Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

MOTION RECORD

June 18, 2021

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TAB 1

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

NOTICE OF MOTION
(Returnable June 23, 2021)
(Proposal Approval Order and Lien Action Dismissal Order)

YSL Residences Inc. ("**YSL Inc.**"), and YG Limited Partnership ("**YG LP**", and together with YSL Inc., "**YSL**") will make a motion before the Honourable Justice Dunphy of the Ontario Superior Court of Justice (Commercial List) on Tuesday, June 23, 2021 at 10:00 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard via videoconference as a result of the COVID-19 pandemic, the details of which can be found at Schedule "A" hereto.

THE MOTION IS FOR:

1. An order, substantially in the form attached to the within motion record at Tab 3, (the "**Proposal Approval Order**"), among other things:

   (a) abridging the time for service of the motion returnable June 23, 2021 and dispensing with service on any person other than those served; and

(b) approving the Amended Proposal #2 filed with the Official Receiver on June 15, 2021 (the "**Further Amended Proposal**"), which proposal was unanimously accepted by the requisite majority of creditors of YSL at the creditors meeting held on June 15, 2021 (the "**Creditors' Meeting**").

2. An order or orders, among other things, dismissing certain actions commenced by creditors that have registered liens against title to the YSL Project (as defined below) lands, as requested by and consented to by the plaintiff parties to such actions.

3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

Background

4. Together, YSL are the owners and developers of an intended mixed-use office, retail and residential condominium project located at 363-385 Yonge Street, Toronto (the "**YSL Project**"). The YSL Project is a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, a commercial/retail component and 242 parking spaces. As of the Filing Date, approximately 800 residential condominium units have been pre-sold.

5. To date the YSL Project has obtained city zoning, drawings have been prepared, significant pre-sales of residential units achieved, and construction has commenced, with demolition, partial shoring and partial excavation having been completed to-date. However, due to YSL's insolvency, work has been halted on the YSL Project site, other than as necessary for site preservation and maintenance.

6. YG LP is subject to an Amended and Restated Limited Partnership Agreement Effective August 4, 2017, and is a limited partnership registered under Manitoba law pursuant to *The Partnership Act*, CCSM c P30. The General Partner of YG LP is 9615334 Canada Inc. (the "**GP**").

7. There are eight (8) Limited Partners who are investors in YG LP and have Class A Preferred Units (the "**LPs**"), as well as 1 holder of Class B Units, which entities are related parties within the Cresford Group of Companies ("**Cresford**").

8. The LPs hold limited partnership units in YG LP.

9. Certain of the LPs have initiated Applications in the Superior Court of Justice (Commercial List) bearing Court File No. CV-21-0061386-00CL and Court File No. CV-21-00661530-00CL. The LPs oppose the sanction of the Further Amended Proposal, and one group seeks the nullification of these proposal proceedings.

10. Another stakeholder in opposition is Maria Athanasoulis, a former executive within Cresford that has filed a proof of claim, valuing her claim at $19 million, with the Proposal Trustee, which claim was disputed by the Proposal Trustee for voting and distribution purposes. This treatment is consistent with the treatment of Ms. Athanasoulis' claims in the other insolvency proceedings that entities within Cresford are involved in.

11. The YSL Project has been suffering from financial difficulty since early 2020. In light of the foregoing, the GP has been attempting to find a buyer able to execute the YSL Project on terms that would provide a return to the LPs since that time.

12. Due to the aforementioned financial difficulties, YG LP defaulted on its loan agreement with its senior secured lender, Timbercreek Mortgage Servicing Inc. ("**Timbercreek**"), and subsequently entered into a series of forbearance agreements starting in March 2020. The most recent forbearance agreement requires that Timbercreek be paid in full by June 30, 2021 or Timbercreek will proceed with its Application to appoint a receiver. The Application to appoint a receiver is scheduled to be heard on July 12, 2021, although, pursuant to the Endorsement of the Honourable Justice Dunphy dated June 1, 2021, that timing is anticipated to be accelerated should the Court decline to sanction the proposal.

13. Initially in March 2020, and again in May 2020, Empire (Water Wave) Inc. ("**Empire**") commenced discussions with the GP regarding the acquisition of the YSL Project. Empire submitted an Agreement of Purchase and Sale dated June 22, 2020 (as amended, the "**Empire APS**"). A further offer was presented on July 12, 2020 that provided any sale was contingent on the Investors executing a Special Resolution approving a sale of the YSL Project.

14. Various iterations of the Empire APS were tabled in an effort to strike a deal. Despite these efforts, no agreement was reached and all negotiations with Empire ended in late September 2020.

The GP then entered into discussions with Concord Adex Inc. to determine whether it had any interest in the YSL Project.

15. The GP entered into a Term Sheet with Concord Properties Developments Corp. ("**Concord**") on November 20, 2020 (the "**Concord Term Sheet**") pursuant to which the GP would hand over management of the YSL Project to Concord or another Concord entity. Pursuant to the terms of the Concord Term Sheet, Concord entity had to obtain construction financing and would provide mezzanine financing. The LPs who signed a non-disclosure agreement were provided with a copy of the Concord Term Sheet.

16. Subsequent to certain discussions with the LPs revolving around the Concord Term Sheet and the terms thereof, Otera Capital Inc. ("**Otera**") came forward with an interest to provide Concord the financing necessary to complete the YSL Project. Notwithstanding its interest, Otera required substantial changes to the structure initially contemplated by the Concord Term Sheet and insisted that Concord obtain complete ownership of the YSL Project, without any go-forward participation by any Cresford-related entities. As a result, in April 2021, Concord re-approached YG LP and proposed that it would sponsor a proposal under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**").

17. On April 30, 2021, YSL, certain Cresford entities and Concord Properties Developments Corp. (the "**Sponsor**"), a Concord affiliate, with the consent and support of YSL's secured lenders, executed an agreement whereby the Sponsor agreed to sponsor a proposal to be made to YSL's creditors pursuant to the BIA. In consideration for its sponsorship of the Further Amended Proposal, should the proposal be implemented, the Sponsor or another Concord-affiliate would become the owner and developer of the YSL Project, with a view to completing the YSL Project.

The Proposal Approval Order

(i) Proposal Proceedings

18. On April 30, 2021, each of the YSL entities filed Notices of Intention to Make a Proposal (the "**NOIs**") naming KSV Restructuring Inc. as proposal trustee (in such capacity, the "**Proposal Trustee**") .The YSL Inc and YSL LP estates were consolidated by an Order of Madam Justice Gilmore on May 14, 2021.

19. On May 27, 2021, YSL filed a proposal in accordance with Section 50(2) of the BIA (the "**Original Proposal**"). Following discussions with the Proposal Trustee, and as a result of feedback received from various stakeholders, the Original Proposal was amended and filed with the Official Receiver on June 3, 2021 (the "**Amended Proposal**"). Following additional discussions and stakeholder feedback, the Amended Proposal was further amended immediately prior to the meeting of creditors and the Further Amended Proposal was filed with the Official Receiver on June 15, 2021.

(ii) the Further Amended Proposal[1]

20. On June 4, 2021, the Proposal Trustee provided a Notice of Proposal to Creditors and its Report to Creditors by regular mail and by email, where so requested, the Office of the Superintendent in Bankruptcy and to every known creditor affected by the Amended Proposal (the "**Materials**"). The Proposal Trustee then posted the Materials on its website.

21. For the purposes of voting, the Further Amended Proposal has only one class of creditors, being the Affected Creditor Class. Unaffected Claims under the Amended Proposal include: (i) the Claims of YSL's senior secured creditor, Timbercreek; (ii) the Claims of YSL's second-ranked secured creditor, Westmount; (iii) the Claims of YSL's third-ranked secured creditor 2576725 Ontario Inc.; (iv) any Claim by the City of Toronto; (v) all Condo Purchaser Claims; (vi) 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; (vii) claims in respect of the Administrative Fees and Expenses, including the fees, expenses and legal fees and disbursements incurred by or on behalf of the Proposal Trustee and the solicitors of the Companies; and (viii) such other Claims as the Companies and Sponsor may agree with the consent of the Proposal Trustee.

22. The Further Amended Proposal, as is standard practice, includes a convenience creditor concept. Under the terms of the Further Amended Proposal, a Convenience Creditor (who will be deemed to have voted the full amount of its Proven Claim in favour of the approval of the Amended Proposal) is an Affected Creditor with a Convenience Creditor Claim, being:

[1] Capitalized terms not otherwise defined in this section have the meaning ascribed to them in the Further Amended Proposal.

(a) any Proven Claims of an Affected Creditor in an amount less than or equal to $15,000; and

(b) any Proven Claim of an Affected Creditor in an amount greater than $15,000 if the relevant Creditor has submitted a valid Convenience Creditor Election Form prior to 5:00 pm (Toronto time) on June 14, 2021, the Convenience Creditor Election Deadline.

23. Implementation of the Further Amended Proposal is conditional upon, among other things, the approval of the Further Amended Proposal by the Court, as required under the BIA.

(ii) The Creditors' Meeting

24. The Creditors' Meeting was held on Tuesday, June 15, 2021 at which meeting the Further Amended Proposal was unanimously accepted by 46 creditors representing approximately $18.1 million dollars in value of claims voted to approve the Amended Proposal.

The Lien Action Dismissal Order

25. Should the Court approve the proposed Proposal Approval Order, certain of YSL's construction trade creditors have requested that YSL also seek orders to dismiss the lien actions commenced by them in perfecting their liens. As part of the discharge of liens contemplated by section 6.01 of the Further Amended Proposal, these lien-holder creditors have requested and consented to these orders to expedite the consensual resolution of their lien claims in the event that the Further Amended Proposal is proceeding to implementation.

OTHER GROUNDS:

26. The provisions of the BIA and the inherent and equitable jurisdiction of this Honourable Court.

27. Rules 1.04, 2.03, 3.02, 14.05(2), 16, 38 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended and sections 138 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

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

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

(a) the Affidavit of David Mann, sworn on June 4, 2021, and the exhibits attached thereto;

(b) the Affidavit of David Mann, sworn on June 18, 2021, and the exhibits attached thereto;

(c) the Third Report of KSV Restructuring Inc., in its capacity as Proposal Trustee, dated June 18, 2021, to be filed; and

(d) such further and other evidence as counsel may advise and this Court may permit.

June 18, 2021

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

Schedule "A"

Join Zoom Meeting
https://zoom.us/j/91428874948

Meeting ID: 914 2887 4948
One tap mobile
+15873281099,,91428874948# Canada
+16473744685,,91428874948# Canada

Dial by your location
+1 587 328 1099 Canada
+1 647 374 4685 Canada
+1 647 558 0588 Canada
+1 778 907 2071 Canada
+1 204 272 7920 Canada
+1 438 809 7799 Canada
Meeting ID: 914 2887 4948

Find your local number: https://zoom.us/u/aPytxDMKx

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

Consolidated Court File No. 31-2734090

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

NOTICE OF MOTION

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Lawyers for YG Limited Partnership and
YSL Residences Inc.

TAB 2

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

AFFIDAVIT OF DAVID MANN
(sworn June 18, 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., (the "GP") 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. Where I do not have personal knowledge of a matter, I have stated the source of my information and, in all such cases, believe it to be true.

2. YG Limited Partnership and YSL Residences Inc. (collectively "YSL") agreed to the transaction proposed by Concord Properties Developments Corp. ("Concord") because the GP believed that it was the best recovery that could be achieved in the circumstances in light of the pending payment deadline of June 30, 2021 by the first mortgagee Timbercreek Mortgage Servicing Inc. The deadline of June 30, 2021 was set out in Forbearance Agreement Amendment #3 made as of January 28, 2021 with Timbercreek.

3. Since early 2020 the GP had canvassed interest among the largest developers in Canada with minimal interest shown by them. The concern in finding a new buyer in April 2021 was that all known possible buyers with the ability to execute on a project of the scale and

complexity as the YSL Project had been canvassed and the time required to do due diligence on a project of this size and complexity was many months.

4. GFL who submitted a Letter of Intent in May 2020 had spent many months in the fall of 2019 doing due diligence on the YSL Project. Empire (Water Wave) Inc. who submitted an offer in June 2020 had been doing due diligence since March 2020, which continued through the summer months. Concord initially looked at the YSL Project in the spring of 2020, subsequently diverted its attention to other projects that were available but later rekindled its interest in the YSL Project in September 2020 and did extensive due diligence. Concord submitted a Term Sheet at the end of November 2020, but continued its due diligence continued into the spring of 2021 and remains ongoing.

5. A prospective purchaser will not commit to a deal unless it has secured financing, which can take at least 6-12 months to put together a syndicated group of lenders to finance a billion-dollar project. Concord was negotiating construction financing with Otera Capital Inc. ("Otera"). The GP was advised by Concord that Otera would not provide construction financing unless Concord owned the YSL Project and Cresford had no further involvement with it. The GP still hoped that a satisfactory deal could be made with Concord. When negotiations stalled in late March 2021, the GP terminated the initial agreement with Concord.

6. Throughout 2020 and 2021 Dan Casey and Ted Dowbiggin on behalf of the GP were in contact from time to time with three of the top real estate agents in Toronto, being Peter Senst and Casey Gallagher of CBRE and Andrew Barnicke, and asked them to be on the lookout for a developer who might be interested in the YSL Project. None materialized. These agents further advised that they would need 3 to 4 weeks to put a sales package together to try to remarket the YSL Project.

