Corp v Therapy General Partner Ltd*, 2010 BCSC 590 at para 115 "the number of votes against [the former general partner] speaks for itself" and "an exercise of democracy … ought to govern the outcome…" and the last thing" that the Court should do is reverse the vote of a large majority of the limited partners and force them to take back the general partner they wanted to remove.

[41] Other courts have taken an even more limited view of their roles and have held that courts should be limited to determining whether the limited partners had "validly passed an extraordinary resolution" and assessing whether the limited partners had "satisfied the conditions precedent to the passing of such resolution": see for example *Neural Capital GP, LLC v 1156062 BC Ltd*, 2019 BCSC 2180, at paras 4-5.

[42] I am satisfied on the facts of this case that Zephyr has committed specific breaches of the Limited Partnership Agreement which it has not remedied, namely entering into related party agreements without seeking the approval of the limited partners, co-mingling of funds and mis-use of Partnership funds for personal expenses.

[43] There is also, however, a broader concern. A general partner is a fiduciary of the limited partners: *Molchan v Omega Oil & Gas Ltd*, [1988] SCR 348 at para 35. Its obligation is to act for and on behalf of the limited partners. More general breaches of fiduciary duty would also disqualify a general partner from acting quite apart from the specific terms of the Limited Partnership Agreement. Courts have recognized that a general loss of trust and confidence in a general partner constitutes a material default under a limited partnership agreement which gives the limited partners the right to terminate the general partner. By way of example, in *Village Gate Resorts Ltd v Moore*, [1997] BCJ No. 2478, 1997 CanLII 4052 (BCCA), the British Columbia Court of Appeal noted at para 34 that:

> "[34] … The phrase "is in material default" … must be informed by a consideration of the fact that the limited partnership structure, even more than that of a company or even of an ordinary partnership, relies on a substratum of trust and confidence in the integrity and ability of the general partner. It was surely the intention of the draftsman of the Agreement that the Limited Partners could take action to bring the relationship to an end where that trust and confidence have fallen away. This loss of trust and confidence cannot now be restored any more than the past breaches can now be "cured" in any real sense."

## Relief from Forfeiture

[44] Zephyr brings a cross - application for relief from forfeiture. Zephyr bears the onus on the application: *Kozel v The Personal Insurance Company*, 2014 ONCA 130 at para 28-29.

[45] In *Saskatchewan River Bungalows Ltd v Maritime Life Assurance Co*, [1994] 2 SCR 490 the Supreme Court of Canada has set out the test for relief from forfeiture as follows at para 32:

> "[t]he power to grant relief against forfeiture is an equitable remedy and is purely discretionary. The factors to be considered by the Court in the exercise of its discretion are the conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach".

[46] Applying these principles would not lead me to exercise my discretion in favour of relief from forfeiture. The breaches in question here are serious. They are not minor technical

breaches that someone might stumble into inadvertently. Rather, they go to fundamental elements of character and trust.

[47] The fundamental problem with the value of the property forfeited is that the "property" is the value of payments to which SCM is entitled under an agreement that should have been approved by the limited partners but was not. Granting relief from forfeiture in those circumstances would effectively ignore the provision of the Limited Partnership Agreement that requires related party transactions to be approved by a majority of the limited partners.

[48] I do not believe it would be appropriate to exercise the court's equitable discretion to allow a fiduciary to retain the benefit of a self-interested transaction that was entered into in breach of its contractual and common law duties.



## Disposition

[49] As a result of the foregoing I grant the following declarations and orders:

(a) A declaration that TriDelta was appointed as the general partner of the limited partnership as of February 7, 2019.

(b) A declaration that Zephyr was removed as the general partner of the limited partnership as of February 7, 2019.

(c) An order requiring Zephyr to deliver all of the books, records and accounts and assets of the limited partnership to TriDelta GP.

(d) An order directing Zephyr to cease representing and asserting that it continues to act as general partner of the limited partnership.

(e) A declaration that the Administrative Services Agreement between the limited partnership and SCM was terminated as of April 12, 2019.

(f) On consent, an order that TriDelta's limited partnership units shall be redeemed no later than January 21, 2021.

(g) An order barring Zephyr GP from using Partnership funds to fund its opposition to this Application or to pay for any cost order.

[50] TriDelta GP shall continue as general partner until TriDelta's limited partnership units have been redeemed. Once TriDelta's units have been redeemed, Zephyr may resume its status as general partner.

[51] TriDelta also seeks an order requiring a full accounting of Zephyr's management of the Partnership from January 2018 to the present, including the repayment of any "unauthorized" expenses. I order Zephyr to provide such an accounting. I am not prepared, at this point, to order the repayment of unauthorized expenses to the Partnership. I do not have enough information about who is entitled to funds that Zephyr receives in excess of the interest payments owing to TriDelta or about the entitlement of Zephyr to distribute those funds under the Limited Partnership Agreement. That was not the focus of any oral or written argument.

[52] Although the failure to adhere to proper accounting and a separation of interests amounts to a breach of fiduciary duty and a breach of the Limited Partnership Agreement sufficient to replace the general partner, it does not follow automatically that the funds could not have been paid out as Zephyr claims, had it followed proper procedures. If the parties cannot agree on the entitlement to and distribution of funds after receiving an accounting, those issues will have to be the subject of further adjudication.

[53] These reasons are not to be interpreted as having any bearing on the rights of TriDelta, if any, beyond the right to interest on and the right to redemption of its units.

[54] Any party seeking costs as a result of these reasons may make written submissions within 14 days of the release of the reasons. A responding party will have seven days to respond with a further five days for reply.

Koehnen J.

**Date: September 1, 2020**

# TAB 4

**From:** Harry Fogul
**To:** Sapna Thakker
**Cc:** "Alexander Soutter"; Shaun Laubman; Matt Gottlieb
**Subject:** RE: YSL Residences Inc. - Application Record
**Date:** April-30-21 12:30:17 PM

---

I note the 9.30 is before Justice Gilmore who may have a conflict re Cassels but presumably there is no problem with scheduling.

I probably need at least until Friday May 4th but would prefer Monday May7th as I need to prepare at least 2 affidavits and maybe more as different persons know different aspects as to what happened through 2020 and 2021. The balance of the schedule can re adjusted from there. Once we know the date of the hearing, the schedule can be fine tune the schedule. The proposal process would not be completed until sometime in June.

You can call me at 416-918-9914

**Harry Fogul**
**Aird & Berlis LLP**

T **416.865.7773**
E **hfogul@airdberlis.com**



**From:** Sapna Thakker <sthakker@lolg.ca>
**Sent:** April 30, 2021 11:19 AM
**To:** Harry Fogul <hfogul@airdberlis.com>
**Cc:** 'Alexander Soutter' <ASoutter@tgf.ca>; Shaun Laubman <slaubman@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>
**Subject:** RE: YSL Residences Inc. - Application Record



Harry,

Do you have a position with respect to our proposed schedule now that you have had the opportunity to review our material? If you would like to discuss, I am available today or over the weekend. It would be helpful to at least agree on a schedule prior to appearing before Justice Gilmore.

Thanks,
Sapna

**Sapna Thakker**
Direct 416 642 3132

# TAB 5

**From:** Harry Fogul
**To:** Sapna Thakker; Shaun Laubman; Alexander Soutter (asoutter@tgf.ca)
**Subject:** Notices of Intention to make a Proposal (NOI)
**Date:** May-01-21 8:05:05 PM
**Attachments:** Certificate.pdf
Certificate for the Notice of Intention - 31-2734090.pdf

---

Please be advised that YSL Residences Inc. and YG Limited Partnership each filed an NOI late Friday. Confirmation by the Superintendent of Bankruptcy was sent to me by the Trustee today.
The affect of the filing is that there is a stay of proceedings against these entities.
Mr. Soutter had previously asked about the GP. As I now understand the Limited Partnership does not have separate legal personality from the partners and the GP has unlimited liability and the LPs have limited liability.

**Harry Fogul**

T 416.865.7773
F 416.863.1515
E hfogul@airdberlis.com

**Aird & Berlis LLP** | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

# TAB 6

**CITATION:** Global Royalties Limited v. David Brook, 2015 ONSC 6277
**COURT FILE NO.:** 32-1774278
CV-15-11006-00CL
**DATE:** 20151013

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Global Royalties Limited and Benchmark Conversion International Limited O/A BCI, Plaintiffs

**AND:**

David Brook, Anna Brook, 2323593 Ontario Inc., Geoffrey Black aka Geoff Black, Griffin & Highbury Inc., Dario Beric aka Dario Beri-Maskarel, Dikran Khatcherian aka Diko Khatcherian aka Danny Matar, Leslie Frohlinger aka Les Frohlinger, Diversity Wealth Management Inc. and Diversity Wealth Management Holdings Inc., Defendants

**BEFORE:** Penny J.

**COUNSEL:** *Harvey Stone* for the Plaintiffs

*Russell Bennett* for David Brook

**HEARD:** October 8, 2015



## ENDORSEMENT

[1] In this motion the plaintiff seeks orders in connection with s. 69.4 of the *Bankruptcy and Insolvency Act*:

(1) declaring that injunctive and declaratory relief claimed against David Brook as well as monetary claims arising from Brook's conduct post-bankruptcy, are not subject to the stay under s. 69 because these grounds of relief are not claims provable in bankruptcy; and

(2) lifting the stay of proceedings with respect to monetary relief claimed against Brook in connection with Brook's pre-bankruptcy conduct.