7. At the end of the second week of April 2021 Concord restarted discussions which led to Concord proposing to sponsor a proposal to the creditors. As noted above the GP concluded that the Concord proposal was the best deal available taking into account the lack of interest in the project, the time required to remarket the property and allow for due diligence and the Timbercreek forbearance deadline of June 30, 2021. The GP also

considered the time required to create a sales proposal as well as the minimal interest expressed in the other Cresford properties that did not generate expected sale prices in recent receivership proceedings.

8. The three other Cresford projects that went into receivership were The Clover on Yonge ("Clover"), Halo Condominiums ("Halo") and 33 Yorkville Condominiums ("33 Yorkville"). All these projects were in downtown Toronto.

9. Clover was a mixed-use condominium development that had completed structural work with most of the interior construction work yet to be completed. The project became subject to CCAA proceedings and Concord purchased the project. All condo purchase agreements were terminated. There is some recovery for unsecured creditors, but no money left for equity holders.

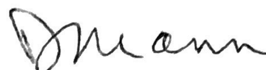
10. Halo was also a mixed-use condominium development but was much further on in the development than YSL. In the receivership sale process, in the final bidding round, there were only two bidders Concord and the secured creditor bciMC who put in a credit bid and took over the project. All condo purchase agreements were terminated, and the building is being converted into a rental building. There is some recovery for unsecured creditors, but no money left for equity holders.

11. 33 Yorkville was also a mixed-use condominium development. 33 Yorkville was also a partially constructed hole in the ground similar to YSL. In the final round of the receivership sale process there was only one bidder. The timeline for closing for the successful bidder was extended several times to allow for additional due diligence and in the end the purchaser insisted on a price reduction which was accepted by the Receiver as there were no alternative transactions available. All condo purchase agreements were terminated. I understand that there is no recovery for unsecured creditors or equity holders and only a partial recovery for Westmount/Aviva (secured creditor). This process took many months to finalize.

12. Maria Athanasoulis (“Maria”) has filed a Proof of Claim in these proposal proceedings that has been marked “objected to”. Attached to her Proof of Claim is a Statement of Claim that is identical to the Statement of Claim that Maria filed in the Clover CCAA proceedings. Maria’s Clover Claim was disallowed by the Monitor in the Clover CCAA relating to her claims for termination pay and her profit-sharing claim. Maria’s Claim for termination pay is against Cresford (Rosedale) Developments Inc. not YSL. There are no profits to be derived by Cresford in the YSL Project. Justice Hainey in the Clover proceedings described the profit-sharing claim as too speculative. In addition, the action brough by Maria is being defended and a Statement of Defence and Counterclaim has been filed in that action. Attached to my Affidavit as **Exhibit “A”** is Maria’s Statement of Claim that was part of her Clover Proof of Claim. Attached to my Affidavit as **Exhibit “B”** is the Monitor’s Disclaimer in the Clover CCAA proceedings. Attached to my Affidavit as **Exhibit “C”** is a copy of the Statement of Defence and Counterclaim.

13. If the Proposal is implemented, it is a condition of closing, and I am advised by Concord, a requirement of Otera, that all liens be removed from title to the YSL Project lands. I understand from Concord that all but three lien claimants have entered into consensual arrangements with Concord that will result in the discharge of such liens in the event that the Proposal is approved. In order to perfect their liens, lien claimants commenced actions against YSL in respect of the lienable interests (each, a “**Lien Action**”). In the event that the Proposal is approved by the Court, in order to facilitate the consensual discharge of liens, certain lien claimants have requested the assistance of YSL to obtain orders on consent dismissing their Lien Actions. Absent such dismissal orders, I am advised by Harry Fogul that each lien claimant would have to take steps to have its actions dismissed, at the expense of each lien claimant and consuming judicial resources.

14. This Affidavit is made in support of the Application for Court Approval of the Amended Proposal #2 dated June 15, 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 18th day of June, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	)
Commissioner for taking affidavits	)  **David Mann**

TAB A

Exhibit “A”

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

Affidavit of **David Mann**

Sworn before me this 18th day of June, 2021

A Commissioner for taking affidavits

Court File No./N° du dossier du greffe: CV-20-00634836-0000

Electronically issued
Délivré par voie électronique : 21-Jan-2020
Toronto

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARIA ATHANASOULIS

Plaintiff

- and -

CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP, THE CLOVER ON YONGE INC., THE CLOVER ON YONGE LIMITED PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480 YONGE STREET LIMITED PARTNERSHIP, YG LIMITED PARTNERSHIP, YSL RESIDENCES INC., YSL RESIDENCES LIMITED PARTNERSHIP, 50 CHARLES STREET LIMITED, 50 CHARLES STREET LIMITED PARTNERSHIP and DANIEL C. CASEY

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date January 21, 2020 Issued by ______________________
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON M5G 1R7

TO: **NELLIGAN O'BRIEN PAYNE LLP**
50 O'Connor Street, Suite 300
Ottawa, ON K1P 6L2

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Tel 613.231.8224
Fax 613.788.3654

Counsel to the Defendants

CLAIM

1. The Plaintiff, Maria Athanasoulis, claims against the Defendants for:

   (a) A declaration that the Defendants wrongfully terminated Ms. Athanasoulis;

   (b) Damages for wrongful dismissal in the amount of $1,000,000;

   (c) A declaration that Ms. Athanasoulis is entitled to 20% of the profits earned by each of the Projects (as defined below);

   (d) Damages in the amount of $48 million, representing the value of the entitlement referenced in (c) above;

   (e) Damages for defamation, in an amount to be provided prior to trial;

   (f) Punitive, aggravated and exemplary damages;

   (g) Pre and post judgment interest; and

   (h) Such further and other relief as this Court deems just.

PART I. BACKGROUND

A. THE DEFENDANTS' BUSINESS

(i) Cresford

2. The corporate defendants (collectively, "**Cresford**") are all part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario using the brand name Cresford.

3. Cresford's corporate predecessors were founded by the Defendant, Daniel C. Casey, approximately 40 years ago. However, until approximately 2014, Cresford and its predecessors focused on small and medium-sized condominium developments.

4. Since 2014, Cresford has developed a reputation for developing and building large luxury condominium communities, largely as a result of the Plaintiff's efforts (which are described below). It has completed some of the largest and most ambitious condominium development and construction projects in the Greater Toronto Area.

5. Each of Cresford's development and construction projects is owned by a separate legal entity. That entity purchases the land where the relevant project is to be built, obtains the required permissions, markets the project to proposed purchasers, hires contractors to build the project and takes all of the other steps to convert real estate into a major condominium development.

6. The staff required to complete this work, including Ms. Athanasoulis, were paid by East Downtown Redevelopment Partnership ("**EDRP**"). However, EDRP does not own any real estate or conduct any active business. Cresford employees, including Ms. Athanasoulis, provided services directly to the entities that owned, developed and built Cresford's projects.

(ii) Ms. Athanasoulis was critical to Cresford's success

7. Ms. Athanasoulis joined Cresford in 2004 as its Manager, Special Projects. Although she had not previously worked in real estate, she quickly demonstrated a talent for marketing development projects. In 2005, she was promoted to Vice President of Sales and Marketing.

8. In 2012, Ms. Athanasoulis was promoted again to President, Sales and Marketing. In that capacity, she reported directly to Mr. Casey. Over time, her role expanded to include virtually all aspects of Cresford's business except for land acquisition and project finance. In 2018, Ms. Athanasoulis was promoted again to President and Chief Operating Officer ("**COO**") around the time that Ted Dowbiggin, the President of Cresford Capital, resigned.

(iii) The real estate development and construction process

9. Condominium development and construction projects are complex, and each is unique to some extent. However, certain steps are common to virtually all projects. The builder/developer must:

(a) identify an attractive development site;

(b) negotiate an agreement to purchase the site;

(c) hire third parties to design the proposed project;

(d) obtain the municipal permissions required to build the proposed project, which often involves a long and extensive review and approval process. The process of obtaining these approvals is typically called the "development process";

(e) market condominium units to purchasers. These purchasers provide a deposit (or a series of deposits) to secure their purchases;[1]

[1] These deposits must be insured before they can be used to fund construction costs. The deposit insurer guarantees that the deposits will be repaid to purchasers if the units are not built, and registers a mortgage on title to protect itself against the risk of repayment.

(f) hire contractors to supply the labour and materials required to build the project; and

(g) register the condominium and transfer control of it to the condominium corporation.

10. Importantly, the vast majority of revenues earned on a project are not released to the builder/developer until construction is complete and the condominium is registered. This means that the builder/developer must fund development and construction costs using both debt and equity.

(iv) Mr. Casey was responsible for providing or securing the equity that Cresford required

11. In recent years, Mr. Casey has had very little involvement in Cresford's day to day operations. He rarely attended Cresford's offices and was largely unaware of – and uninvolved in – Cresford's business except for financing matters and cost overruns. Unlike other aspects of the business, which were operated by Ms. Athanasoulis, Mr. Casey always kept control of Cresford's financing and limited Ms. Athanasoulis' access to information about it.

12. As noted above, almost all of the revenue from a condominium development is earned after the condominium is built and registered. Almost all of the costs required to complete the development must be incurred before then. Real estate development projects, and particularly the large-scale projects that Cresford has pursued recently, have substantial (and complex) funding needs.

13. Cresford, like all major developers, secures third party mortgage financing to fund a significant portion of its construction and development costs. Lenders agree to fund based on a detailed budget prepared for each project and carefully monitor costs. A project inspector reviews

detailed information to ensure that funds are properly used and the project can be completed in accordance with the original budget. If the project inspector identifies cost overruns, then the owner of the project must immediately provide the required funds. The Altus Group ("**Altus**") is the project inspector on Cresford's current projects.

14. In addition, lenders rely on the financial position of the project owner in deciding to advance funds. As a result, the loan agreements all prohibit further borrowing without prior consent from the lender.

15. Cresford's lenders required that the owner of each project make a significant equity investment before funds were advanced. Mr. Casey's primary role at Cresford was to provide or secure these equity investments. The investments were critical. In order to complete its projects, Cresford needed a stable source of equity funds. Without such funds, Cresford could not meet its commitments to lenders, construction contractors, consultants, brokers, purchasers and other stakeholders.

16. Mr. Casey represented to Ms. Athanasoulis that he was a wealthy and successful businessman. Ms. Athanasoulis believed that Mr. Casey had the ability to make the investments that Cresford's business required.

17. As described below, these funds either did not exist or Mr. Casey was not prepared to invest them in Cresford's business. Mr. Casey was unwilling or unable to provide the equity funding that Cresford required. This failure threatened (and continues to threaten) the viability of Cresford's business.

18. Importantly, prior to the fall of 2018, Ms. Athanasoulis was not responsible for acquiring development sites or financing the purchase and construction of projects. Ted Dowbiggin, the President of Cresford Capital, was responsible for site acquisitions and finance until his resignation effective August 31, 2018. Mr. Dowbiggin reported directly to Mr. Casey, and together, they were solely responsible for financing Cresford's acquisition and development activities. Finance activities were separated from the rest of Cresford's operations. Ms. Athanasoulis and her team had little information about how Mr. Casey and Mr. Dowbiggin financed projects and what they communicated to lenders.

19. Thus, Ms. Athanasoulis was responsible for executing Cresford's projects successfully but was not responsible for how those projects were financed, did not participate in communications with lenders and did not know what Mr. Casey did (and did not) tell lenders.

(v) Cresford's recent success

20. Although Ms. Athanasoulis developed (and has) significant expertise in every aspect of the real estate development and construction business, she has a unique talent for designing and marketing residential condominium units to purchasers. As a result, Cresford was able to sell a large volume of condominium units quickly and for premium prices. Every condominium must pre-sell units worth a minimum amount before construction loan funding will be advanced – typically 65% or more of the total project revenue. Cresford's most recent projects have met their targets very quickly.

21. As importantly, Ms. Athanasoulis built Cresford into a recognized luxury condominium brand. Satisfied customers bought units in multiple Cresford projects, and the real estate brokers

that represented Cresford's target customers trusted Cresford to keep its promises. This allowed Cresford to charge premium prices for its units. Few, if any, Canadian developers have the sort of reputation that Ms. Athanasoulis built for Cresford.

22. Put simply, Ms. Athanasoulis was the driving force behind Cresford's success. In the last five years alone, Cresford has sold more than 3,000 condominium units and generated revenues in excess of $2.5 billion. In the process, she built a reputation (both for herself and for Cresford) for dealing honestly and fairly with consultants, construction contractors and real estate agents.

(vi) Ms. Athanasoulis' compensation

23. Mr. Casey recognized Ms. Athanasoulis' value. He knew that Ms. Athanasoulis was the key to Cresford's success and, over the years, he offered her significant incentives to remain at Cresford.

24. In 2014, Ms. Athanasoulis supervised the design, marketing and sales on the Vox project at Yonge and Wellesley in Toronto, as she had done on several previous projects. The Vox project met its sales targets with ease, and the project was a success. Moreover, because of Ms. Athanasoulis' sales and marketing expertise, Cresford saved the substantial cost of a third party marketing company. A third party marketing company would have charged Cresford more than $3 million to market only the Vox project, but Ms. Athanasoulis was paid only $300,000 per annum, plus a payment equal to 0.15% of Cresford's sales on every project, to market all of Cresford's projects and fulfill her other duties. Ms. Athanasoulis realized that she could earn much more working as a contractor for Cresford and other developers.