[2] Brook was deemed bankrupt on February 27, 2015. The statement of claim in action C-15-11006-00CL was issued in June 2015. Brook is a defendant in that action.

[3] Brook took the position that the action against him was invalid by reason of his status as an undischarged bankrupt and the stay imposed by s. 69.3 of the BIA. Hence, the plaintiff brings this present motion.

[4] The relevant allegations in the statement of claim are that Brook breached fiduciary duties owed to the plaintiffs, defrauded the plaintiffs and misappropriated sales, revenue and business opportunities from the plaintiffs and that the other defendants knowingly assisted Brook in his dishonest and fraudulent behavior. It is alleged that Brook falsely represented sales and marketing figures to the plaintiffs and that he wrongfully copied and removed client files from the plaintiff's office and fraudulently diverted sales, revenues and clients from the plaintiffs to his new venture.

[5] Under s. 69.3 of the BIA, upon bankruptcy, no creditor has a claim against a debtor or shall commence or continue any action for the "recovery of a claim provable in bankruptcy."

[6] The term "claim provable in bankruptcy" is defined in s. 121 of the BIA. There are three essential requirements:

(i) there must be a debt, liability or obligation to a creditor;

(ii) the debt, liability or obligation must be incurred before the date of bankruptcy; and

(iii) it must be possible to attach a monetary value to the debt, liability or obligation,

*John Briggs Armstrong (Re)*, 2015 BCSC 1167 (CanLII) at para. 23.

[7] Claims which arise after the date of bankruptcy (and claims which do not involve a monetary value) are not claims provable in bankruptcy and are not, therefore, stayed by s. 69.3

[8] As the Divisional Court said in *Edward v. Niagara Neighbourhood Housing Co-operative Inc.*, 2006 CanLII 16485, "the effect of a stay under ss. 69.3 should be limited to the words of the provision; the state operates as against *the recovery of a claim provable in bankruptcy*. There is nothing in the judgment that violates the BIA." In that case, the Co-op sought only post-bankruptcy arrears from the tenant.

[9] In this case, the plaintiffs allege ongoing conduct pre- and post-bankruptcy by Brook in respect of which they seek declaratory and injunctive relief and ongoing conduct pre- and post-bankruptcy, in respect of which they seek monetary damages. The plaintiffs, therefore, argue that the declaratory and injunctive relief is not a claim provable in bankruptcy because it does not involve a monetary value. Similarly, the plaintiffs argue that the post-bankruptcy monetary damages sought are not a claim provable in bankruptcy because they post-date the bankruptcy. It is only, the plaintiffs concede, the pre-bankruptcy claims for monetary damages that have been stayed by virtue of s. 69.3. They seek an order lifting the stay of those claims.

[10] Brook argues that the plaintiffs are not creditors and that they have no standing to seek relief under s. 69.4.

[11] I do not agree.

[12] First, the defendant's argument is tautological. If the claims are not claims provable in bankruptcy, they are not stayed in the first place. No order lifting the stay is required.

[13] Second, the definition of creditor includes a contingent creditor. The plaintiffs' claims are for unliquidated damages and have yet to be proved, to be sure, but to the extent they assert monetary claims arising pre-bankruptcy, they are creditors.

[14] I find the claims for declaratory and injunctive relief are not stayed by s. 69.3. I further find the claims for monetary damages incurred post-bankruptcy are also not stayed.

[15] Because these claims were never stayed by operation of s. 69.3, there is no need for an order lifting the stay under s. 69.4.

[16] With respect to the claims for monetary damages arising pre-bankruptcy, the plaintiffs seek an order of the court lifting the stay under s. 69.4.

[17] Section 69.4 provides that a creditor who is affected by s. 69.3 may apply to the court for a declaration that the stay no longer operates in respect of that creditor and the court may make such a declaration, if it is satisfied that the creditor is likely to be materially prejudiced by the continued operation of the stay or that it is equitable on other grounds to make such a declaration.

[18] In *Re Ma* the Court of Appeal for Ontario upheld the decision of the registrar lifting the stay to permit the TD Bank to continue an action against the bankrupt. The bankrupt argued that the creditor had to establish a *prima facie* case on the merits by providing evidence of the facts giving rise to the proposed claim. The registrar held that the test to be applied is whether the type of claim which the creditor seeks to advance against the bankrupt is the type of claim that should be allowed to proceed. She held that it was not the function of the court on a motion to lift the stay to embark upon a scrutiny of the merits of the proposed action.

[19] The Court of Appeal pointed out that lifting the statutory stay is far from a routine matter. The Court of Appeal affirmed, however, that there was no obligation on the part of the moving party to establish a prima facie case on the basis of evidence. The gloss on the previous law provided by the Court of Appeal in *Re Ma* is that the court is not precluded from *any* consideration of the merits where relevant to the issue of whether there are "sound reasons" for lifting the stay. The court used the example that, if the proposed action had little prospect of success, it would be difficult to find that there were sound reasons for lifting the stay.

[20] It is well-established in the authorities that "sound reasons" constituting material priejudice or other equitable grounds includes:

(i) actions against the bankrupt for a debt for which a discharge would not be a defence (s. 178(1));

(ii) actions involving sufficient complexity to make the summary procedure under s. 135 of the BIA inappropriate; and

(iii) actions in which the bankrupt is a necessary party for the complete adjudication of matters at issue involving other parties.

[21] The plaintiffs argue that all three categories apply in this case.

[22] First, the plaintiffs argue that the judgment they seek, or at least a portion thereof, would not be compromised by a discharge by virtue of s. 178.

[23] Section 178 of the BIA provides that an order of discharge does not release the bankrupt from any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation.

[24] Morawetz J. noted, in connection with the decision in *Re Ma*, that, "the moving creditor need only plead specific facts which show that there are sound reasons to lift the stay, such as a set of facts which, if believed, would fall within the ambit of s. 178(1)(d)." See *Ieluzzi (Re)*, 2012 O.J. No. 2763.

[25] Here, the plaintiffs have alleged that Brook committed fraud, misappropriated money and assets and obtained property by fraudulent misrepresentation. The plaintiff complains that none of these allegations have been proved. That, however, is clearly not the test.

[26] While the pleading lacks a certain amount of particularity, this is not a pleadings motion. The bottom line of the pleading is that allegations are made of fraudulent conduct which, if proved, could result in an award of monetary damages which would not be released on discharge.

[27] Having to wait until discharge, when a release may well not be available to the defendant anyway, represents material prejudice to the plaintiffs.

[28] The plaintiffs also allege that Brook, as a former employee, owed fiduciary duties and conspired with other former employees to breach those duties, divert customers and assets and misappropriate property of the plaintiffs. There are multiple parties (none of the other defendants are in bankruptcy proceedings) and multiple causes of action. There are few if any written agreements. It is clear that the issues in this action are complex and will require documentary and oral discovery and are likely to involve numerous procedural steps. Is also clear that credibility issues will be paramount on many important material facts. In this circumstance, the issues pleaded against Mr. Brook are unlikely to be amenable to resolution through a summary claims procedure under s. 135 of the BIA. Depriving the plaintiffs of

fundamental procedural tools under the Rules and trial practice would constitute a form of material prejudice, *Sher (Re)*, 1999 CanLII 15015 (Ont. S.C.) at para. 59.

[29] Based on the allegations in the statement of claim, Brooks is a central figure in the events giving rise to the causes of action pleaded against all defendants. It would make little sense to have one procedure to deal with the other eight defendants and another, entirely different procedure, to deal with Brooks. The conclusion of Ground J. in *Royal Bank of Canada v. Societe Generale (Canada)*, [2003] O.J. No. 5139 is equally applicable here:

> the evidence of the Bankrupts will be crucial in the action to establish the factual framework surrounding the various transactions which are alleged to be part and parcel of the fraudulent scheme and, accordingly, there cannot be a completed adjudication of the issues in the action among the other parties without the production of documents in the possession of, and the discovery of, [an, I would note, the evidence of] the Bankrupts."

[30] Finally, Brook argues that lifting the stay will interfere with the proper administration of his bankrupt estate.

[31] Apart from the potentially negative effect on his income-earning capacity of an interlocutory injunction (assuming one were sought and that the plaintiffs were able to meet the stringent test for the grant of an interlocutory injunction) Brook has not raised any concrete consequences for the administration of his estate resulting from his continued participation as a defendant in this action.

[32] The trustee does not oppose the relief sought on this motion. That is some indication, at least, from an independent player actually charged with the administration of the bankrupt's estate, that lifting the stay would not interfere with the proper administration of that estate.

[33] In conclusion, I find that:

(1) The claims for injunctive and declaratory relief sought in the action, as well as claims for monetary damages arising post-bankruptcy, are not stayed by the operation of s. 69.3; and

(2) the test for lifting the stay under s. 69.4 regarding the claim for pre-bankruptcy monetary damages has been met.

This conclusion is subject to one proviso. The enforcement (recovery) of any monetary damages arising out of pre-bankruptcy conduct, if any such damages are ever found owing and awarded, is stayed subject to further order of the court.