25. Recognizing Ms. Athanasoulis' value, Mr. Casey agreed to increase her salary to $500,000 per annum in 2014 and pay her 0.15% of Cresford's sales on every project going forward. Most importantly, after the Vox project, Mr. Casey agreed that Ms. Athanasoulis would be entitled to 15% of the profits earned on all projects launched by Cresford thereafter as well as an additional $500,000 at registration of each of the active projects (i.e., 1000 Bay, Casa II and Casa III). Following the successful launch of YSL, Mr. Casey increased the percent of profits that Ms. Athanasoulis was to be entitled to from 15% to 20%. In an effort to assist with monthly cash flow, Ms. Athanasoulis never drew her increased salary. Mr. Casey knew this, and knew that Ms. Athanasoulis was still owed her increased salary.

26. Ms. Athanasoulis worked closely with Mr. Casey, and trusted him to protect her interests. As a result, their agreement was not immediately reduced to writing. Ms. Athanasoulis launched three more very successful projects in 2015, 2016 and 2017.

27. After the successful launch of YSL (as defined below) in October 2018, Ms. Athanasoulis realized that the services she provided to Cresford on its four most recent projects had saved it approximately $37.5 million on fees that would otherwise have been paid to a third party marketing consultant. She asked Mr. Casey to memorialize his agreement to pay her 20% of the profits on existing projects. She subsequently attended a meeting with Mr. Casey and John C. Papadakis, Cresford's corporate lawyer. At the meeting, Mr. Casey confirmed that Ms. Athanasoulis was entitled to 20% of the profits generated by Cresford's projects and asked Mr. Papadakis to document the agreement.

28. Ms. Athanasoulis did not receive the agreement that Mr. Papadakis was instructed to draft. She did not press for a written agreement, however, because Mr. Casey had confirmed her entitlement several times and she trusted him.

29. As described below, her trust was misplaced.

PART II. CRESFORD'S CASH CRISIS

A. CRESFORD'S CURRENT PROJECTS

30. In recent years, Cresford has focused on large condominium developments in or near downtown Toronto. Cresford currently has four active condominium developments (collectively, the "**Projects**"):

(a) The Clover on Yonge ("**Clover**"), a 44 story condominium located near Yonge and Bloor. Clover is owned by Clover on Yonge Inc. ("**Clover Inc.**") in its capacity as General Partner of Clover on Yonge Limited Partnership ("**Clover LP**"). Clover LP is beneficially owned by entities related to or controlled by Mr. Casey;

(b) Halo Residences on Yonge ("**Halo**"), a 38 story condominium tower located on Yonge Street between Wellesley and Carlton in Toronto. Halo is owned by 480 Yonge Street Inc. ("**Halo Inc.**"), the general partner of 480 Yonge Street Limited Partnership ("**Halo LP**"). Halo LP is, in turn, beneficially owned by entities related to or controlled by Mr. Casey;

(c) The Residences of 33 Yorkville ("**33 Yorkville**"), a condominium with one 64-story tower and one 41-story tower. 33 Yorkville is owned by 33 Yorkville

Residences Inc. ("**33 Yorkville Inc.**"), in its capacity as general partner of 33 Yorkville Residences Limited Partnership ("**33 Yorkville LP**"). There are two classes of limited partnership units in 33 Yorkville LP. The Class A limited partnership units are held by 20 third parties, who collectively invested $75 million. These investments are described in more detail below; and

(d) Yonge Street Living Residences ("**YSL**"), an 85-story condominium tower located at the corner of Yonge and Gerrard in Toronto. YSL is owned by YSL Residences Inc. ("**YSL Inc.**"), in its capacity as general partner of YG Limited Partnership ("**YSL LP**"). YSL LP is beneficially owned by entities controlled by or related to Mr. Casey and third party investors.

31. Revenue from the project will not be realized unless and until the Projects are completed. In order to complete the Projects, Cresford must meet its obligations to lenders, contractors and other stakeholders. This requires access to funding that Cresford does not currently have.

B. MR. CASEY'S FAILURE TO MAKE (OR SECURE) EQUITY INVESTMENTS

32. As noted above, each lender required that Cresford (or Mr. Casey) invest significant equity into each Project. Ms. Athanasoulis only role in these equity investments was to introduce potential investors to Mr. Casey.

33. Mr. Dowbiggin resigned from Cresford in August 2018. Around the time of Mr. Dowbiggin's resignation, Ms. Athanasoulis learned, for the first time, that Cresford was woefully underfunded on Clover and Halo. Cresford did not have the funds required to complete the Projects, and Mr. Casey did not have a plan to secure the funds it needed.

34. Mr. Casey and Mr. Dowbiggin initially directed Ms. Athanasoulis to reach out to CBRE, a well-known commercial real estate brokerage, to explore the possibility of selling the land owned by YSL Inc. Mr. Casey hoped to earn a gross profit on the sale of $80-$100 million and use that profit to fund cost overruns on the Clover and Halo projects.

35. Given the scale of the YSL Project, the pool of potential buyers was quite small. CBRE reached out to the most likely purchasers, but did not find an interested buyer. Accordingly, the only alternative was to design, market and sell the project in order to make it viable. Ms. Athanasoulis worked tirelessly in September and October to launch the YSL Project quickly. This work paid off, and the YSL launch was a huge success. Among other things, the purchasers were contracted to pay approximately $140 million in deposits on YSL units.

36. Ms. Athanasoulis continued to work with Mr. Casey to try to find a solution to Cresford's cash issues. However, in the summer of 2019 she learned that Mr. Casey's own financial position was far more precarious than he had claimed.

37. Worse still, Ms. Athanasoulis learned in the fall of 2019 that Cresford had made significant misrepresentations to its lenders. When Ms. Athanasoulis pressed Mr. Casey to make the equity investments the business required and to deal honestly with lenders, she was stripped of her responsibilities and constructively terminated.

(i) Mr. Casey's secret loans

38. Cresford did not actually make many of the equity investments that it was contractually required to make, and claimed to have made. Instead, Mr. Casey represented to lenders that funds borrowed from a third party lender, OTB Capital Inc. ("**OTB**"), were equity investments made by

Mr. Casey or entities that he controlled. These so-called equity investments were, in fact, high interest financing that was specifically prohibited by the applicable loan documents. OTB's loans are secured by every piece of collateral that Mr. Casey could offer, including the unsold retail and residential condominium units in the Clover and Halo projects. Neither Ms. Athanasoulis nor the affected lenders were aware of this.

39. Specifically, Ms. Athanasoulis learned that Mr. Casey had borrowed money from OTB in or around 2014. She also knew that Cresford had to make substantial monthly interest payments to OTB. This was a significant burden on Cresford's cashflow, since interest on most loans in the real estate development industry is capitalized and paid at the end of the project.

40. Ms. Athanasoulis did not, however, know the details of Mr. Casey's arrangements. Most importantly, she did not know what Mr. Casey had told lenders about OTB. She assumed that Mr. Casey had disclosed the nature of his relationship with OTB to existing and prospective lenders, as he was required to do. Shortly before her termination (which is described below), she learned that he had not.

(ii) Clover

41. Mr. Casey's scheme is illustrated by the funding of Clover. Pursuant to a commitment letter dated April 27, 2016 (the "**Clover Loan Agreement**"), British Columbia Investment Management Corporation ("**QuadReal**") agreed to provide Clover Inc. with:

(a) a construction financing and letter of credit facility in the amount of approximately $175 million, which was to be secured by a first mortgage charge; and

(b) a third mortgage facility in the amount of approximately $30 million (including a $9 million interest reserve).

42. The Clover Loan is managed by QuadReal Property Group ("QuadReal"), a real estate company owned by BC IMC.

43. The Clover Loan Agreement required that the borrower, Clover Inc., invest equity of approximately $20.6 million before any funds could be advanced. The Clover Loan Agreement prohibited any other financing without the prior written consent of QuadReal, but it allowed Clover Inc. to register *its own* mortgage on title to secure the equity investment it was required to make.

44. Clover Inc. represented to QuadReal that it made the required equity investment, and registered a mortgage on title in favour of Cresford Financial Limited ("**CFL**"). Once it was satisfied that this investment had been made, QuadReal began to advance funds.

45. Unbeknownst to QuadReal, and to Ms. Athanasoulis, neither Clover Inc. nor any other entity related to Mr. Casey invested $20.6 million in Clover. Most of the so-called equity investment was borrowed from OTB.

46. Specifically, OTB lent CFL $17 million. The loan was guaranteed by Clover Inc., Mr. Casey and a host of other Cresford companies. CFL pledged all of its shares to OTB until OTB's loan was repaid. Accordingly, the mortgage registered by CFL secured OTB's loan and was effectively controlled by OTB.

47. Put simply, the majority of the "equity" in the Clover project was actually high interest secured debt.

(iii) Halo

48. Mr. Casey made substantially identical arrangements relating to Halo, without the knowledge of Ms. Athanasoulis or QuadReal.

49. By commitment letter dated November 24, 2016 (the "**Halo Loan Agreement**"), QuadReal agreed to fund a first mortgage construction loan (including a $2 million letter of credit facility) in the amount of approximately $159 million and a third mortgage mezzanine loan in the amount of approximately $29 million to fund the Halo Project. The Halo Loan Agreement required that Halo Inc. invest equity of $13.6 million before any loan advances were made, and prohibited any other borrowing by Halo Inc. without QuadReal's prior consent. Halo Inc. was, however, allowed to register a mortgage to secure its own equity investment in the Project.

50. Halo Inc. did not make the equity investment required of it. By Loan Agreement dated November 30, 2016, Cresford Equities Inc. ("**Cresford Equities**") agreed to borrow $10.1 million from OTB. This amount was guaranteed by, among other companies, Halo Inc.

51. Cresford Equities registered a fifth mortgage against the lands owned by Halo Inc. However, Cresford Equities pledged all of its shares to OTB until the loan was repaid. Thus, the fifth mortgage that was meant to secure Cresford's equity was in fact registered to secure OTB's loan. None of this was shared with Ms. Athanasoulis, or QuadReal.

(iv) 33 Yorkville

52. The budget submitted to lenders in respect of 33 Yorkville required an equity investment of approximately $75 million. Mr. Casey approached Ms. Athanasoulis and asked her to identify third party investors who might fund some of this commitment. As a result of Cresford's

reputation for successful projects, and her own close relationships with a number of potential investors, Ms. Athanasoulis was able to introduce Mr. Casey to investors that ultimately purchased $75 million worth of limited partnership units in 33 Yorkville LP (the "**33 Yorkville Investors**"). She trusted Mr. Casey to make appropriate arrangements and disclose those arrangements to the lenders. This did not happen.

53. Without Ms. Athanasoulis' knowledge, Mr. Casey represented to QuadReal that the 33 Yorkville Investors had invested approximately $20.5 million in 33 Yorkville and that Cresford and/or Mr. Casey had made the balance of the equity investment required.

(v) YSL

54. YSL is Cresford's largest project to date, with its most complex funding structure. The purchase price and early stage project costs were funded by a $100 million first mortgage from Timbercreek Financial Corp. ("**Timbercreek**") and a deposit insurance facility in the amount of $120 million from Westmount Guarantee Services Inc. ("**Westmount**") that was arranged after the success of the YSL launch to repay a prior mortgage that had come due. Timbercreek's first mortgage was to be repaid using a first mortgage construction loan from Otera Capital Inc. ("**Otera**") in the amount of approximately $623 million (the "**YSL Construction Loan**"). The YSL Construction Loan was arranged after the successful launch of YSL.

55. The YSL Construction Loan required equity of $75 million. Mr. Casey represented to lenders that these funds had been raised from equity investments in YSL LP. Mr. Casey and YSL Inc. guaranteed that the investments would be repaid with interest.

56. Indeed, Mr. Casey and YSL Inc. even agreed to grant one of the so-called limited partners, 247625 Ontario Inc. ("**247 Inc.**") a mortgage over the YSL lands to secure its $20 million "equity" investment. Mr. Casey told Cresford's staff that he had personally borrowed the funds from 247 Inc. to invest in YSL, but this is not true. YSL Inc.'s corporate predecessor borrowed the funds, and YSL Inc. is liable for them. Although the mortgage has not yet been registered on title, the funds advanced by 247 Inc. (like the so-called equity investments in Halo and Clover described above) were high interest secured debt in all but name.

C. CRESFORD'S MANAGEMENT IDENTIFIES CASH SHORTFALLS

57. Beginning in mid-2018, Cresford's management team identified significant cash shortfalls in the Clover and Halo projects. In late 2018, after the launch of YSL, a cash shortfall was identified in the 33 Yorkville Project. Each of these projects could (and still can) be completed successfully. But each project requires additional equity funding, and Mr. Casey has been unwilling or unable to provide or secure that funding.

(i) Clover cash shortfall

58. Clover is currently under construction. Construction costs are funded through the Clover Construction Loan, which is described above. These costs are carefully monitored by Altus, the project inspector hired by QuadReal (although paid by Clover Inc.). Clover Inc. must provide detailed information about the status of construction, and the projected cost to complete the project, in order to secure the advances that it needs to pay contractors. Clover Inc. is responsible for cost overruns, and if projected costs exceed the original budget, then Clover Inc. must fund the increased costs before further funds will be advanced.

59. As noted, Clover is a 44-story condominium tower. Clover Inc. (through its contractors and suppliers) had to purchase a significant volume of steel and other material in order to build the project. In 2018, the price of steel and other construction materials increased significantly, primarily as a result of tariffs imposed by the United States. At the same time, unions representing the workers required to build Clover negotiated new agreements that significantly increased labour costs. These factors significantly increased the cost of building the Clover project, and all of the other condominium developments in Toronto.

60. In addition, the original construction schedule proposed for the Clover project was very aggressive. After construction began, it became clear that the original schedule was unrealistic. The delay further increased construction and project costs.

61. By the fall of 2018, Ms. Athanasoulis, and the rest of Cresford's senior management team, advised Mr. Casey that Clover would require an additional $50 million to complete construction. Though this additional funding requirement would mean that no profit would be earned on this project, all lenders, trades and costs would be paid in full and Cresford could continue as a going concern with a solid reputation. Cresford funded some of the Clover obligations using fees earned on other projects, but a shortfall of $37 million remains.

(ii) Halo cash shortfall

62. Cresford faces a similar cash shortfall on the Halo project, for substantially the same reasons. Halo construction costs increased substantially as a result of the increased costs of steel and other materials. In addition, the aggressive schedule originally proposed for the Halo project proved unachievable.

63. Halo Inc. awarded a number of construction contracts in November 2018. When the contracts were awarded, Cresford's management estimated that the total overrun would be $45 million. Some of the shortfall has been funded using fees earned on other projects, leaving a $38 million funding shortfall for the Halo project. Though this additional funding requirement would mean that no profit would be earned on the Halo project, all lenders, trades and costs would be paid in full, and Cresford could continue as a going concern with a solid reputation.

(iii) 33 Yorkville cash shortfall

64. In late 2018, Cresford's construction team hired a third party peer review cost consultant, CB Ross, to assess the construction budget for 33 Yorkville to confirm the magnitude of anticipated cost overruns. As a result of this review, the projected cost of the project that had been presented by the construction team was confirmed. Based on the new estimate, 33 Yorkville is facing a cash shortfall of approximately $65 million. Though an additional $65 million funding requirement would mean that only nominal profit would be earned on this project, all lenders, trades and costs would be paid in full, and Cresford could continue as a going concern with a solid reputation.

(iv) Casa III

65. As noted, Mr. Casey used funds earned from earlier projects to fund overruns on later projects. One of these earlier projects was Casa III, a luxury condominium that was owned by 50 Charles Street Limited and registered in August 2018. Funds earned from Casa III were used to pay amounts due on other projects, which left Casa III without the funds required to make the final payments that it owed. The final work on Casa III, which will cost approximately $4.5 million,

cannot be completed. The owner of Casa III already owes approximately $5 million to construction contractors and real estate contracts. It is unable to fund either the outstanding payables or the construction required to complete the project, leaving the building and landscaping unfinished for the past two years.

(v) Mr. Casey proved unwilling or unable to address Cresford's cash flow issues

66. Mr. Casey was unwilling or unable to provide an adequate solution – or any solution – to Cresford's cash flow problems. As noted, Mr. Casey told Ms. Athanasoulis for years that he had substantial assets available to him. Mr. Casey refused to use these funds (if they existed) to fund Cresford's business. The only funds invested in Clover, Halo, 33 Yorkville and YSL were generated from earlier projects that Cresford completed but these projects did not generate nearly enough cash to satisfy the requirements.

67. But taking funds from predecessor projects did not solve the problem. Instead, it caused the cash flow problem to grow and spread. For example, real estate brokers that were owed commissions for previously completed projects (including Cresford's own brokers, employed by Cresford Real Estate Corporation) are owed approximately $5 million.

(vi) Cresford's cash flow crisis worsened

68. The understanding of the overall cash flow issues grew significantly worse over time. The projected cash shortfall across Casa III, Clover, Halo and 33 Yorkville ballooned to a combined $150 million. Projects were unable to pay contractors what they were owed as payments came due on Casa III and Halo. Clover and 33 Yorkville would soon have the same issue, because Cresford did not have a plan in place, and because Mr. Casey was unwilling to use funds available

to him personally, to fund the contracts it had entered into. These contractors pressed Cresford's construction staff (who reported to Ms. Athanasoulis) for payment. As the situation grew worse, contractors demanded answers from Ms. Athanasoulis. She did not have those answers. In addition, Cresford could not enter into new construction contracts because it did not have the ability to fund the resulting costs.

(vii) Mr. Casey could not or would not help solve Cresford's cash problems

69. As noted, Mr. Casey had repeatedly represented to Ms. Athanasoulis that he had access to significant funds. Ms. Athanasoulis believed that Mr. Casey could use some of this wealth to solve Cresford's cash problems. In the summer of 2019, however, Mr. Casey told Ms. Athanasoulis that he had substantial mortgages registered against both his cottage and home. Ms. Athanasoulis began to suspect that Mr. Casey was not as wealthy as he claimed, and that he would not be able to contribute the funds that Cresford required.

70. Ms. Athanasoulis' concerns about Mr. Casey were exacerbated by his lavish lifestyle. He told her in the summer of 2019 that he required between $4 million and $5 million annually to maintain his lifestyle, and Ms. Athanasoulis learned that funds needed by Cresford had been used for personal purposes. As noted, Cresford had used fees earned on earlier projects to fund some of the cost overruns on later projects. But Mr. Casey prioritized his own interests over Cresford's. For example, in February 2019, when Cresford was desperate for cash, he took approximately $750,000 from Casa III (which should have been used to pay creditors) to buy a house for his son.

(viii) The Defendants conduct caused significant mental and emotional harm

71. This caused Ms. Athanasoulis significant stress and anxiety. Ms. Athanasoulis had spent years building Cresford's reputation with Toronto's largest and most reliable contractors and real estate brokers. She developed close personal and professional relationships with many of these contractors and brokers. Her hard work and critical relationships were threatened by Cresford's inability to pay contractors and brokers on time, or at all. She also worried about how contractors and brokers would react when they learned that there were no funds available to pay them. She worried about what would happen to purchasers who had trusted Cresford and paid deposits on condominium units. She worried about what would happen to Cresford's staff if funding was not secured.

(ix) Potential purchaser to solve Cresford's cash flow crisis

72. Ms. Athanasoulis worked diligently to solve Cresford's financial difficulties. She explored a number of potential solutions once it became clear Mr. Casey could not or would not provide the funds that Cresford desperately needed. In the course of these discussions, Mr. Casey suggested that he would consider selling the business to solve the cash flow crisis.

73. Ms. Athanasoulis was ultimately introduced to a well-known Toronto businessman who expressed an interest in buying Cresford's four ongoing projects and other assets. The potential purchaser was, however, only interested in Cresford if Ms. Athanasoulis stayed with the company and continued to operate its business. Mr. Casey was of the same opinion and agreed the opportunity should be explored.

74. Ms. Athanasoulis discussed the potential sale with Mr. Casey and he authorized her to continue discussions with the potential purchaser. The potential purchaser signed a non-disclosure agreement, and began to evaluate Cresford's business.

75. The potential purchaser offered Ms. Athanasoulis an interest in the business to incentivize her to participate in the transaction and remain with Cresford after the sale.

76. Ms. Athanasoulis told Mr. Casey that, if the purchase was completed, she would have an interest in the purchaser. He did not object, nor did he suggest that Ms. Athanasoulis' potential interest with the purchaser would interfere with her continued role at Cresford.

77. Discussions with the purchaser progressed to the point that the potential purchaser provided Mr. Casey with a non-binding letter of intent ("LOI") setting out the terms of a potential deal in December 2019. The proposed transaction would have addressed Cresford's cash flow issues, injected the proper required equity by paying out the high interest loans and investors, and generated a significant personal profit for Mr. Casey. But Mr. Casey did not accept, or even negotiate to improve, the LOI.

(x) Mr. Casey tries to conceal Cresford's cash flow crisis

78. Instead of completing the proposed purchase, or pursuing an alternative solution to Cresford's cash crisis, Mr. Casey focused on concealing that crisis from lenders and other stakeholders.

79. As noted above, Halo Inc. had an obligation to provide Altus with copies of all of its construction contracts. This allowed Altus to (among other things) identify cost overruns. In

October 2018, Cresford hired Verdi Inc. ("**Verdi**") to perform concrete forming work on the Halo project. The Verdi contract created a cash shortfall of approximately $4.5 million. Instead of funding this overrun with equity (or finding outside funding), Mr. Casey directed Cresford's staff to withhold the Verdi contract and all progress bills from Altus. This was a breach of the Halo Loan Agreement. It was also very short-sighted. Verdi erected a large crane on the Halo site, which is prominently located on Yonge Street, to complete its work. It is only a matter of time before Altus sees the crane, identifies the breach of contract and notifies the affected lenders.

80. The cash flow issues on 33 Yorkville are also urgent. The applicable loan agreements require that 75% of the remaining construction contracts be awarded by January 1, 2020. Awarding these contracts would crystallize cost overruns in the approximate amount of $65 million, and 33 Yorkville Inc. would have to fund these overruns. Mr. Casey had no plan in place to fund the overruns, so he instructed Cresford's construction staff to delay awarding the contracts. This breached the 33 Yorkville loan agreements. It is also short-sighted, since the contracts will still need to be awarded, and the cost overruns will need to be addressed.

81. In addition, contractors and real estate brokers already working on the Projects have not been paid on time. The owners of these projects owe approximately $20 million to contractors and real estate brokers. Many of these amounts are significantly overdue. Mr. Casey has no funding in place to pay the contractors, and several have threatened to sue and/or register liens in accordance with the *Construction Lien Act* if they are not paid immediately.

D. CONSTRUCTIVE TERMINATION

82. As soon as Ms. Athanasoulis discovered how Mr. Casey had funded Cresford's business, and the need for significant further funding, she urged Mr. Casey to find stable funding for Cresford so it could complete the Projects and comply with its lending agreements. She worked diligently to help him do so, but made it clear she would not help him deceive lenders, contractors or anyone else. As more time passed, and the issues grew more serious, Ms. Athanasoulis' efforts to convince Mr. Casey to address the issues became more urgent and forceful.

83. Despite Ms. Athanasoulis' efforts, Mr. Casey took no steps to rectify the situation.

84. Instead of focusing on the projects that required cash, Mr. Casey told Ms. Athanasoulis that Cresford's sole priority was to satisfy the conditions precedent on the YSL Construction Loan. In order to access that funding, YSL Inc. had to enter into an agreement to sell the retail component of YSL. This was the final funding condition, so once a suitable purchaser was found YSL could access the first tranche of the YSL Construction Loan.

85. As is standard, funds advanced pursuant to the YSL Construction Loan can only be used to fund construction costs on YSL. Thus, funding the YSL Construction Loan would do nothing at all to help Cresford's overall cash position unless YSL diverted funds to other projects. Such diversions would be fraud.

86. Ms. Athanasoulis raised this concern with Mr. Casey, but did not receive a meaningful response. Instead, Mr. Casey sent a non-binding letter of intent purporting to relate to the sale of the retail component of YSL directly to YSL's construction lender, Otera. The letter of intent did not satisfy the condition of the YSL Construction Loan, since an actual agreement of purchase and

sale was required, no one (including Cresford's management) knew who the purchaser was and the transaction contemplated by the letter of intent did not satisfy the requirements of the YSL Construction Loan in any event. The YSL Construction Loan required that the deposit on the retail component be available to fund construction costs, and such use was prohibited by the letter of intent Mr. Casey provided.

87. Ms. Athanasoulis, and other members of Cresford's management, asked Mr. Casey to clarify these issues. Mr. Casey provided no meaningful response. Instead, he instructed his litigation lawyer, Allan O'Brien, to write to Ms. Athanasoulis and accuse her of breaching her fiduciary duty by interfering with YSL Inc.'s attempts to close the YSL Construction Loan. Mr. O'Brien provided no particulars to support this allegation, because there was no interference.

88. Otera was, understandably, confused by Mr. Casey's e-mail. Ms. Athanasoulis had been responsible for Cresford's relationship with Otera since early 2019, so Otera asked to speak with her. Mr. Casey prohibited her from communicating with Otera, or any other lender, and indicated that he alone would speak to Cresford's lenders.

89. Mr. Casey then went further still, and advised that he alone would deal with *all* of Cresford's key stakeholders including contractors and lenders. He also told Cresford's staff, who previously reported to Ms. Athanasoulis, that they would now report to him directly.

90. Mr. Casey's actions stripped Ms. Athanasoulis of essentially all of her responsibilities as Cresford's president and COO. She was terminated in all but name. But Mr. Casey refused to formalize this termination because he was concerned about how Cresford's key stakeholders, including contractors, lenders, investors and employees, would react.

91. All of this put Ms. Athanasoulis in an impossible situation. She was nominally an officer of Cresford (and a director of YSL Inc.) but had no ability to understand or affect how Cresford conducted business. She had good reason to believe that Mr. Casey planned to take steps that would violate Cresford's legal obligations and potentially expose her to personal liability.

92. The conduct described above constituted repudiation of Ms. Athanasoulis' employment contract, and constructive termination of her employment by Cresford. By letter dated January 2, 2020, Ms. Athanasoulis wrote to accept this repudiation.

E. DEFAMATION

93. Ms. Athanasoulis' January 2, 2020 letter indicated that she would like to negotiate an amicable separation from Cresford and that, while negotiations were ongoing, she would tell third parties only that she was no longer with Cresford and that all inquiries relating to Cresford should be directed to Mr. Casey.

94. Ms. Athanasoulis did what she said she would do. When lenders, contractors and other stakeholders contacted her, she referred them to Mr. Casey and said nothing about Cresford's business.

95. Unfortunately, Mr. Casey followed the opposite path. Before Ms. Athanasoulis accepted Cresford's repudiation, Mr. Casey began telling lies meant to harm her reputation and blame her for Cresford's cash flow issues. His false and defamatory statements continued after Ms. Athanasoulis' termination.