[34] Both parties filed bills of costs. They are roughly equivalent in amount. This is a case where costs on a partial indemnity scale should follow the event. As the plaintiffs were successful, costs are fixed in the amount of $13,500 payable by Brook.

Penny J.

**Date:** October 13, 2015

2504670 CANADA INC. et al.

Applicants

-and-

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC., 9615334 CANADA INC., YG LIMITED PARTNERSHIP, and DANIEL CASEY

Respondents

B-1-146

Court File No. 21-00661386-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**APPLICANTS' COMPENDIUM**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSO#: 32268B
mgottlieb@lolg.ca
Tel: 416 644 5353
**Shaun Laubman** LSO#: 51068B
slaubman@lolg.ca
Tel: 416 360 8481
**Sapna Thakker** LSO#: 68601U
sthakker@lolg.ca
Tel: 416 642 3132

Lawyers for the Applicants

# Tab 5

Court File No.: CV-21-00661530-00CL

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

B E T W E E N:

**2583019 ONTARIO INCORPORATED as general partner of YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION and TAIHE INTERNATIONAL GROUP INC.**

Applicants

-and-

**9615334 CANADA INC. as general partner of YG LIMITED PARTNERSHIP and YSL RESIDENCES INC.**

Respondents

APPLICATION UNDER s.101 of the *Courts of Justice Act*, RSO 1990, c C.43

**CASE CONFERENCE BRIEF**
**(May 7, 2021)**

Dated: May 6, 2021

**Thornton Grout Finnigan LLP**
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

**D.J. Miller (LSO# 34393P)**
Tel: (416) 304-0559
Email: djmiller@tgf.ca

**Alexander Soutter (LSO# 72403T)**
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for the Applicants

TO: THE SERVICE LIST

**Overview**

1. The Applicants ("**YongeSL *et al***") seek the appointment of a *Courts of Justice Act* (Ontario) receiver over property held by the Respondents, an early-stage condominium project located near the intersection of Yonge Street and Gerrard Street in Toronto (the "**YSL Project**"), and related relief.

2. The YSL Project lands are beneficially owned by the YG Limited Partnership (the "**Partnership**"). YongeSL *et al* are 2/3 of the preferred limited partners in the Partnership. The applicants in CV-21-00661386-00CL are the other preferred limited partners ("**Chi Long *et al***", and when referred to with YongeSL *et al*, the "**Class A LPs**").

3. The urgency of the relief sought in this matter flows from the General Partner (defined below) announcing that it intends to direct the Partnership to make a proposal (the "**Proposal**") pursuant to the *Bankruptcy and Insolvency Act*. Under the Proposal, unsecured creditors would receive approximately 58% of their claims and the Class A LPs nothing. The Cresford Group (defined below) alleges that its members have unsecured claims of approximately $38.2 million against the Partnership.

4. YongeSL *et al* take the position that **(a)** the General Partner is in default of the agreement governing the Partnership (the "**Partnership Agreement**") and **(b)** was required to cease acting as General Partner, depriving it of any authority to make the Proposal. Further, **(c)** the Cresford Group's alleged advances to the Partnership are equity claims, and **(d)** the Cresford Group is trying to unlawfully extract value from the YSL Project via the Proposal.

5. These issues are at the heart of this application. They must be resolved before the Proposal is put to the Partnership's creditors.

**Persons Claiming an Interest in the YSL Project**

6. The persons claiming an interest in the YSL Project are as follows:

| Entity | Interest in the YSL Project |
|---|---|
| **Members of the Partnership** | |
| a) The Respondent 9615334 Canada Inc. (the "**General Partner**") | General partner of the Partnership; owns the YSL Project lands via a nominee corporation, the Respondent YSL Residences Inc. |
| b) YongeSL *et al* | Hold 2/3 (by value and number) of the Class A Preferred Units in the Partnership |
| c) Chi Long *et al* | Hold 1/3 (by value and number) of the Class A Preferred Units in the Partnership |
| d) Cresford (Yonge) Limited Partnership ("**Cresford Yonge**") | Holds all Class B Units of the Partnership |
| **Other** | |
| e) 2292912 Ontario Inc. (c/o Timbercreek Mortgage Servicing Inc.) ("**Timbercreek**") | Holds a mortgage securing principal of $100 million over the YSL Project lands |
| f) Concord Properties Development Corp. ("**Concord**") | The Proposal's sponsor. If the Proposal is approved by the Court, the YSL Project lands would be transferred to Concord |

7. The General Partner and Cresford Yonge are affiliates and members of a group real estate development companies operating under the "Cresford" banner (the "**Cresford Group**").

8. Other members of the Cresford Group include,

   (a) Oakleaf Consulting Ltd., the limited partner of Cresford Yonge; and

(b) Cresford (Rosedale) Developments Inc. and East Downtown Redevelopment Partnership, each of which **(i)** are indirectly owned by Oakleaf Consulting Ltd. and **(ii)** claim to have made unsecured advances to the Partnership.

**The Cresford Group's Attempts at Self-Dealing**

9. The Partnership Agreement provides that the Class A LPs are entitled to a preferred return on the profits of the Partnership. Between May-November 2020, the Cresford Group acknowledged this priority, but nevertheless sought out transactions involving the transfer of the YSL Project lands which would see **(a)** the Class A LPs recover less than their full entitlement and **(b)** the Cresford Group receive millions of dollars. If the Cresford Group really was an unsecured creditor of the Partnership, it would have no need for the Class A LPs to waive any of their rights.

10. At a November 30, 2020, meeting, the Cresford Group switched its strategy and alleged for the first time that it had made unsecured advances to the Partnership. There are no written agreements governing these advances.

**The Proposal**

11. YongeSL *et al* see the Proposal as merely the Cresford Group's latest attempt at self-dealing. The Proposal will involve Concord, as sponsor, paying the Cresford Group's unsecured creditors (including the Cresford Group) 58% of their claims in consideration for being transferred the YSL Project lands. The Cresford Group stands to recover approximately $22 million under the Proposal. The Partnership's unsecured creditors (excluding the Cresford Group) stand to recover approximately $15 million based on the most recent list of accounts payable delivered by the General Partner.

**The General Partner Ceased to Act as General Partner**

12. YongeSL *et al* allege that the General Partner is in default of the Partnership Agreement;

(a) it consented to the appointment of a receiver in an application by Timbercreek, and has not obtained a dismissal of that application, each of which are defaults; and

(b) it has engaged in the pattern of self-dealing described above in an effort to mask equity injections as unsecured advances to extract value from the Partnership.

13. The Partnership Agreement provides that when the General Partner is in default, it "shall cease" acting as general partner. It would therefore have no authority to make the Proposal.

**This Application Must Proceed Before a Meeting of Creditors in the Proposal**

14. The question of the General Partner's default under the Partnership Agreement, and therefore its authority to even make the Proposal, must be determined before the Proposal can be put to the Partnership's unsecured creditors.

15. Further, if it is just and convenient to appoint a receiver, it will be because there is a genuine issue surrounding the true legal character of the Cresford Group's alleged advances. The Proposal process is not an effective vehicle for the investigation of that issue, since the debtor remains fully in possession and control of the process. A receivership would be, where the receiver is an officer of the Court.

16. The true nature of the Cresford Group's alleged advances is a question that should be resolved before the unsecured creditors vote on the Proposal. Otherwise, if the Cresford Group's claims are in fact equity claims, but the Proposal is nevertheless approved, then either,

(a) the Cresford Group will be unlawfully enriched by $22 million (if its claims are treated in the Proposal as unsecured claims); or

(b) the YSL Project lands will be transferred for at least $22 million under value (if the Cresford Group claims are recognized as equity claims).

**Conclusion**

17. The General Partner and the Proposal trustee have advised that a meeting of creditors is expected to be scheduled on or about June 11, 2021. For the above reasons, this application should be scheduled so that it is heard before any meeting of creditors in the Proposal.

18. YongeSL *et al* **do not** concede that a motion to lift the stay resulting from the Respondents having filed the NOI is necessary.[1] To the extent it is, however, that motion should proceed at the same time as this application. It would defy common sense to have two motions, each involving the same evidence, heard separately over the coming weeks. It is a far more efficient use of the Court's and the parties' resources that all of the issues be heard together.

19. YongeSL *et al* propose the following timetable:

| | | |
|---|---|---|
| a) | Responding Record | May 12 |
| b) | Cross-examinations | May 17-18 |
| c) | Applicants' Factum | May 24 |
| d) | Respondents' Factum | May 27 |
| e) | Reply Factum | May 31 |
| f) | Hearing | June 2, 3 or 4 |

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6th day of May, 2021.

Thornton Grout Finnigan LLP
Counsel to the Applicants, YongeSL *et al*

[1] *Provincial Refining Co v Newfoundland Refining Co*, 1977 CarswellNfld 6 (CA), aff'd 1978 CarswellNfld 17 (SCC) (application for a bankruptcy order not stayed by filing a proposal. The same reasoning should apply here).

APPLICATION UNDER s.101 of the *Courts of Justice Act*, RSO 1990, c C.43

**2583019 ONTARIO INCORPORATED as general partner of YONGESL INVESTMENT LIMITED PARTNERSHIP *et al***

Applicants

- and -

**9615334 CANADA INC. as general partner of YG LIMITED PARTNERSHIP *et al***

Respondents

B-1-154

Court File No.: CV-21-00661530-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**CASE CONFERENCE BRIEF**
**(May 7, 2021)**

**Thornton Grout Finnigan LLP**
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

**D.J. Miller (LSO# 34393P)**
Tel: (416) 304-0559
Email: djmiller@tgf.ca

**Alexander Soutter (LSO# 72403T)**
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for the Applicants

# Tab 6

Court File No. CV-21-00661386-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

B E T W E E N:

**2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC.**

Applicants

- and –

**CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC., 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY**

Respondents

**WRITTEN SUBMISSIONS OF**
**TIMBERCREEK MORTGAGE SERVICING INC. and 2292912 ONTARIO INC.**
(case conference May 7, 2021)

May 6, 2021

**CASSELS BROCK & BLACKWELL LLP**
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Jane O. Dietrich LSO #: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Michael Wunder LSO #: 31351O
Tel: 416.860.6484
mwunder@cassels.com

Jeremy Bornstein LSO #: 65425C
Tel: 416.869.5386
jbornstein@cassels.com

Lawyers for Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.

**TO: THE SERVICE LIST**

**WRITTEN SUBMISSIONS OF**
**TIMBERCREEK MORTGAGE SERVICING INC. and 2292912 ONTARIO INC.**

**Summary of Position**

1. Timbercreek Mortgage Servicing Inc. ("**Timbercreek**") advanced a loan in the principal amount of $100,000,000 (the "**Loan**") to Cresford Capital Corporation ("**Cresford Capital**")[1]. As security for the Loan, Timbercreek obtained, among other things, (i) a first-ranking mortgage (the "**Mortgage**") by YSL Residences Inc. ("**YSL Residences**") against the Real Property; (ii) a charge and direction (the "**Charge and Direction**") by YG Limited Partnership ("**YG LP**") (as beneficial owner of the Real Property); (iii) a guarantee (the "**Guarantee**") by YSL Residences and Cresford (Rosedale) Developments Inc. ("**Cresford Rosedale**", collectively with Cresford Capital, YSL Residences and YG LP, the "**Cresford Parties**"); and (iv) a general security agreement by YSL Residences and YG LP (the "**GSA**" and together with the Mortgage, Charge and Direction and Guarantee, the "**Security**").

2. On October 28, 2020, Timbercreek and 2292912 Ontario Inc. ("**229**") an affiliate of Timbercreek which holds the Security, commenced an application seeking the appointment of a receiver (the "**Timbercreek Receivership Application**") over the Property.[2] The commencement of the Timbercreek Receivership Application followed a number of maturity date extensions, a forbearance agreement (and amendments to same), defaults under the forbearance agreement and the delivery of the required demands and notices of intention to enforce security under the *Bankruptcy and Insolvency Act*.

---

[1] The Loan was advanced pursuant to the terms of a Commitment Letter dated May 2, 2017, as amended, and a Loan Agreement dated August 4, 2017.
[2] Being the real property municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, and as legally described by PIN numbers 21101-0042 (LT) to 21101-0049 (LT) inclusive ("**Real Property**") and all of the assets, undertaking and properties of the Cresford Parties, relating to, located upon or used in connection with the Real Property and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (collectively, and together with the Real Property, the "**Property**").

3. As part of the forbearance agreement entered into among Timbercreek, 229 and the Cresford Parties, the Cresford Parties executed and delivered to Timbercreek a consent to a receivership order (the "**Consent**"), substantially in the form of order sought in the Timbercreek Receivership Application.

4. Subsequent to the commencement of the Timbercreek Receivership Application, Timbercreek, 229 and the Cresford Parties entered into certain additional forbearance agreement amendments. The current forbearance period terminates on June 30, 2021 (subject to an earlier termination upon the occurrence of a terminating event) at which time the Loan must be repaid in full. The Timbercreek Receivership Application is currently scheduled to be heard on July 12, 2021 at 10:00 am before Justice Hainey.

5. If the Court is inclined to grant relief as requested in the applications of the limited partners of YG LP (i.e. a) the application of 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc. seeking to, among other things, terminate the relationship of YG LP with its general partner; and b) the application of the other limited partners to appoint a receiver over the general partner of YG LP and YSL Residences) (collectively, the "**Limited Partner Applications**"), Timbercreek and 229's agreement to forbear from enforcing the Security will terminate. In that circumstance, considering Timbercreek and 229 are the first priority secured creditors with a contractual right to seek the appointment of a receiver over the Property pursuant to the terms of their Security and the Consent, Timbercreek and 229's position is that the Timbercreek Receivership Application should proceed at that time.

6. In light of the above, Timbercreek and 229 submit that the Timbercreek Receivership Application should be scheduled to be heard at the same time as the Limited Partner Applications.

7. In addition, Timbercreek and 229 reserve the right to seek an earlier hearing with respect to Timbercreek's Receivership Application should a separate forbearance termination event occur.

2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC. and

CRESFORD CAPITAL CORPORATION, SL RESIDENCES INC., 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY

B-1-160

Applicants

Respondents

Court File No. CV-21-006613864-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**WRITTEN SUBMISSIONS OF**
**TIMBERCREEK MORTGAGE SERVICING INC. AND**
**2292912 ONTARIO INC.**
(case conference May 7, 2021)

**Cassels Brock & Blackwell LLP**
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Jane O. Dietrich LSO #: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Michael Wunder LSO #: 31351O
Tel: 416.860.6484
mwunder@cassels.com

Jeremy Bornstein LSO #: 65425C
Tel: 416.869.5386
jbornstein@cassels.com

Lawyers for Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.

# Tab 7

ksv advisory inc.

# First Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc.

May 6, 2021

## Contents



## Appendices

**COURT FILE NO.: 31-459200 AND 31-2734090**

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

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

**and**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**MAY 6, 2021**

# 1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOIs") filed on April 30, 2021 (the "Filing Date") by YG Limited Partnership (the "Partnership") and by YSL Residences Inc. ("YSL Inc.", and together with the Partnership, the "Companies"), a company related to the Partnership, pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".

2. The principal purpose of these proceedings is to create a stabilized environment to allow the Companies to file a proposal that provides creditors with a better result than they would realize in a bankruptcy (a "Proposal").

## 1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies;

   b) comment on appraisals and analyses thereon to be performed of the YSL Project, as defined in Section 2 below; and

   c) summarize the Proposal Trustee's activities since the Filing Date.

### 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

### 1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with representatives of Concord Adex Inc. ("Concord").

2. The Proposal Trustee has not performed an audit or other verification of such information. An examination of the Companies' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report or relied upon by the Proposal Trustee in its preparation of this Report.

3. The Companies' business and operations may be affected by the Covid-19 pandemic and the effect of the pandemic on the Companies may be material.

## 2.0 Background

1. The Partnership was formed on February 3, 2016 under *The Partnership Act*, C.C.S.M. c. P30 (Manitoba). 9615334 Canada Inc. (the "GP") is the Partnership's general partner. The GP has not filed a NOI. YSL Inc. was incorporated on January 28, 2016 under the *Business Corporations Act* (Ontario).

2. The Companies are part of the Cresford Group of Companies ("Cresford"). YSL Inc. is the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "Property") acting as a bare trustee and nominee of, for and on behalf of the Partnership. The Partnership is the beneficial owner of the Property, and was formed for the purpose of developing the Property into a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, 190,000 square feet of commercial/retail/institutional space and 242 parking spaces, and known as Yonge Street Living Residences (the "YSL Project"). Approximately 800 residential condominium units have been pre-sold.

3. Based on the Partnership's records, the YSL Project is subject to three mortgages totaling approximately $249 million. Other claims, including lien and unsecured claims, are estimated to be $64 million. A copy of the Proposal Trustee's notices to creditors dated May 5, 2021, which include creditor listings, is provided as Appendix "B".

4. Due to the ongoing financial difficulties of the Companies and Cresford, construction of the YSL Project has been suspended for more than a year and it is presently at the excavation stage.

5. Pursuant to an agreement dated April 30, 2021 between the Companies, certain Cresford entities and Concord Properties Development Corp. (the "Sponsor"), an affiliate of Concord (the "Agreement"), the Sponsor, with the consent and support of the Companies' secured lenders, has agreed to sponsor a Proposal to be made to the Companies' creditors. If the Proposal is implemented, the Sponsor or another Concord-affiliate would become the owner and developer of the YSL Project. The Proposal Trustee understands that the Proposal is in the process of being finalized and is intended to be filed in the near term.

## 2.1 Applications by Limited Partners

1. Certain of the Partnership's limited partners (the "LPs") have commenced separate applications before the Ontario Superior Court of Justice (Commercial List) (the "Court") seeking Orders declaring that, among other things: a) the GP is terminated as general partner of the Partnership; b) any agreements entered into by the GP with the Sponsor are null and void; c) the GP breached its duty of good faith to the limited partners; and d) appointing a receiver.

2. Timbercreek Mortgage Servicing Inc. ("Timbercreek"), the Companies' senior secured creditor, takes the position that the granting of any of the relief sought in the LPs' applications would trigger a forbearance event, and that Timbercreek will seek to be in a position to bring on for hearing its application for appointment of a court-appointed receiver (currently scheduled for July 12, 2021) in preference to any such relief being granted.