96. On December 21, 2019, Mr. Casey told the potential purchaser – who was also Ms. Athanasoulis' potential business partner – that "people" had invented Cresford's cash crisis to further their own financial interests. Mr. Casey's statement obviously referred to Ms. Athanasoulis, since she was the only person in a position to "create" the cash flow crisis and then profit from it. Mr. Casey's statement was, in essence, an allegation that Ms. Athanasoulis committed a grievous breach of her duties as President by harming Cresford to further her own interests.

97. In addition, on January 2, 2020, Mr. Casey told members of Cresford's staff that Ms. Athanasoulis had caused Cresford's cash crisis by selling condominium units for less than they were worth. This, too, was defamatory.

98. Mr. Casey's defamatory campaign continued. After terminating Ms. Athanasoulis, Mr. Casey hired Ted Dowbiggin, the former president of Cresford Capital. He told Mr. Dowbiggin that Ms. Athanasoulis had devalued Cresford so that she could buy it. Mr. Dowbiggin relayed Mr. Casey's false allegations to Cresford personnel and others.

99. On January 7, 2020, Mr. Casey met again with the prospective purchaser. At that meeting, Mr. Casey repeated his allegations against Ms. Athanasoulis. He claimed again that "people" had "hidden" Cresford's profits for their own benefit. It was clear to the potential purchaser that Mr. Casey was referring to Ms. Athanasoulis, and alleging again that she had breached her duties to Cresford in order to further her own financial interests.

100. Ms. Athanasoulis has spent many years building a stellar reputation in the real estate development industry. She is known to be a talented executive who conducts business honestly.

This reputation is very valuable. Indeed, because of her reputation, Ms. Athanasoulis had the opportunity to acquire an interest in Cresford's business if the purchase transaction described above was completed. That reputation is particularly important now, since Ms. Athanasoulis has been terminated by Cresford and must now seek new opportunities in the industry.

101. Mr. Casey's statements harmed – and were meant to harm – Ms. Athanasoulis' reputation. Mr. Casey's false allegations that she betrayed him would, if believed, make it difficult or impossible for Ms. Athanasoulis to do business with the potential purchaser or other business partners. Potential new employers would, of course, never hire an executive who had tried to destroy her previous employer so its business could be purchased at a discount.

102. Mr. Casey's statements are unquestionably defamatory. They are also entirely false. Ms. Athanasoulis did not – and would not – do anything to harm Cresford. Cresford's cash crisis was (and is) real. It was caused by Mr. Casey's own failure to inject equity into the business, and the secret high interest loans he took out to fool lenders into thinking he had made the equity injections he agreed to make.

F. COMPENSATORY DAMAGES

(i) Notice period

103. Ms. Athanasoulis was constructively dismissed without notice or cause. The defendants are liable for damages in an amount equal to what Ms. Athanasoulis would have earned during the notice period that she was entitled to. Ms. Athanasoulis is entitled to 24 months' notice, having regard to:

(a) **Character of employment:** Ms. Athanasoulis was Cresford's most senior employee except for Mr. Casey, with overall responsibility for virtually all aspects of Cresford's business except financing. In that capacity, she successfully executed some of the most ambitious development and construction projects in Canada;

(b) **Age and length of employment:** Ms. Athanasoulis worked at Cresford for 16 years and is 42 years old;

(c) **Availability of similar employment:** similar employment is not currently available to Ms. Athanasoulis and will not be available to her for the foreseeable future. There are only a handful of developers in Canada that execute projects of the type, size and scope that Ms. Athanasoulis worked on while she was at Cresford. These developers already have presidents. As a result, Ms. Athanasoulis is unlikely to find comparable employment for at least 24 months.

(ii) Profit and revenue shares owed

104. As noted, Ms. Athanasoulis was entitled to $500,000 per annum, plus benefits. She also was entitled to 0.15% of all revenue earned by Cresford on new projects during her notice period.

105. In addition, and most importantly, Ms. Athanasoulis continued to dedicate her time, energy and talent to Cresford's business because Mr. Casey agreed to pay her 20% of the profits yielded by that business. She is entitled to 20% of all the profits earned by Cresford on the Projects. The Projects are expected to yield profits of $242 million, with a majority of this coming from YSL, and Ms. Athanasoulis is entitled to 20% of those profits, which are equal to $48 million.

G. PUNITIVE AND EXEMPLARY DAMAGES

106. As described above, Ms. Athanasoulis was terminated because she insisted that Mr. Casey deal honestly with Cresford's stakeholders. Cresford's actions, and those of Mr. Casey, demonstrate a wanton and contumelious disregard for Ms. Athanasoulis' rights and warrant an award of punitive and exemplary damages. Those actions also caused significant mental and emotional distress to Ms. Athanasoulis, and an award of aggravated damages is also warranted.

January 21, 2020

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO#: 55510L
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Lawyers for the Plaintiff, Maria Athanasoulis

MARIA ATHANASOULIS - and - DANIEL CASEY *ET AL.*
Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

STATEMENT OF CLAIM

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO#: 55510L
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Lawyers for the Plaintiff, Maria Athanasoulis

TAB B

Exhibit “B”

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

Affidavit of **David Mann**

Sworn before me this 18th day of June, 2021

A Commissioner for taking affidavits

NOTICE OF REVISION OR DISALLOWANCE OF CLAIM
ACKNOWLEDGEMENT NUMBER ___1634__

TO: Maria Athanasoulis
Email Address: cfox@goodmans.ca, mdunn@goodmans.ca

PricewaterhouseCoopers Inc., in its capacity as the court-appointed Monitor (in such capacity, the "**Monitor**") of the Clover CCAA Applicants named in the Amended and Restated Initial Order of The Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) made June 22, 2020, hereby gives you notice that the Monitor has reviewed your Request for Amendment or your Proof of Claim against The Clover on Yonge Inc. and/or The Clover on Yonge Limited Partnership, as the case may be, and has revised or rejected your Claim or any part thereof or any information relating thereto, as follows:

Request for Amendment as Submitted (if applicable)	The Proof of Claim as Submitted (if applicable)	The Claim/Information as Accepted
$ 0.00	$49,000,000.00	$ 1.00

Reasons for Revision or Disallowance:

The Monitor has reviewed your claim against The Clover on Yonge Inc. and/or The Clover on Yonge Limited Partnership and has revised or disallowed the claim as follows:

The Proof of Claim for $49,000,000 is disallowed. The Monitor will value the claim at $1.00, determined as follows:

- Wrongful dismissal: $nil on the basis that there is no contractual obligation owing to Ms. Athanasoulis by the Clover CCAA Applicants. Per the employment agreement drafted by Ms. Athanasoulis, all contractual obligations are with Cresford Developments. No supporting documentation has been provided to establish that the Clover CCAA Applicants are liable for these amounts.

- Profit sharing agreement: $1.00 on the basis that this amount is contingent on the Clover Project earning a profit, which currently remains unknown.

The Monitor is in the process of reviewing your claim against one or more of the Directors and/or Officers of The Clover on Yonge Inc. and/or The Clover on Yonge Limited Partnership and will revise or disallow such claim at a later date.

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

1. **If you dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on November 18, 2020, being the Business Day which is fourteen days after the Notice of Revision or Disallowance is sent by the Monitor (see paragraph 11 of the Claims Procedure Order), notify the Monitor by delivery of a Notice of Dispute in accordance with the Claims Procedures Order. The form of Notice of Dispute is enclosed.**

2. **IF YOU DO NOT DELIVER A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU AND YOUR CLAIM SHALL BE DEEMED TO BE AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE**.

DATED at Toronto, this 4th, day of November, 2020.

PRICEWATERHOUSECOOPERS INC., LIT,
SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF THE CLOVER CCAA APPLICANTS, AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Mica Arlette, LIT
Senior Vice President

NOTICE OF DISPUTE

We hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Acknowledgement Number ______1634______ and dated ______________________ issued in respect of our claim.

Reasons for Dispute (attach extra sheets and copies of all supporting documentation if necessary):

____

____

Name of Creditor: ____

______________________________ ______________________________
(Signature of individual completing this Dispute) Date

____
(Please print name)

Telephone Number: ______________________________

Email address: ______________________________

Facsimile Number: ______________________________

Full Mailing Address: ______________________________

____

THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (TORONTO TIME) ON NOVEMBER 18, 2020, BEING THE BUSINESS DAY WHICH IS FOURTEEN DAYS AFTER THE NOTICE OF REVISION OR DISALLOWANCE IS SENT BY THE MONITOR (PURSUANT TO PARAGRAPH 11 OF THE CLAIMS PROCEDURE ORDER) TO:

PricewaterhouseCoopers Inc.
in its capacity as the Monitor of the Clover CCAA Applicants
PwC Tower
18 York Street, Suite 2600
Toronto, ON M5J 0B2

Attention: Tammy Muradova
E-mail: halo.clover@pwc.com

TAB C

Exhibit “C”

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

Affidavit of **David Mann**

Sworn before me this 18th day of June, 2021

A Commissioner for taking affidavits

Court File No. CV-20-00634836-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARIA ATHANASOULIS

Plaintiff

and

CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP, THE CLOVER ON YONGE INC., THE CLOVER ON YONGE LIMITED PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480 YONGE STREET LIMITED PARTNERSHIP, YG LIMITED PARTNERSHIP, YSL RESIDENCES INC., YSL RESIDENCES LIMITED PARTNERSHIP, 50 CHARLES STREET LIMITED, 50 CHARLES STREET LIMITED PARTNERSHIP and DANIEL C. CASEY

Defendants

STATEMENT OF DEFENCE AND COUNTERCLAIM OF THE DEFENDANTS

1. Subject to qualifications set out in the Statement of Defence and Counterclaim, the Defendants admit the allegations of fact in paragraphs 2, 5, 6, 9, 10, 12, 13, 58, 59, 74, 75, and 93 of the Statement of Claim.

2. Subject to qualifications set out in Statement of Defence and Counterclaim, the Defendants deny the allegations of fact in paragraphs 3, 4, 7, 8, 11,14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 , 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106 of the Statement of Claim.

A. Parties

3. East Downtown Redevelopment Partnership (East Downtown) is the "employer" of Cresford staff which provides development and construction services to each of the Cresford projects on a fee for service basis.

4. Cresford (Rosedale) Developments Inc. (Cresford Rosedale) is a company incorporated under the Ontario Business Corporations Act and provides the owner equity for the Cresford projects. All of the equity, from various sources, would flow through Cresford Rosedale to the Cresford projects. Cresford Rosedale is also a corporate guarantor on all of the construction loans.

5. The other corporate defendants (collectively "Cresford") are part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario.

6. Casey is and remains the President and sole Director of all of these companies. Athanasoulis is not a director or officer of any of these companies, nominally or otherwise.

7. Athanasoulis was an employee of East Downtown.

B. General – Cresford - Real Estate and Construction Process

8. Cresford's corporate predecessors were founded by Daniel C. Casey (Casey) approximately forty years ago. Casey has been constructing condominium developments during that forty year period. During that period, he has constructed tens of thousands of condominium units, always of a scale that is among the largest in the market at the time.

9. Cresford has been constructing large and complex condominium developments in Toronto since at least 1997 when it launched the million square foot Merchandise Building followed by Thornwood Condominiums, the Bloor Street Neighbourhood, Casa Condominium at 33 Charles Street and NXT I - II condominiums on the Queensway, in the City of Toronto. All of these developments were completed well before 2014.

10. While Cresford has developed a reputation for developing and building large luxury condominium communities, Cresford denies that this reputation was earned largely as a result of Athanasoulis' efforts.

11. Cresford agrees with the allegations in paragraph 9 of the Statement of Claim, in that, condominium development and construction projects are complex, and each is unique to some extent. Cresford also agrees with the steps that are set out in paragraph 9 of the Statement of Claim, being common to virtually all projects. There are many fundamental aspects to the successful development and construction of complex condominium projects and success demands a team approach and a broad expertise. Athanasoulis was part of this successful team, but the reputation that Cresford developed was as a result of the team approach rather than largely a result of Athanasoulis' efforts.

12. In addition to the fundamental steps as set out in paragraph 9 of the Statement of Claim, certain other important steps are omitted.

13. Prior to marketing condominium units to purchasers, the developer would have to establish a proforma development budget and a project construction budget from which the sale prices would be established having regard to carrying costs and schedule, and

taking into account the value of the land on which the units and common element interests will be constructed. The developer must then manage those budgets and schedules from the point of sale to protect the profitability of the project. The greatest risk in condominium development is the fact that prices are set very early on in a project and are not tested until some time later, when the contracts are awarded for the work.

C. Overview of Role of Athanasoulis – 2004-2019

14. Immediately prior to being hired by Cresford, Athanasoulis was a Financial Analyst at TD Bank in Toronto. In April 2004, she joined Cresford as a Financial Analyst in the Finance and Acquisition Group (Finance Group). She reported to Ted Dowbiggin (Dowbiggin) who was the Chief Operating Officer (COO) at that time.

15. As a Financial Analyst, her duties included preparation of project proforma financial statements, budgets, financial and market analysis, preparation and review of draw requests, maintenance of loan files, and management of financing conditions.

16. In 2005, Athanasoulis was promoted to Director of Sales and Marketing.

17. In 2012, Athanasoulis's title was changed to VP Sales and Marketing.

18. In August 2018, Athanasoulis assumed the role of COO of Cresford.

19. During the majority of her career at Cresford, Athanasoulis was primarily involved in the marketing and sale of Cresford's condominium projects. In that role, she contributed to the success of those projects.