3. In their materials, the LPs have filed with the Court three appraisals prepared by CBRE Limited ("CBRE") of the YSL Project on "as is" and "as if complete" bases. The most recent CBRE appraisal included in the LP's application is dated August 8, 2019 (the "2019 Appraisal").

4. The 2019 Appraisal estimates the "as is" market value of the YSL Project to be $375.5 million, reflecting the estimated Land Residual Value and the Costs Incurred to Date Beneficial to a Potential Purchaser (as those terms are defined in the 2019 Appraisal) and $1.225 billion on an "as if complete" basis.

5. CBRE also prepared an appraisal of the YSL Project dated April 30, 2021 (the "2021 Appraisal"). The appraisal is addressed to Concord. Concord provided the appraisal to the Proposal Trustee on a confidential basis. The Proposal Trustee has been advised that Concord has offered to provide a copy of the 2021 Appraisal to each of the LPs upon execution of a confidentiality agreement.

6. As the value of the YSL Project is central to determining the reasonableness of the Proposal, the Proposal Trustee engaged Finnegan-Marshall Inc. ("FM"), a real estate and development cost consulting firm, to, among other things:

   a) review CBRE's most recent appraisal;

   b) analyse the differences between the 2019 Appraisal and the 2021 Appraisal;

   c) assess the value of the improvements and work performed to-date; and

   d) prepare a report that will opine on "the sales price for the project on an as-is basis after assessing the project budget, project revenue and resultant profitability".

7. A copy of the Proposal Trustee's engagement letter with FM dated May 3, 2021 (the "FM Engagement Letter") is provided as Appendix "C". Pursuant to the FM Engagement Letter, FM estimates that its report will be completed in three weeks.

8. It is the Proposal Trustee's intention, following the filing of a Proposal by the Companies, to report to the Companies' creditors on the terms of the Proposal and provide a comparison of the recoveries under the Proposal to a bankruptcy. The Proposal Trustee's report will include a recommendation as to whether the creditors should vote in favour of the Proposal. It is presently contemplated that the meeting of creditors would be convened on or around June 11, 2021.

## 3.0 Proposal Trustee's Activities

1. In addition to the activities summarized in this Report, the Proposal Trustee's activities since the Filing Date have included:

   - Corresponding with the Partnership, its counsel and Concord's counsel regarding the pre-sold condominium units;
   - Assisting the Partnership to prepare a statement of projected cash flow pursuant to Section 50.4(2) of the BIA;
   - Considering an application to consolidate the BIA proceedings of the Partnership and YSL Inc.;
   - Dealing with notices of disclaimer which will be issued pursuant to Section 65.11 of the BIA;
   - Corresponding with Concord regarding funding for these proceedings;
   - Attending at Court, virtually, on May 3, 2021;

- Establishing the Proposal Trustee's website;
- Reviewing CBRE's appraisals; and
- Responding to creditor inquiries.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.**
**IN ITS CAPACITY AS TRUSTEE UNDER THE**
**NOTICE OF INTENTION TO MAKE A PROPOSAL OF**
**YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,**
**AND NOT IN ITS PERSONAL CAPACITY**

# Appendix “A”

Industry Canada | Industrie Canada
Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-459200
Estate No. 31-459200

In the Matter of the Notice of Intention to make a proposal of:

**YG Limited Partnership**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention: April 30, 2021

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver
151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Industry Canada | Industrie Canada
Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2734090
Estate No. 31-2734090

In the Matter of the Notice of Intention to make a proposal of:

**YSL Residences Inc.**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention: April 30, 2021

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver
151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

# Appendix “B”

**ksv advisory inc.**
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

May 5, 2021

**To: Creditors of YG Limited Partnership (the "Partnership")**

We are writing to advise you that on April 30, 2021, the Partnership commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act* ("BIA"). A copy of the NOI and a preliminary listing of the Partnership's creditors are attached. KSV Restructuring Inc. ("KSV") has been appointed as the trustee under the NOI (the "Proposal Trustee"). KSV is also the proposal trustee of YSL Residences Inc., a company related to the Partnership that also filed an NOI on April 30, 2021.

Although the NOI proceedings are pursuant to the BIA, it is important to note that the Partnership is not bankrupt.

The principal purpose of these proceedings is to create a stabilized environment to allow the Partnership to prepare a proposal that provides creditors with a better result than they would receive through a bankruptcy.

At present, creditors are not required to file a proof of claim. The Proposal Trustee will provide you with further information, a proof of claim form and further instructions at a later date.

During the restructuring proceedings, among other things:

- no person may terminate or amend any agreement, including a security agreement, with the Partnership, or claim an accelerated payment, or a forfeiture of the term, under any agreement, including a security agreement, by reason only that the Partnership is insolvent or by reason of the filing of the NOI, pursuant to Section 65.1(1) of the BIA;
- no creditor has any remedy against the Partnership or its property or shall commence or continue any action, execution, or other proceedings against the Partnership, pursuant to Section 69.1(1) of the BIA; and
- to the extent applicable, suppliers should discuss directly with their usual Partnership representative the terms of payment for ongoing goods and/or services that they provide to the Partnership.

If you have any questions after speaking with your contact at the Partnership, please contact Murtaza Tallat from the Proposal Trustee's office at mtallat@ksvadvisory.com.

Yours very truly,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.**
**TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP**

Industry Canada | Industrie Canada
Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-459200
Estate No. 31-459200

In the Matter of the Notice of Intention to make a proposal of:

**YG Limited Partnership**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention: April 30, 2021

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver
151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

FORM 33

**Notice of Intention to Make a Proposal**
*[Subsection 50.4(1)]*

**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORM UNDER THE LAWS OF THE PROVINCE OF MANITOBA**

**TAKE NOTICE THAT:**

1. **YG Limited Partnership**, an insolvent person, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a proposal to its creditors.

2. **KSV Restructuring Inc.** of 150 King Street West, Suite 2308, Toronto, Ontario, a licensed trustee, has consented to act as trustee under the proposal and a copy of the consent is attached hereto.

3. A list of the names of the known creditors with claims amounting to $250 or more and the amounts of their claims is attached.

4. Pursuant to section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against YG Limited Partnership are stayed as of the date of filing this notice with the Official Receiver in its locality.

**DATED** at Toronto, Ontario this 9th day of April, 2021.

**YG LIMITED PARTNERSHIP,**
**by its general partner**
**9615334 CANADA INC.**

Per: _____
Name: Daniel Casey
Title: President

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

**Preliminary List of Creditors as at April 29, 2021, as submitted by YG Limited Partnership**
**without admission as to any liability or privilege herein shown**
(Unaudited)

| Creditor | Address | Amount ($)* |
|---|---|---|
| **Secured** | | |
| 2576725 Ontario Inc | 35 Wembley Avenue, Markham, ON L3R 1Z1 | 30,865,424 |
| Timbercreek Mortgage Servicing Inc. | 25 Price Street, Toronto, Ontario M4W 1Z1 | 106,798,989 |
| Westmount Guarantee | 600 Cochrane Drive, Ste 205, Markham, Ontario L3R 5K3 | 111,757,134 |
| Total - Secured | | 249,421,547 |
| **Unsecured and Lien Claims** | | |
| 2600924 Ontario Inc. | 18 Leone Lane, Brampton, Ontario L6P 0K9 | 67,800 |
| 1st Choice Disposal | 2117 Codlin Crescent, Rexdale, Ontario M9W 5K7 | 8,917 |
| AEC Paralegal Corporation | 640 - 10 Carlson Crt, Etobicoke, Ontario M9W 6L2 | 593 |
| Aim Home Realty Inc | 2175 Sheppard Avenue E, #106, Toronto, Ontario M2J 1W8 | 15,018 |
| Aird & Berlis LLP | 181 Bay Street, Ste 1800, Box 754 Toronto, Ontario M5J 2T9 | 16,583 |
| Altus Group Limited | 126 Don Hillock Drive, Aurora, Ontario L4G 0G9 | 20,960 |
| AlumaSafway, Inc | c/o Lockbox 919760, PO Box 4090 STN A Toronto, Ontario M5B 1S1 | 46,505 |
| Architects Alliance | 317 Adelaide Street West, 2nd Floor, Toronto, Ontario M5V 1P9 | 1,009,360 |
| Arthur J. Gallagher Canada Li | P.O. Box 57194, Station A,, Toronto, Ontario M5W 5M5 | 105,288 |
| BA Consulting Group Ltd. | 45 St. Clair Avenue West, Suite 300, Toronto, Ontario M4V 1K9 | 7,919 |
| Baaron Group Inc. | 51 Adirondack Drive, Vaughan, Ontario L6A 2V7 | 20,398 |
| Bay Street Group Inc | 8300 Woodbine Avenue, Ste 500, Markham, Ontario L3R 9Y7 | 45,738 |
| Beck Taxi | 1 Credit Union Drive, Toronto, Ontario M4A 2S6 | 4,037 |
| Bell Canada | 1 Carrefour Alexandre-Graham-Bell, Aile E 3, Verdun, QC H3E 3B3 | 456 |
| Bennett Jones LLP | 3400 One First Canadian Place, P.O. Box 130 Toronto, Ontario M5X 1A4 | 20,813 |
| Blaney McMurtry LLP | 2 Queen Street East,Suite 1500, Toronto, Ontario M5C 3G5 | 100,057 |
| BVDA Group Ltd. | 107 Toronto St South, Suite 1, Uxbridge, Ontario L9P 1H4 | 1,130 |
| Canon Canada Inc. | Lockbox 914820, PO Box 4090, Stn A Toronto, Ontario M5W 0E9 | 38 |
| CBSC Capital Inc. | c/o T9649, PO Box 9649, STN A, Toronto, Ontario M5W 1P8 | 6,126 |
| Century 21 Kennect Realty | 7780 Woodbine Avenue, U#15, Markham, Ontario L3R 2N7 | 53,036 |
| Century 21 King's Quay Real E | 7300 Warden Avenue, Suite 401, Markham, Ontario L3R 9Z6 | 37,594 |
| Century 21 Leading Edge Realty | 165 Main Street North, Markham, Ontario L3P 0E7 | 10,878 |
| Cityscape Real Estate Ltd. | 25 Waitline Avenue, Suite 402, Mississauga, Ontario L4Z 2Z1 | 246,999 |
| Citywide Door & Hardware Inc. | 80 Vinyl Court, Woodbridge, Ontario L4L 4A3 | 1,130 |
| Cresford (Rosedale) Developments Inc. | 203 – 250 Merton Street, Toronto, ON M4S 1B1 | 13,100,000 |
| Dale & Lessmann LLP | 181 University Avenue, Suite 2100, Toronto, Ontario M5H 3M7 | 5,322 |
| Dekla Corporation | 288 Judson Street, Unit 8, Toronto, Ontario M8Z 5T6 | 25,000 |
| E.R.A. Architects Inc. | 600-625 Church St., Toronto, Ontario M4Y 2G1 | 46,764 |
| East Downtown Redevelopment Part. | 203 – 250 Merton Street, Toronto, ON M4S 1B1 | 5,810,053 |
| Entuitive Corporation | 200 University Avenue, 7th FL, Toronto, Ontario M5H 3C6 | 5,509 |
| Federal Wireless Communication | 5250 Finch Avenue East, #11, Scarborough, Ontario M1S 5A5 | 4,292 |
| Forest Hill Real Estate Inc | 441 Spadina Road, Toronto, Ontario M5P 2W3 | 30,876 |
| Foster Interactive Inc. | 80 Ward St. Office #213, Toronto, Ontario M6H 4A6 | 1,627 |
| Four Seasons Hotel Toronto | 60 Yorkville Avenue, Toronto, Ontario M4W 0A4 | 97,938 |
| GFL Infrastructure Group Inc. | 100 New Park Place, # 500, Vaughan, Ontario L4K 0H9 | 4,296,801 |
| Heritage Restoration Inc | 14 Paisley Lane, Stouffville, ON L4A7X4 | 393,006 |
| Home Standards Brickstone Realty | #30 - 180 Steeles Ave. West, Thornhill, Ontario L4J 2L1 | 114,566 |
| Homelife/Bayview Realty Inc | 505 Hwy. 7 East, Unit#201, Thornhill, Ontario L3T 7T1 | 1 |
| Homelife Classic Realty Inc | 1600 Steeles Ave. W., #36, Vaughan, Ontario L4K 4M2 | 12,478 |
| HomeLife Frontier Realty Inc. | 7620 Yonge Street, Suite 400, Toronto, Ontario L4J 1V9 | 25,376 |
| HomeLife Landmark Realty Inc. | 7240 Woodbine Ave, Suite 103, Markham, Ontario L3R 1A4 | 1,669,032 |
| HomeLife New World Realty Inc | 201 Consumers Road, Suite 205, Willowdale, Ontario M2J 4G8 | 544,356 |
| Howe Gastmeier Chapnik Limited | Suite 203-2000 Argentia Rd, Plaza One, Mississauga, Ont L5N 1P7 | 15,343 |
| Hunter & Associates Ltd. | 1133 Yonge Street. 3rd Floor, (The Exchange) Toronto, Ontario M4T 1W1 | 2,924 |
| Innocon Partnership | T10094, PO Box 10094, Stn A, Toronto, Ontario M5W 2B1 | 50,239 |
| Investments Hardware Limited | 250 Rowntree Dairy Road, Woodbridge, Ontario L4L 9J7 | 15,091 |
| Isherwood | 3100 Ridgeway Drive, Unit 3, Mississauga, Ontario L5L 5M5 | 131,669 |
| Jablonsky, Ast and Partners | 1129 Leslie Street, Don Mills, Ontario M3C 2K5 | 349,632 |
| JanetRosenberg&Studio Inc. | 148 Kenwood Avenue, Toronto, Ontario M6C 2S3 | 16,690 |
| JDL Realty Inc. | 95 Mural Street, Ste 105, Richmond Hill, Ontario L4B 3G2 | 20,478 |
| Jensen Hughes Consulting Cana | C/O T56207C, PO Box 56207, Station A Toronto, Ontario M5W 4L1 | 53,889 |
| Keller Williams Referred | Urban Realty, Brokerage, 156 Duncan Mill Rd., Unit 1 Toronto, Ontario M3B 3N2 | 6,174 |
| Kohn Pedersen Fox Associates | 11 West 42nd Street, New York, NY 10036 | 2,149,015 |

B-1-176

| Creditor | Address | Amount ($)* |
|---|---|---|
| Kramer Design Associates Limited | 103 Dupont Street, Toronto, Ontario M5R 1V4 | 74,185 |
| Lam & Associates Ltd. | 160 Applewood Crescent, #25, Concord, Ontario L4K 4H2 | 129,925 |
| LandpowerReal Estate Ltd. | 3621 Highway 7 E., Ste. 403, Markham, Ontario L3R 0G6 | 2,256,549 |
| Lerch Bates | 9780 S. Meridian Blvd., #450, Englewood, Colorado USA 80112 | 11,900 |
| Live Patrol Inc. | 2645 Skymark Avenue, #205, Mississauga, Ontario L4W 4H2 | 16,781 |
| Living Realty Inc. | 8 Steelcase Road West, Markham, Ontario L3R 1B2 | 88,588 |
| Master's Choice Realty, Inc. | 3190 Steeles Avenue E. #110, Markham, Ontario L3R 1G9 | 379,298 |
| McIntosh Perry | 200-6240 Highway 7, Woodbridge, Ontario L4H 4G3 | 218 |
| Michael Bros. Excavating | 240 Toryork Drive, Weston, Ontario M9L 1Y1 | 1,758,732 |
| Mike Catsiliras | 62 Presteign Avenue, Toronto, Ontario M4B 3B2 | 1 |
| Montana Steele | 5255 Yonge Street Ste 1050, Toronto, Ontario M2N 6P4 | 73,928 |
| Mulvey & Banani Lighting Inc. | 44 Mobile Drive, Toronto, Ontario M4A 2P2 | 29,979 |
| Municipal Mechanical Contract | 9418 The Gore Road, Brampton, Ontario L6P 0A8 | 11,303 |
| Myles Burke | 10 Planchet Road, #29, Vaughan, Ontario L4K 2C8 | 53,698 |
| Naf-Muk Contracting Inc | 23 Gillingham Street, Scarborough, Ontario M1B 5X1 | 2,440 |
| North American Sign Company I | 499 Edgeley Boulevard, Unit 3, Concord, Ontario L4K 4H3 | 2,825 |
| Oakleaf Consulting Ltd. | 203 – 250 Merton Street, Toronto, ON M4S 1B1 | 19,363,566 |
| Otis Canada Inc. | PO Box 57445 Station A, Toronto, Ontario M4Y 0E7 | 5,395,110 |
| PETRA Consultants Ltd. | 104-93 Dundas Street E., Mississauga, Ontario L5A 1W7 | 185,969 |
| PM Sheetmetal & Ventilation | 140 Bowes Road, Unit B, Concord, Ontario L4K 1J6 | 29,042 |
| Powerland Realty, Brokerage | 160 West Beaver Creek Rd., #2A, Richmond Hill, Ontario L4B 1B4 | 10,678 |
| PricewaterhouseCoopers LLP | 18 York Street, Suite 2600, Toronto, Ontario M5J 0B2 | 19,267 |
| Priestly Demolition Inc. | 3200 Lloydtown-Aurora Rd., King, Ontario L7B 0G3 | 660,123 |
| R. Avis Surveying Inc. | 235 Yorkland Boulevard, Suite 203, Toronto, Ontario M2J 4Y8 | 53,758 |
| Rapid Equipment Rental Limited | 5 St. Regis Crescent, N. U# 2, Toronto, Ontario M3J 1Y9 | 4,520 |
| Re/Max Condo Plus Corp | 45 Harbour Square, Toronto, Ontario M5J 2G4 | 16,358 |
| RE/MAX Goldenway Realty Inc. | 15 Wertheim Court, Suite 309, Richmond Hill, Ontario L4B 3H7 | 125,424 |
| RE/MAX Realtron Realty Inc. | 88 Konrad Crescent, Markham, Ontario L3R 8T7 | 42,576 |
| RE/MAX Realty Enterprises Inc | 125 Lakeshore Road East, Mississauga, Ontario L5G 1E5 | 72,090 |
| Real One Realty Inc. | 15 Wertheim Crt., Unit 302, Richmond Hill, Ontario L4B 3H7 | 181,936 |
| Reco Cleaning Services | 260 Spinnaker Way, Unit 9&10, Concord, Ontario L4K 4P9 | 74,482 |
| ReMax Ultimate Realty Inc. | 1739 Bayview Avenue, Toronto, Ontario M4G 3C1 | 16,718 |
| Reprodux Limited | 1120 Brevik Place, Mississauga, Ontario L4W 3Y5 | 724 |
| Right At Home Realty Inc. | 895 Don Mills Rd., Ste 202, Toronto, Ontario M3C 1W3 | 10,678 |
| Rosa Trading Ltd. | 552 Wellington Street W #1203, Toronto, Ontario M5V 2V5 | 1 |
| Royal Elite Realty Inc., Broker | 7050 Woodbine Ave Unit101, Markham, Ontario L3R 4G8 | 16,198 |
| Royal LePage - New Concept | 1993 Leslie Street, Toronto, Ontario M3B 2M3 | 85,770 |
| Royal LePage - Signature Real | 8 Sampson Mews #201, Toronto, Ontario M3C 0H5 | 14,678 |
| Ryan Property Tax Paralegal | 640 - 10 Carlson Crt, Etobicoke, Ontario M9W 6L2 | 5,360 |
| Safeline Management Systems | 260 Spinnaker Way, Unit 9&10, Concord, Ontario L4K 4P9 | 9,074 |
| Sebba Steel Construction Ltd. | PO Box 27, Gormley, Ontario L0H 1G0 | 86,075 |
| Soberman Engineering Inc | 55 St Clair Avenue W Ste 205, Toronto, Ontario M4V 2Y7 | 1,271 |
| Stantec Consulting Ltd. | c/o Lockbox 310260, PO Box 578, Stn M Calgary, Alberta T2P 2J2 | 9,023 |
| Stephenson's Rental Services | 6895 Columbus Road, Mississauga, Ontario L5T 2G9 | 13,202 |
| Strada Aggregates | 30 Floral Parkway, Suite 400, Concord, Ontario L4K 4R1 | 36,999 |
| The Odan/Detech Group Inc. | 5230, South Service Rd, U#107, Burlington, Ontario L7L 5K2 | 6,526 |
| The Treasurer, City of Toronto | 55 John Street, 26th Floor, Metro Hall Toronto, Ontario M5V 3C6 | 486,245 |
| Toronto Hydro-Electric System | Misc Accounts Receivable, 500 Commissioners Street Toronto, Ontario M4M 3N7 | 44,098 |
| Tradeworld RealtyInc. | 411 Dundas Street W., #202, Toronto, Ontario M5T 1G6 | 67,770 |
| V.A. Siu Design Consultants | 596 Queen Street W., #301, Toronto, Ontario M6J 1E3 | 96,050 |
| Verdi Structures Inc | 91 Parr Blvd., Bolton, Ontario L7E 4E3 | 775,180 |
| Westmount Guarantee Services | 600 Cochrane Drive, Ste 205, Markham, Ontario L3R 5K3 | 231,504 |
| WSP Canada Inc. | c/o TX4022 C PO Box 4590 Stn A, Toronto, Ontario M5W 7B1 | 76,063 |
| You-Go Rental & Sales | 9418 The Gore Road, Brampton, Ontario L6P 0A8 | 2,809 |
| Total - Unsecured and Lien Claims | | 64,091,776 |