20. In 2015, Athanasoulis joined the three-person Management Team Committee at Cresford. Casey and Dowbiggin were the other two members. In that role, Athanasoulis increased her involvement in the formulation of project budgets, arranging project financing and general oversight of Cresford projects. It was this background and experience that allowed Athanasoulis to assume the role of COO in August 2018.

21. However, Athanasoulis had no involvement in land acquisition and little to no involvement in the development work required for zoning or site plan approval.

22. The defendants admit that lenders required that the owner of each project make a significant equity investment before loan funds were advanced. Casey was not the owner of these projects. The defendants admit that the equity investments are critical to secure a loan commitment.

23. The defendants deny that Casey's primary role at Cresford was to provide or secure these equity investments.

24. As part of the Management Team, Athanasoulis played an active role in the project budget process and construction financing.

25. Initially she played a role in raising equity investment in the Halo Project.

26. In the summer of 2017, Athanasoulis played a key role in raising equity investment into the limited partnership for 33 Yorkville Project. She was the lead in arranging and instructing Cresford's law firm with respect to the investment and documentation of these investment funds.

27. Athanasoulis was also directly involved in raising the equity investment required for the YSL Project.

28. Since August 2017, Athanasoulis has continued to play a key role in securing equity investment required for the 33 Yorkville Project and YSL Project and thus was familiar with the equity requirements and the source of funds that were being applied to meet the equity requirements of the lenders. Athanasoulis was actively involved in the review of the reports undertaken by Altus on behalf of the lenders and was involved in any suggested amendments to these reports.

29. Over the years, Dowbiggin was also involved in finding equity investors and construction financing for the projects.

30. Over the forty years of operations, Casey did play a significant role in providing and/or securing equity investments for Cresford projects.

31. The defendants deny paragraph 11 of the Statement of Claim. During the period of December 2018 until the summer of 2019, Casey did not attend the office on a regular basis for health reasons. However, Casey remained involved during this period. All departments at Cresford, including the Finance Group, were reporting directly to Athanasoulis as COO of Cresford. During this period, Casey trusted Athanasoulis had gained sufficient experience to oversee and manage the project budgets and construction budgets, the construction schedules, the communications with lenders and cost consultant and all other aspects of the Cresford business.

32. The defendants deny paragraph 18 of the Statement of Claim. Finance activities were not and could not reasonably be separated from the balance of Cresford's operations. Finance and equity requirements are fundamentally integrated with the sales and construction departments of Cresford. Athanasoulis was aware of the requirements of financing, the source and nature of the owner's equity requirements, factors that might be contributing to cost overruns, the importance of having contracts executed early on in the project to protect project budgets and the impact of cost overruns on owner equity requirements. Athanasoulis was copied on all minutes of the construction team on each of the projects so that she would be aware of factors that might disrupt the budget or the schedule and thereby impact the financing, the ability to obtain draws and the requirements for increased owner equity.

33. The defendants deny paragraphs 19 and 20 of the Statement of Claim. It is not possible to have "significant expertise in all aspects of real estate and development and construction" without also having significant involvement in financing and equity requirements. Athanasoulis had this involvement and her role in these areas was one of the reasons that Casey trusted her to perform all obligations of the COO. Casey was satisfied that, with the support of the other senior employees, Athanasoulis would provide good oversight on all aspects of Cresford's business in the years to come.

D. Compensation of Athanasoulis

I. General

34. Throughout Athanasoulis's career at Cresford, she received generous compensation for her contribution to Cresford. Athanasoulis never expressed that she was dissatisfied with

her compensation or that she was considering leaving Cresford to seek other employment for greater compensation.

II. 0.15% of Cresford's Sales on Projects

35. Athanasoulis never asked that her compensation be increased to reflect the commissions that might otherwise be paid to third party agents, brokers or marketing consultants.

36. This topic was never discussed with Casey. Cresford and Casey never agreed to this alleged compensation.

37. Athanasoulis never received any compensation related to the alleged 0.15% of Cresford's sales on projects.

III. Salary – Bonus – Benefits

38. Athanasoulis was compensated at a base salary of $300,000 per year commencing March 15, 2015. This base salary continued until she terminated her employment on January 2, 2020.

39. Athanasoulis's salary was never increased to $500,000 per year and she always received the salary draw that she was entitled to receive.

40. For the years set out below, Athanasoulis's taxable income from employment (base salary, bonus, benefits) as declared on Athanasoulis's T4 slips was as follows:

2014 - $301,900

2015 - $314,400

2016 - $617,195

2017 - $621,871.05

2018 - $889,400

2019 - $889,400

IV. Condominium Units – Cresford Projects

41. Cresford employees are permitted to purchase condominium units at a discount equal to the savings of real estate commission that would otherwise be paid by Cresford.

42. As part of her compensation, Athanasoulis also received a much more generous discount on the purchase of condominium units on Cresford projects. Athanasoulis would receive a substantial reduction/discount from the actual launch market value of the condominium unit.

43. Between 2014 and 2019, Athanasoulis and her husband received a minimum of $3,717,378 in discounts from the launch price.

44. These agreements of purchase and sale required no investment or deposits on the part of Athanasoulis until the closing of the transaction.

45. Athanasoulis would place the condominium units on hold, then sign the Agreement of Purchase and Sale near the closing date with the knowledge that the market value of the condominium unit was significantly higher than the launch price.

46. Without assuming any risk, Athanasoulis would benefit not only from the generous discount, but also from the increased market value at the time of closing. The total increased market value between launch date and date of closing for the units acquired by Athanasoulis is estimated to be in excess of $1,000,000.

47. This benefit from employment is over and above the income as set out in paragraph 40 above.

48. Athanasoulis also took advantage of this discount benefit and placed title to additional condominium units in the name of family members.

49. As a result of the successful launch of the 33 Yorkville Project, Casey agreed that Athanasoulis could acquire one unit at the CASA III Project at a discount of $1,000,000. Typically, the more expensive units take longer to sell. Without approval from Casey, Athanasoulis purchased two units at a discount of $500,000 on each unit, thereby doubling the upside return between the point of launch and registration of the condominium, and depriving the project of a full price return on one of the acquired units.

V. 10% on Net Profit - Cresford Projects

50. The Vox Project met its sales target, and was able to proceed to completion, but its profitability was significantly less than as anticipated in the project budget.

51. After the Vox Project, Casey agreed to pay Athanasoulis 10% of the net profits realized on the successful completion of future projects. As with all employees of Cresford, Athanasoulis would only be entitled to this benefit if she contributed to the successful completion of the project and remained an employee of Cresford at the date of the project completion.

52. After the successful launch of the YSL Project, Casey and Athanasoulis discussed increasing the 10% of net profit to 15% on the YSL Project and future Cresford projects.

53. With respect to paragraphs 27 and 28 of the Statement of Claim, Casey and Cresford deny that John Papadakis (Papadakis) was instructed to draft an agreement along the terms set out in those paragraphs.

54. Casey, Athanasoulis and Papadakis met at Cresford's office on February 16, 2019. Two issues were discussed; that is, Athanasoulis' compensation and corporate succession issues. It was a very preliminary and informal discussion. There was no meeting of minds on these issues and no instructions were given to Papadakis to draft any agreement. Once again, as with all employees at Cresford, Athanasoulis would only be entitled to this benefit if she contributed to the successful completion of the project and remained an employee of Cresford at the date of project completion.

E. Cresford's Financial Stability 2018 – Summer 2019 – As Represented by Athanasoulis

55. From December 2018 to the summer of 2019, Casey had limited involvement in Cresford's day to day operations. During that period of time, Casey was dealing with health issues. Because of his reduced involvement in Cresford's day to day operations, Casey relied upon Athanasoulis to ensure that he was kept fully informed of all important issues relating to Cresford.

56. Throughout this period of time, Athanasoulis represented to Casey that Cresford was in a stable financial situation. Athanasoulis did not express concern related to cost overruns on projects, nor any need for further equity funding.

57. In or around June 2019, Athanasoulis suggested that Casey should place an aquarium in his office. Casey thought that the cost of the aquarium would be approximately $10,000. Athanasoulis followed up on her suggestion and drawings were drafted for the aquarium. Ultimately, the cost was going to be approximately $100,000. Athanasoulis thought it was still a good idea to follow up on the aquarium purchase. Casey was not interested in such an expensive aquarium and rejected the idea. When Athanasoulis promoted this aquarium proposal, at the cost of $100,000, there was no suggestion from her of any impending financial difficulties.

58. In addition, and in connection with the fit-up and furnishing of Cresford's new office space at 59 Hayden Street, Toronto, Athanasoulis as COO directed the purchase of furniture and décor items at a total value of approximately $400,000.00, including but not limited to a $40,000.00 mirror. Once again, there was no suggestion from Athanasoulis of any impending financial difficulties.

59. During this summer period, it was expected that the YSL Financing would be completed and ready for advance in September or October 2019. The focus at Cresford was to locate new development sites and to satisfy the conditions in the commitment issued by the YSL Construction Lender. The outlook was positive and Cresford was looking to expand and grow.

60. In or about August 2019, Athanasoulis advised Casey that there were certain financial issues that would have to be dealt with, but Cresford, based on her analysis, would have about a year to resolve those issues.

F. Breach of Fiduciary Duties by Athanasoulis

I. Athanasoulis Owed Fiduciary Duty to Cresford and Casey

61. As COO, Athanasoulis was ultimately responsible for managing and operating the business affairs of Cresford and she owed a fiduciary duty to Cresford and Casey.

62. As part of her fiduciary duty, to Cresford and Casey, Athanasoulis was required to:

a) act at all times in the best interests of Cresford;

b) not let her personal interests, or those of third parties, detract from her duties to Cresford;

c) ensure that the broader interests of Cresford were always the priority and not to subordinate those interests to the desires of particular stakeholders;

d) not place herself in a position in which her personal interests were liable to conflict with her duties to Cresford;

e) not act on initiatives or desires that would compete with her duties owed to Cresford; and

f) act honestly and in good faith in her dealings with Cresford.

II. Athanasoulis – Breach of Fiduciary Duties – Potential Sale of Cresford – September 2019 – February 2020

a) General Background

63. In early September 2019, Athanasoulis met with a contractor of Cresford (hereinafter referred to as "the potential purchaser") to discuss delays that Cresford was experiencing at the 33 Yorkville Project. During that meeting, the potential purchaser expressed an interest in pursuing other business opportunities with Cresford. Shortly thereafter, they discussed a joint venture to redevelop the Courtyard Marriott at 475 Yonge Street, Toronto, Ontario.

64. Later in September, Athanasoulis and Casey had a discussion as to whether or not the potential purchaser would be interested in purchasing Cresford. During that discussion, Athanasoulis and Casey agreed that $125,000,000 would be a reasonable valuation for the purchase of Cresford.

65. Following that meeting, Athanasoulis and certain employees of the Finance and Acquisition Group (Finance Group) at Cresford, selected by Athanasoulis, took steps to create an information and financial package showcasing all aspects of Cresford's business operations which would be delivered to the potential purchaser.

b) Breach of Fiduciary Duty

66. In the promotion and negotiations of the possible sale of Cresford to the potential purchaser, Athanasoulis breached her fiduciary duties to Cresford and Casey by:

a) personally entering into an undisclosed agreement with the potential purchaser which was in direct conflict with her fiduciary duties to Cresford and Casey;

b) actively undermining the value of Cresford's assets and overstating Cresford's liabilities;

c) failing to take steps to attempt to maximize the value of Cresford's business;

d) threatening to resign on a number of occasions during the negotiation process, if Casey did not accept the purchaser's proposed terms;

e) preventing certain employees of Cresford and representatives of Casey from obtaining financial information that was relevant to the negotiations of the potential sale of Cresford;

f) ordering certain employees at Cresford not to provide requested financial information to Casey or his representatives;

g) negotiating terms that would benefit the potential purchaser rather than Cresford;

h) refusing to follow directions from Casey that would optimize Cresford's market value as a going concern; and

i) interfering with Cresford's contractual relationships with employees, trades, lenders and consultants.

67. In breaching her fiduciary duty to Cresford and Casey, Athanasoulis intended to create a situation that would force Casey to sell Cresford assets at liquidation value to the purchaser of her choice.

68. The material facts relating to Athanasoulis's breach of fiduciary duty are set out below.

c) Athanasoulis Secret Deal with Potential Purchaser

69. Casey agrees with the allegations in paragraphs 74 of the Statement of Claim. He did authorize Athanasoulis to continue discussions with the potential purchaser. The potential purchaser signed a Non-Disclosure Agreement and began to evaluate Cresford's business.

70. Casey denies the allegations in paragraphs 75 and 76 of the Statement of Claim. Casey assumed that the potential purchaser would wish to employ Athanasoulis if the sale was completed. However, Athanasoulis never informed Casey that the potential purchaser offered her an interest in the business to incentivize her to participate in the transaction and remain with Cresford after the sale. Casey believed that Athanasoulis would always continue to act in the best interests of Cresford in the negotiations of the potential sale. Casey was never informed, nor ever anticipated, that Athanasoulis and the potential purchaser had made an arrangement whereby the potential purchaser had promised her an interest in the business to incentivize her to participate and promote his interest in the purchase and sale transaction. Casey never anticipated that Athanasoulis would take steps to undervalue Cresford in order to complete the sale to her future partner at the lowest possible price. This arrangement was in direct conflict with Athanasoulis's fiduciary duty owed to Cresford and Casey.

71. At no time did Athanasoulis ever divulge the arrangement that she had made with the potential purchaser as described in paragraphs 75 and 76 of the Statement of Claim.

d) Athanasoulis – Negotiations with Potential Purchaser

72. Once the negotiations commenced with the potential purchaser, Athanasoulis took steps to exclude Casey, certain other employees of Cresford, and Casey's personal financial advisor, from obtaining relevant financial information related to Cresford.