*An amount of $1.00 indicates that the amount due is undetermined or unknown.

B-1-177

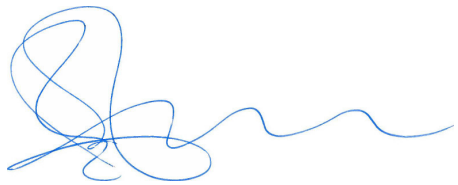
**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP**

**CONSENT**

**KSV RESTRUCTURING INC.** hereby consents to act as Trustee under the Notice of Intention to Make a Proposal and/or Proposal to be filed by YG Limited Partnership.

**DATED** at Toronto, Ontario this 29th day of April, 2021.

**KSV RESTRUCTURING INC.**



Per: _____
Name: Bobby Kofman
Title: Authorized Signing Officer

**ksv advisory inc.**
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

May 5, 2021

**To: Creditors of YSL Residences Inc. ("YSL")**

We are writing to advise you that on April 30, 2021, YSL commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act* ("BIA"). A copy of the NOI and a preliminary listing of YSL's creditors are attached. KSV Restructuring Inc. ("KSV") has been appointed as the trustee under the NOI (the "Proposal Trustee"). KSV is also the proposal trustee of YG Limited Partnership, a partnership related to YSL that also filed an NOI on April 30, 2021.

Although the NOI proceedings are pursuant to the BIA, it is important to note that YSL is not bankrupt.

The principal purpose of these proceedings is to create a stabilized environment to allow YSL to prepare a proposal that provides creditors with a better result than they would receive through a bankruptcy.

At present, creditors are not required to file a proof of claim. The Proposal Trustee will provide you with further information, a proof of claim form and further instructions at a later date.

During the restructuring proceedings, among other things:

- no person may terminate or amend any agreement, including a security agreement, with YSL, or claim an accelerated payment, or a forfeiture of the term, under any agreement, including a security agreement, by reason only that YSL is insolvent or by reason of the filing of the NOI, pursuant to Section 65.1(1) of the BIA;
- no creditor has any remedy against YSL or its property or shall commence or continue any action, execution, or other proceedings against YSL, pursuant to Section 69.1(1) of the BIA; and
- to the extent applicable, suppliers should discuss directly with their usual YSL representative the terms of payment for ongoing goods and/or services that they provide to YSL.

If you have any questions after speaking with your contact at YSL, please contact Murtaza Tallat from the Proposal Trustee's office at mtallat@ksvadvisory.com.

Yours very truly,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.**
**TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE**
**A PROPOSAL OF YSL RESIDENCES INC.**

Industry Canada | Industrie Canada
Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2734090
Estate No. 31-2734090

In the Matter of the Notice of Intention to make a proposal of:

**YSL Residences Inc.**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention: April 30, 2021

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver
151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

FORM 33

**Notice of Intention to Make a Proposal**
*[Subsection 50.4(1)]*

**IN THE MATTER OF THE PROPOSAL OF YSL RESIDENCES INC., A CORPORATION INCORPORATED PURSUANT TO THE LAWS OF ONTARIO**

**TAKE NOTICE THAT:**

1. **YSL Residences Inc.**, an insolvent person, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a proposal to its creditors.

2. **KSV Restructuring Inc.** of 150 King Street West, Suite 2308, Toronto, Ontario, a licensed trustee, has consented to act as trustee under the proposal and a copy of the consent is attached hereto.

3. A list of the names of the known creditors with claims amounting to $250 or more and the amounts of their claims is attached.

4. Pursuant to section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against YG Limited Partnership are stayed as of the date of filing this notice with the Official Receiver in its locality.

**DATED** at Toronto, Ontario this 21 day of April, 2021.

**YSL RESIDENCES INC.**

Per: _____
Name: Daniel Casey
Title: President

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF**
**YSL RESIDENCES INC.**
**OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**Preliminary List of Creditors as at April 29, 2021, as submitted by YSL Residences Inc.**
**without admission as to any liability or privilege herein shown**
(Unaudited)

| Creditor | Address | Amount ($) |
|---|---|---|
| **Secured** | | |
| Timbercreek Mortgage Servicing Inc. | 25 Price Street, Toronto, Ontario M4W 1Z1 | 106,798,989 |
| Total - Secured | | 106,798,989 |

B-1-182

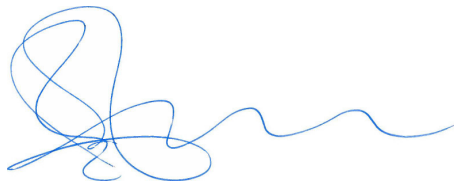
**IN THE MATTER OF THE PROPOSAL OF YSL RESIDENCES INC.**

**CONSENT**

**KSV RESTRUCTURING INC.** hereby consents to act as Trustee under the Notice of Intention to Make a Proposal and/or Proposal to be filed by YSL Residences Inc.

**DATED** at Toronto, Ontario this 29th day of April, 2021.

**KSV RESTRUCTURING INC.**



Per: _____
Name: Bobby Kofman
Title: Authorized Signing Officer

# Appendix “C”

FINNEGAN | MARSHALL
326 DAVENPORT ROAD, SUITE 200
TORONTO M5R 1K6

KSV Restructuring Inc.
150 King Street West,
Suite 2308,
Toronto, ON
M5H 1J9

May 3rd, 2021

Attn: Bobby Koffman

RE: YSL project, Toronto, ON

Dear Sir,

KSV Restructuring Inc. ("KSV") has advised that they have been appointed as Proposal Trustee for the YSL project on the south/east corner of Yonge & Gerrard. The project comprises generally of an 86-storey tower with 6 levels of underground with 1,106 residential condo suites, approximately 96,000sf office, 60,000sf retail and 251 parking stalls. Sales of the condominiums are partially undertaken, and there is also an agreement with Ryerson University for some of the office space. Construction has also commenced with the heritage exterior wall structure retention work in place and shoring and excavation underway.

KSV have requested that Finnegan Marshall ("FM") review pertinent project documentation and prepare a report that will provide the sales price for the project on an as-is basis after assessing the project budget, project revenue and resultant profitability.