73. In early November, Casey's financial advisor reviewed the documentation that Athanasoulis had prepared for the purchaser (referenced in paragraph 65, above). The financial advisor confirmed that a value of approximately $120,000,000, excluding inventory, was reasonable in all the circumstances.

74. Athanasoulis and Casey met on November 12, 2019. During this meeting, Athanasoulis proposed a purchase price for Cresford of $25,000,000 on the closing of the transaction and $50,000,000 approximately five years later at the closing of the YSL Project. Casey told Athanasoulis that this was far below his expectations and far below what she had previously agreed to be a reasonable sale price; that is, $125,000,000. Athanasoulis agreed that had been her position in September 2019 but then stated her assessment had not been correct. As of September 2019, Athanasoulis had been COO of Cresford for approximately one year.

75. A few days after the November 12, 2019 meeting, as described above, Casey told Athanasoulis that he had spoken to his advisors and that it was his priority to sell the YSL Retail in order to satisfy the YSL Financing conditions and to close the YSL Financing. Casey would continue to deal with the possible sale of Cresford to the potential purchaser, but completing the YSL Financing was the priority. Casey explained that in

order to maximize the value of Cresford, it must be sold as a going concern and having the YSL Financing was fundamental to that objective.

76. Finalizing the YSL Financing was crucial to Cresford because:

a) it would provide funding to pay existing and future payables related to the YSL Project;
b) it would avoid construction lien issues;
c) it would provide access to a return of equity paid in to the YSL Project;
d) it would allow Cresford to receive development fees to pay current and further payables on other projects; and
e) it would increase the value of Cresford as a going concern.

Furthermore, there was no downside to Cresford in finalizing the YSL Financing.

77. Athanasoulis did not agree with the advice that Casey was receiving from his advisors and stated that she would not give priority to completing the YSL Financing until Casey dealt with “her deal”; that is, the sale of Cresford to the potential purchaser.

78. On November 19, 2019, Athanasoulis commenced sending emails to Casey that exaggerated the size and urgency of Cresford’s payables and cost overruns. Athanasoulis also raised numerous other issues which she claimed required immediate directions from Casey. Although Athanasoulis had been aware of these issues for a significant period of time, she had not previously informed Casey of these issues and had not previously sought directions from him.

79. When Casey attempted to obtain clarification with respect to the accounts payable and the urgency of them, and to obtain further information related to the potential sale of Cresford, Athanasoulis prevented certain employees of Cresford from participating in this effort.

80. On November 21, 2019, Casey met with the potential purchaser and an advisor to the potential purchaser. As a result of that meeting, Casey was confident that a deal could be completed at a price that he would accept.

81. On November 22, 2019, Athanasoulis and Casey met. At that meeting, Athanasoulis told Casey that, if he did not accept the offer from the potential purchaser by 5 p.m. that afternoon, she would resign from the company and go public with her resignation.

82. Arrangements were then made for Casey to meet with the potential purchaser and an advisor to the potential purchaser on Wednesday, November 27, 2019.

83. At the beginning of the meeting on November 27, 2019, Athanasoulis told the potential purchaser that there was an additional $8,000,000 of income tax owed by Cresford Rosedale that he should know about. This statement was incorrect. Cresford Rosedale does not have an income tax liability and furthermore Athanasoulis knew or ought to have known that the potential purchaser was not purchasing Cresford Rosedale. At that meeting, Athanasoulis again stated that, if they did not reach a deal on that day, she would probably resign from Cresford on the following day.

84. In late November 2019, Casey's financial advisor attempted to get information about Cresford's short term cash plan. It was evident that Cresford had to be a going concern to

maximize its value. The financial advisor asked Dave Mann (Mann), a senior employee at Cresford, to assist in estimating the cash requirements over the next few months and the source of funding. Upon hearing this request, Athanasoulis directed the employee at Cresford who deals with cash planning not to provide Mann with any information and Athanasoulis ultimately told the employee to go home that day.

85. Throughout this period, Athanasoulis continued to emphasize the urgency of certain cashflow issues. When solutions were suggested, they were rejected by Athanasoulis without explanation.

86. Athanasoulis had also instructed the employee who dealt with cash planning to send an email to Casey highlighting the cash shortfalls. The employee had expressed her discomfort with certain requests from Athanasoulis and that Athanasoulis had been rejecting her attempts to manage the cashflow and solve related issues. It was the employee's position that Athanasoulis was exaggerating the size and urgency of the cashflow issues.

87. In early December 2019, Athanasoulis removed the cash management duties from this employee.

88. On December 4, 2019, Athanasoulis ordered the same employee not to provide any information to Casey or Mann.

89. In the latter part of November and early December 2019, Athanasoulis engaged in conduct to put pressure on Casey to enter into an improvident sale transaction with the potential purchaser.

90. On December 6, 2019, the financial advisor for Casey met with Mann and other employees of Cresford in the Finance Group. The purpose of the meeting was to discuss Cresford's short term cash needs and the financial advisor requested a cash plan. The financial advisor never received the information that he requested. During his involvement in attempting to assist Casey, the financial advisor did not have access to Cresford's staff or records.

91. The financial advisor then met with Athanasoulis in the afternoon of December 6, 2019. At that meeting, Athanasoulis told him that she did not support the closing of the YSL Financing and that she would not let it happen. During this meeting, the financial advisor asked Athanasoulis whether or not she had a deal with the potential purchaser and she responded "yes" but did not divulge any details. Also during this meeting, Athanasoulis was advancing positions which would benefit the purchaser to the detriment of Cresford.

92. Shortly after that meeting, Athanasoulis told the financial advisor that she did not want the YSL Financing to close because she believed that the potential purchaser could arrange better terms on the mezzanine financing.

93. Cresford later learned that Athanasoulis was dealing directly with the law firm acting on behalf of the potential purchaser. As part of the email communication with the law firm for the potential purchaser, proposals were being made that would have benefited the

potential purchaser and not Cresford or Casey. Casey did not know that Athanasoulis and other members of the Finance Group at Cresford were dealing directly with the law firm of the potential purchaser and was not given an opportunity to review documentation and information that was being forwarded to that law firm.

94. On December 10, 2019, a Letter of Intent (LOI) was received from the potential purchaser. The terms of the LOI were unacceptable to Cresford and Casey for numerous reasons. Athanasoulis played a role in the drafting of the LOI, the terms of which would have significantly impaired Cresford's ability to survive.

95. The LOI did not reflect the terms of sale that had been discussed with the potential purchaser and reviewed by Athanasoulis.

96. Contrary to the allegations in paragraph 77 of the Statement of Claim, the terms of the LOI would not address the concerns of Cresford or Casey.

97. On December 13, 2019, Athanasoulis called Casey's financial advisor to discuss the terms of the LOI. Athanasoulis enquired why Casey was trying to close the YSL Financing and considering new projects. Once again, she emphasized that she was focussed on the sale to the potential purchaser and not on the YSL Financing.

98. Later on Friday, December 13, 2019, Athanasoulis sent a text message to Casey. In this text message she stated:

> *Are you taking the LOI from [the potential purchaser] seriously? Because if you are I would like us all to focus on that with a positive outcome for all as opposed to presenting a suspicious LOI to the bank that jeopardizes the sale of the business. Please let me know today as I have to decide on how to advise key stakeholders.*

99. In the above text message, Athanasoulis is describing the potential purchase of the YSL Retail to complete the YSL Financing as "a suspicious LOI to the bank that jeopardizes the sale of the business". The jeopardizing of the sale of the business refers to the sale of Cresford to the potential purchaser.

100. On December 16, 2019, an email was sent to Athanasoulis reminding her that she owed a fiduciary duty to Cresford and Cresford alone and that she must not place her own interests above those of Cresford.

101. As part of her continuing conduct to put pressure on Casey to sell Cresford to the potential purchaser, Athanasoulis:

a) encouraged employees of Cresford to terminate their employment with Cresford with the understanding that they would be re-hired once the sale transaction was completed;
b) encouraged consultants and trades that provided services to Cresford to terminate their relationship with Cresford with the understanding that once the sale transaction was completed their services would be re-engaged;
c) put pressure on investor representatives to encumber the YSL Project to the detriment of Cresford; and
d) contacted Cresford lenders and misrepresented the existing financial condition of Cresford.

102. On January 2, 2020, Athanasoulis alleged that her employment contract with Cresford had been terminated effective that date. In paragraph 92 of the Statement of Claim, she alleges that Cresford had repudiated her employment contract and that she accepted that repudiation effective January 2, 2020.

103. However, Athanasoulis continued to breach her fiduciary duty to Cresford and Casey on and after January 2, 2020.

104. Athanasoulis authored and mailed a letter dated January 2, 2020 to Otera Capital. Otera Capital is one of Cresford's lenders. In this letter, Athansoulis accuses Casey of:

a) carrying on Cresford's business in "incorrect financial ways";
b) leveraging "his equity requirements with offside loans in other projects";
c) by accepting a new loan, Casey "was fully aware that this new loan immediately put him offside with several of his financings including this new construction loan from Otera"; and
d) of "financial fraud".

105. The purpose of this letter was to disrupt the relationship between Cresford and Otera Capital and to damage Cresford's and Casey's reputation and to cause financial damages to Cresford.

106. In this letter, Athanasoulis misrepresents the author by stating it was sent by Mann. Mann did not author or send this letter.

107. Similarly, Athanasoulis authored and mailed an undated letter to QuadReal Finance, which is another of Cresford's lenders. This letter was mailed by Xpresspost on January 14, 2020.

108. Once again, it is allegedly written by Mann. Mann did not author or send this letter.

109. In this letter, Athanasoulis states:

a) "(Casey) continues to diminish any profits from these projects with offside equity loan arranged by Ted Dowbiggin to inject money into the company and to live his lifestyle";

b) "I am also enclosing a snapshot of the forming contract on Halo to confirm that it is over budget. Dan has asked us all to hide the real number to avoid a further equity injection until more offside equity loans can be arranged"; and

c) "As part of his decision not to sell, (Casey) terminated a number of key staff who were aware of these issues and refused to go along with a fraudulent plan".

110. The purpose of this letter was to disrupt the relationship between Cresford and QuadReal Finance and to damage Cresford's and Casey's reputation and to cause financial damages to Cresford.

111. Although Athanasoulis was no longer an employee of Cresford, she continued her course of conduct to undermine the financial value of Cresford in an attempt to force an improvident sale to the same potential purchaser and future business partner of

Athanasoulis. The two letters referenced above were part of Athanasoulis' conduct to undermine the value of Cresford and to force an improvident sale.

112. On January 7, 2020, the potential purchaser told Casey that he had been willing to increase his financial offer as set out in the December 10, 2019 LOI, but Athanasoulis had advised him not to do so.

113. In January and February 2020, Athanasoulis held regular meetings at her residence with recently departed employees of Cresford's Finance Group. Athanasoulis intended that these individuals would join her once the potential sale transaction was completed. At one January meeting, Athanasoulis requested that a former employee provide her with private information relating to Casey Family Trusts.

114. On February 8, 2020, Athanasoulis and the potential purchaser of Cresford received an email from an entity which intended to be a partner in the potential purchase transaction. In this email to Athanasoulis, he states:

> *We are excited to hear there may be positive momentum on your recap of Cresford. We would love to come up this week and spend time with you both to try and finalize terms for us to partner with you, advance our due diligence, and put in-place a path for an expeditious closing. We propose Wednesday, but are flexible if there is a better day for you guys.*
>
> *It would be great to spend some time at Cresford's office to see the team and get a better sense of the operation. We have continued to do a good amount of market work in the background, which will save us time, and we will plan to set up some market diligence meetings while in town.*

115. Although there were no ongoing negotiations with Cresford, Athanasoulis continued to report to her potential future partners as if she continued to represent Cresford's interests.

G. Equity Investment - Financing

I. Athanasoulis' Understanding of Equity Requirements and Equity Investment

116. The equity requirements for each project are established by the lender for the Project and confirmed in the commitment letters. Each project required that the owner of the lands invest significant equity into each Project.

117. The initial equity requirement is based on proforma budgets for development and construction that are provided by the borrower and are reviewed and often adjusted by the cost consultant acting for the lender before the lender confirms its commitment to finance the project. As actual expenses are incurred, the budget is reviewed, and cost overruns that are not capable of being charged to a construction or development contingencies established by the lender and its cost consultant must be funded by the owner through the injection of additional equity.

118. As the projects proceed, the equity is confirmed prior to each draw on the financing through a review by the cost consultant retained to represent the lender. Altus was the cost consultant for all four of the Projects; that is, Clover, Halo, 33 Yorkville and YSL Projects.

119. In undertaking its periodic review of project and construction costs and liabilities relative to budget, Altus would rely on documents provided by Cresford's Management Team, including Athanasoulis. Cresford's Management Team reviewed the Altus reports prior to finalizing the reports for delivery by Altus to the lender. In each case, the report of the cost consultant to the lender is qualified with respect to the completeness and accuracy of

information provided to it by the borrower. At all times Casey provided full disclosure to the lenders. During the period of time when Athanasoulis was COO, he assumed that she did the same.