CBRE has prepared a land appraisal and FM will review the appraisal and opine on the land value therein. FM will also review a prior appraisal prepared by CBRE and explain the reasons for the reduction in value in the current appraisal vs the former appraisal, to the extent possible.

Our approach will be as follows:

1. Project Revenue – prepare a projection of the overall sales revenue based on retaining the existing sales, selling the unsold condo units/parking stalls/storage lockers at market price, completing the sale to Ryerson, leasing the remaining commercial space at market rents, and providing for a capitalized value for sales disposal of same. Any miscellaneous additional income such as closing recoveries will be accounted for. To be deducted from the sales revenue will be all purchaser deposits previously used to pay for project costs.

2. Project Budget – prepare a detailed project budget addressing all land, hard and soft costs. In this regard, the land cost will be as advised by KSV as being the proposed purchase price by the land vendor of the project which is understood to be equal to the sum of all secured creditors and lien claimants plus 58cents to the dollar for unsecured creditors. FM will prepare a detailed trade by trade division 16 construction budget taking into account work already completed, any prior construction contracts and whether same can be maintained with those trades taking into account prevailing market costs. If the costs are no longer applicable, FM will adjust the construction costs based on prevailing market costs. FM will also prepare a detailed budget for all soft costs taking into account costs already expended and those left to complete the project.



B-1-185

FINNEGAN | MARSHALL
326 DAVENPORT ROAD, SUITE 200
TORONTO M5R 1K6

3. Source of Funding – a key element for the budget preparation will be to calculate the projected capital stack to be available to finance the budget, especially considering that a large amount of the residential deposits are not available as they have been already used. This will impact equity requirements and IRR return for the new vendor and is an important consideration.

4. Executive Summary providing the profit return and its comparison to market.

To undertake this report, to the extent available, we will require receipt of the following documentation:

1. Project drawings.
2. Cost Ledger for project costs incurred to date including making available certain more recent invoices we will want to see that will indicate status of contact billings. So, as we know what balance is left to complete.
3. Accounts payable listing.
4. Sales Summary of suites/parking stalls/storage lockers sold and unsold.
5. Coty of standard Purchase & Sale Agreement to understand deposit structure and closing recoveries.
6. Summary of Co-Broker sales commissions.
7. Zoning By-Law.
8. Section 37 agreement.
9. Ryerson purchase and sale agreement for office.
10. Realty Tax invoices for interim 2021.
11. Tieback & Neighbour Agreements.
12. Construction contracts.
13. Geotechnical, Hydro Geotechnical & Environmental Reports.
14. All building permits issued.
15. Insurance certificates summarizing existing coverage.

There may be some other items, but the foregoing are the primary ones.

Our fees to complete this report will be billed on an hourly basis. We will provide you with a list of our hourly rates for the staff we intend to use on this report as well as a fee projection.

Our timeline to complete our report will be 3 weeks from date of authorization to proceed and we will try to complete it in a shorter timeframe.

FM will also advise whether it is possible that a developer would consider terminating all existing APSs and whether a higher a better price could be achieved through an alternative development.

I trust I have addressed the necessary points, but if not, please advise.

Yours Truly,

FINNEGAN MARSHALL INC.

Per: Niall Finnegan



B-1-186

# Tab 8

**From:** Gilmore, Madam Justice Cory (SCJ) <Cory.Gilmore@scj-csj.ca>
**Sent:** May 7, 2021 2:10 PM
**To:** jdietrich@cassels.com; mwunder@cassels.com; slaubman@lolg.ca; Jeremy Bornstein <jbornstein@cassels.com>; rschwill@dwpv.com; Harry Fogul <hfogul@airdberlis.com>; asoutter@tgf.ca; dgruber@bennettjones.com
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
**Subject:** 2504670 Canada Inc. et al. v. Cresford Capital Corporation et al. Court file no. CV-21-00661386-00CL

**Endorsement of Gilmore, J.**

There are currently three outstanding applications in this matter and two NOI proceedings. As the assigned scheduling judge I took the view that Mr. Laubman and Mr. Soutter's clients' Applications have been stayed as a result of the NOI proceedings and that any lift/stay motion must be heard in the context of the proposal proceedings. Mr. Laubman takes the position that the Applications are not stayed. I confirmed that I have taken the position that they are stayed for scheduling purposes only and have made no finding in that regard.

The lift/stay motion is therefore scheduled for June 1, 2021 at 10:00 a.m. for two hours. The judge hearing this motion may wish to conduct a conference with the parties after releasing his/her decision as the result of that motion will impact next steps.

The sanction hearing and the applications (assuming the stay is lifted) will be heard on June 23, 2021 for three hours at 10:00 a.m. This time allotment may need to be adjusted depending on the result of the lift/stay motion.

The consolidation of the NOI proceedings can likely be done by way of unopposed motion in writing. That may be placed before me when counsel are ready.

May 7, 2021

***Madam Justice Cory A. Gilmore***
***Ontario Superior Court of Justice***
***361 University Avenue***
***4th Floor***
***Toronto, Ontario M5G 1T3***

***cory.gilmore@scj-csj.ca***

# Tab 9

Estate/Court File Nos.: 31-459200
31-2734090

***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 NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LAWS OF MANITOBA CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AND**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC., A CORPORATION FORMED UNDER THE LAWS OF ONTARIO CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**SERVICE LIST**
**(as of May 10, 2021)**

| | |
|---|---|
| **AIRD & BERLIS LLP**<br>Brookfield Place<br>181 Bay Street, Suite 1800<br>Toronto, ON M5J 2T9<br><br>*Lawyers for the Applicants, YSL Residences Inc. and YG Limited Partnership* | Harry Fogul<br>Tel No: 416-865-7773<br>Email: hfogul@airdberlis.com<br>(copy to: dporter@airdberlis.com) |
| **KSV RESTRUCTURING INC.**<br>150 King Street West, Suite 2308<br>P.O. Box 42<br>Toronto, ON M5H 1J9<br><br>*Trustee* | Bobby Kofman<br>Tel No: 416-932-6228<br>Email: bkofman@ksvadvisory.com<br><br>Mitch Vininsky<br>Tel No: 416-932-6013<br>Email: mvininsky@ksvadvisory.com<br><br>Murtaza Tallat<br>Tel No: 416-932-6031<br>Email: mtallat@ksvadvisory.com |
| **DAVIES WARD PHILLIPS VINEBERG LLP**<br>155 Wellington Street West<br>Toronto, ON M5V 2J7<br><br>*Lawyers for KSV Restructuring Inc., in its capacity as Proposal Trustee* | Robin Schwill<br>Tel No: 416-863-5502<br>Email: rschwill@dwpv.com<br><br>Natalie Renner<br>Tel No: 416-367-7489<br>Email: nrenner@dwpv.com |
| **BENNETT JONES LLP**<br>3400 One First Canadian Place<br>P.O. Box 130<br>Toronto, ON M5X 1A4<br><br>*Lawyers for Concord Properties Developments Corp., and its affiliates* | David Gruber<br>Tel No: 604-891-5150<br>Email: gruberd@bennettjones.com<br><br>Jesse Mighton<br>Tel No: 416-777-6255<br>Email: mightonj@bennettjones.com |

| | |
|---|---|
| **CASSELS BROCK & BLACKWELL LLP**<br>2100 Scotia Plaza<br>40 King St. W.<br>Toronto, ON M5H 3C2<br><br>*Lawyers for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.* | Jane Dietrich<br>Tel No: 416-860-5223<br>Email: jdietrich@cassels.com<br><br>Michael Wunder<br>Tel No: 416-860-6484<br>Email: mwunder@cassels.com<br><br>Jeremy Bornstein<br>Tel No: 416-869-5386<br>Email: jbornstein@cassels.com |
| **LAX O'SULLIVAN LISUS GOTTLIEB LLP**<br>Suite 2750, 145 King Street West<br>Toronto, ON M5H 1J8<br><br>*Lawyers for 2504670 Canada Inc. and 8451761 Canada Inc.* | Shaun Laubman<br>Email: slaubman@lolg.ca<br><br>Sapna Thakker<br>Email: sthakker@lolg.ca |
| **THORNTON GROUT FINNIGAN LLP**<br>Suite 3200<br>100 Wellington Street West<br>Toronto, ON M5K 1K7<br><br>*Lawyers for 2576725 Ontario Inc. and Certain YSL Group Investors* | D.J. Miller<br>Tel No: 416-304-1313<br>Email: djmiller@tgf.ca<br><br>Alexander Soutter<br>Tel No: 416-304-0595<br>Email: asoutter@tgf.ca |
| **BORDEN LADNER GERVAIS LLP**<br>Bay Adelaide Centre, East Tower<br>22 Adelaide St. West<br>Toronto, ON M5H 4E3<br><br>*Lawyers for Westmount Guarantee Services Inc.* | James MacLellan<br>Tel No: 416-367-6592<br>Email: jmaclellan@blg.com |

B-1-192

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC.**

B-1-192

Court File No. 31-45[illegible]00

Court File No. 31-2734090

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

# RESPONDENTS MOTION RECORD

**AIRD & BERLIS LLP**
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON M5J 2T9

**Harry Fogul (LSO # 15152O)**

Tel: (416) 865-7773
Fax: (416) 863-1515
Email: hfogul@airdberlis.com

*Lawyers for YG Limited Partnership* and *YSL Residences Inc.*