120. There was nothing unusual about the way that Cresford raised equity investment for its projects. None of the owner site corporations have any assets apart from the land that is acquired at the outset of the project. The lenders recognize this. The commitment letters and/or term sheets issued by the construction lenders often recognize that the project owner may be borrowing from investors or related companies to fund the early costs of land acquisition, development and construction. The lender may take these arrangements into account when approving the funding and allow the owner to secure the equity investments. The lender may be approached by the owner at a later date, for consent for such security on request of the owner. Such approval would always be subject to an agreement by the owner that any security that may be given for the "owner equity" will rank subsequent to all prior secured interests and claims of trade contractors under the *Construction Act.*

121. Once the net sale proceeds are fixed by the agreements of purchase and sale with purchasers, and the pre-sale target is achieved, the lender will not typically allow further credit on account of increased land value beyond that set out in its commitment. From the point of sale of the units, any increase in land value accrues to the purchaser. Athanasoulis was aware of this.

122. Each of the site corporations, and every site corporation created for projects of this size, raise equity investment in part through investors who expect to be paid interest at the end

of the project. There is nothing secret or unusual about this. The lenders and Athanasoulis are aware of this. Those investors may or may not have real property security for their investments. Where they do have such security, that security ranks subsequent to the interests of prior lenders and the deposit surety. Where the investors are unsecured, they rely on the profits in the project after all other debts are paid. However, all proceeds of the unit sales are subject to the charge of the prior lenders and trade creditors until the obligations to them are fully discharged. It is for this reason that the equity investors expect a high rate of return. They are last to be paid out, and their only priority (whether or not they are secured) is as to the Cresford companies and the profit that those companies may realize at the end of the project.

123. Athanasoulis knew that in each project undertaken by Cresford, there were equity investors who were paid out prior to any distribution of profits to Cresford. She also knew, from at least 2015, that the proceeds from one project would often be transferred as equity into the next project or retained to cover operating costs. There is nothing unusual about this in the industry. At all times Athanasoulis was aware of the manner in which Cresford raised its equity requirements for the projects.

124. With respect to cash shortfalls, Athanasoulis was aware at all times that large condominium developments were at risk of cash shortfalls when costs exceed budgets established at the outset of the project. Budgets are an estimate of the costs that will be incurred and there are many factors that may intervene to cause costs to increase. Athanasoulis was aware, from her role in sales, financing and construction, of the risks to the project and construction budgets. Athanasoulis knew and understood:

a) the challenges of condominium construction and development of this scale and the struggle between pricing the units properly for the market while at the same time ensuring that the pricing is based on reliable budgets;

b) that the sales revenue would be fixed once the agreements of purchase and sale were signed;

c) that contract prices might come in higher than the figures used when sale prices were established;

d) the importance of holding some inventory off the market, once the pre-sale target was met, to retain the upside in those units to offset any cost overruns that might occur as the project proceeds through construction;

e) that the biggest risks to the project and construction budgets are expenses that were not anticipated in or exceed amounts specified in the budgets, or delay in the projects resulting in increased costs;

f) that when cost overruns occur, the profitability of the project decreases, even if the owner injects more equity;

g) that financial risk to the owner increases proportionately with the size, complexity and construction schedule for the project;

h) she knew that having five projects ongoing at once would put pressure on Cresford that would require very careful monitoring and review;

i) the manner in which the equity investment was structured, and that interest rates on the equity investments, were taken into account in the proforma profit projections for the projects; and

j) that all equity investors, including the owner expected the return of their equity investment with interest prior to calculating net profit of a project.

In her role as part of Cresford's Management Team, she was involved in all of these Issues.

125. At no time did Casey guarantee to Athanasoulis that any future funding of cost overruns would ensure that there would be profits at the end of the project for distribution to empoloyees, consistent with those projected at the outset of the projects when sale prices were established.

II. Potential Sale of YSL Lands Prior to Launch

126. Casey and the Management Team at Cresford knew that the YSL Project would be more difficult to finance than some of its prior projects. The scale of the YSL Project is such that it presents considerable risk to any developer. Equity and financing was not an issue, but risk was an issue and the magnitude of the project meant that it would take considerably longer than other projects to construct and would present greater exposure to delays, unforeseen conditions and cost overruns. As a result of these risks, and having increased the land value through development approvals, Cresford considered the potential sale of the YSL Project prior to pre-sales and commencement of construction. According to the Altus reports, there was no equity shortfall on Clover or Halo at this time and the consideration of the sale had nothing to do with cost overruns on those projects.

127. It is true that in the spring or summer of 2018 there were discussions with CBRE with respect to a potential sale of the YSL Project, but no real effort was expended in trying to

find a buyer because Athansoulis did not support the idea of selling the project. The land value of the YSL Project had increased significantly through the development approval process. A sale of the project, and avoidance of the risk of construction, was a reasonable proposition to consider, particularly given the demands of other projects. In September 2018, CBRE identified a potential purchaser for the YSL Project. Athanasoulis objected to any sale of the YSL Project because she felt it would reflect poorly on Cresford's reputation.

128. The YSL sales launch took place in September and Otober of 2018. The entire Cresford team worked diligently to launch the project quickly. The launch was a success.

129. By December 31, 2018, Athanasoulis was settling into her expanded role of COO and was giving no indication to Casey that she was concerned about the financial future of the Cresford companies or any representations made to lenders.

III. Athanasoulis Involvement in Financing

130. In the case of each advance under the construction loans, the lawyers for the lender and borrower prepare legal documentation for the advance of funds; while the developer, its consultants and its in-house forces respond to the lender and provide documentation to confirm that all conditions to financing and to draws have been satisfied. Both Athanasoulis, and the Finance Group which reported to Athanasoulis, participated in this process in all four projects that are the subject of this action. In each case, Athanasoulis knew or ought to have known what information was being provided to the lenders.

131. Even prior to her role as COO, Athanasoulis knew the role of the Altus reports in obtaining an advance on financing. She had close contact with the construction trades. She knew when they were looking for payment. She knew that the source of the payments came from the construction lenders, and that the lenders would not advance without a report of the cost consultant. The reports of the cost consultants were available to her at all times.

132. Athanasoulis also knew, from her involvement in many prior projects, and in her role in establishing sale prices, that the cost consultants reviewed budget information provided by Cresford at the outset of each project from which the cost consultant and lender developed their own budget with contingency that would guide the lender in determining whether or not the project remained on budget, and, if not, the extent of additional equity required to maintain debt to equity ratios.

133. Athanasoulis was involved in ensuring that construction contracts were negotiated and executed and included in the information provided to the cost consultant. She knew the importance of having major contracts signed at the earliest possible date to secure the cost to construct and protect the budget and the profitability.

134. From at least August 2018, and for each advance under the construction loans thereafter, Athanasoulis was given a copy of the draft Altus report(s) for review and comment prior to the submission of the report by Altus to the lender. If Athanasoulis had questions or concerns with the information she was seeing, she did not raise these concerns with Casey until late 2019 in connection with her efforts to secure the potential sale of Cresford.

135. Despite the fact that Athanasoulis held the position of COO from August 2018, she gave no indication to Casey or to others on the Cresford Management Team, or to the cost consultants at any time during 2018 or during the first eight months of 2019, that she believed that the Halo and Clover Projects were "woefully underfunded". She did not inform Casey about the stated shortfalls, nor did she speak to him with respect to possible plans for additional funding.

IV. Structure of Equity Investment

136. As a member of the Management Team at Cresford, Athanasoulis was aware of the manner in which the equity investment was structured, and that Cresford accounted for any interest payable to equity investors in its profit projections for each project.

137. Athanasoulis was aware that the return on these investments would take priority over any entitlement to profits on the part of Cresford. She was also knew that the rate of interest payable to equity investors in a project might be higher because of the fact they rank subsequent to all prior and secured creditors in the project.

V. 33 Yorkville Loans

138. With respect to 33 Yorkville, it is true that $75,300,000 of the equity was subscribed by individual investors, many of whom were introduced to Cresford through Athanasoulis and her contacts in the real estate market. She knew that these investments would involve repayment of interest at the end of the project, after payment of all other debts and obligations. Athanasoulis co-ordinated the documentation required for each of these investors through Blaneys LLP and Papadakis.

VI. YSL Loans

139. The land acquisition for the YSL project was partially financed by a third party loan for $13,000,000, which was secured by a charge on title to the property (the Purchase Mortgage). Athanasoulis was aware of this mortgage, the terms of this mortgage.

140. The Purchase Mortgage on the YSL Project was subsequently paid out and discharged as a condition to the financing arranged with Timbercreek for the development and early construction costs. The Purchase Mortgage was discharged through an authorized release of deposits from the deposit trust account at the time of the first advance under the Timbercreek mortgage. This release was authorized by Aviva Westmount, as deposit surety on the project. This was all disclosed to Timbercreek in monthly deposit reports issued by the deposit trustee and included as part of the Altus reporting.

141. The Timbercreek mortgage is to be replaced by a charge in favour of Otera Capital (the "YSL Construction Loan"). The total principal amount of the YSL Construction Loan is $623,000,000. The owner equity requirement set out in the commitment letter issued by Otera and dated February 20, 2019, requires an equity contribution of $187,500,000, calculated as follows:

Mezzanine financing of up to $75,000,000;

$75,000,000 Cash Equity; and

$37,500,000 for surplus land value.

142. Paragraph 14 of the Otera Commitment contains the usual restriction on further financing and encumbrances:

> *Save and except for a charge in favour of the deposit insurer and the mezzanine lender the Borrower agrees to not enter into any further financing of the Property and the Charged Assets and not to further encumber same in any manner without the prior written approval of the Lender which approval may be withheld in the Lender's sole discretion.*

143. In its report of November 30, 2018, under the heading Equity and Mezzanine Financing at para 9.14, page 7 Altus states:

> *the advances are conditional upon receipt of evidence including cancelled cheques confirming that the Borrower has injected not less than $187,500,000 in equity comprised of $37,500,00 appraisal surplus, not less than $75,000,000 in cash equity and not more than $75,000,000 in mezzanine financing. Evidence by way of financial statements and cancelled cheques has been provided.*

144. The $75,000,000 in *cash equity* requirement was funded in part by individual investors who acquired units in the YG Limited Partnership, and by a $20,000,000 loan from a third party investor to another Cresford company, which in turn loaned the funds to Cresford Rosedale, which then invested the funds in YG Limited Partnership as owner of the project.

145. The full amount of these investments have been injected into the Project and used to fund project costs. The financial statements of the beneficial owner, YG Limited Partnership, show the investment of these funds into the project, and the payable by YG Limited Partnership to Cresford Rosedale. These financial statements were disclosed to the lender.

146. Athanasoulis was at all times aware of these investors. She had ready access to the financial statements for all Cresford companies. There were also specific discussions about the $20,000,000 equity investment among members of Cresford's Management Team, including Athanasoulis. Discussions took place in connection with arrangements for construction financing on the YSL Project to replace the loan in favour of Timbercreek. Athansoulis questioned the merits of providing this agreement to prospective lenders. Casey assumed that the details of this investment had been disclosed to Otera.

147. The investor of the $20,000,000 acknowledged that any interest that he might be granted in the proceeds of the YSL Project would be subject to the prior claims of secured lenders, the deposit surety, and construction lien claimants, if any. While the loan agreement with the investor contemplated a charge on the project lands, no charge has been given and, under the terms of the commitment to the construction lenders, Timbercreek and Otera, no charge can be given without the lender's consent. The YSL beneficial owner was not a party to the $20,000,000 loan agreement with the third party investor. Casey was a party to the agreement, as guarantor, but he was not the borrower and has no authority to direct the beneficial owner of the YSL Project to charge or mortgage the YSL lands without the consent of the prior lenders.

148. The construction lender, through its cost consultant Altus, has verified the equity required for the YSL project, has been provided with all information, documents and financial

statements required to support the equity requirement, and has satisfied itself in that regard.

149. A ledger listing the investors and amounts advanced by each investor was provided to the cost consultant and the lender in late November 2019 and taken into account in the November 30, 2019 report; a copy of which was provided to Athanasoulis for review, prior to being presented to the lender.

H. Mismanagement by Athanasoulis

I. YSL Financing – YSL Retail

150. The YSL Project has a Retail component.

151. Athanasoulis, in negotiations with the lender, advised the lender that Cresford was going to sell the Retail component for at least $97,000,000.

152. As a result, on February 4, 2019 Cresford received a term sheet from the YSL construction lender to finance the YSL Project.

153. Article 1.1.1 of the term sheet stated:

> **1.1.1 "Purchase and Sale Agreement – Retail**
>
> *Receipt of a copy of an executed purchase and sale agreement, and any amendments thereto, acceptable to the Lender pertaining to the sale of 73,378 sqft situated upon floors [●] to [●]. The purchase and sale agreement shall specify a purchase price of not less than $97,764,364 net of HST/GST, a non-refundable purchaser's deposit of $14,664,655 that is to be available as a source of financing in the Project and a closing date of [●].*

154. Athanasoulis later advised Casey that her plan was to syndicate the sale of the YSL Retail to a group of investors who had previously invested in Cresford's limited partnerships. She proposed that the deal with these investors would be that their principal would double over the course of their investment. She would raise $48,500,000 as deposit funds, and when the YSL Project closed in April 2025, the investors would own the YSL Retail valued at $97,000,000.

155. She further proposed that Cresford could use the $14,550,000 deposit as funding for the project. The remaining $33,950,000 would be used to improve Cresford's cash flow position and solve any financing shortfalls that may occur in the Clover or Halo Project. Such a proposal was contrary to the terms of the YSL Financing commitment and contrary to the trust requirements of the *Construction Act*. Casey rejected her proposal.

156. From February 2019 until October 2019, Athanasoulis reassured Casey that she had met with various investors and agents to organize the funding of the purchase of the YSL Retail and that there were no problems with respect to the Retail deal.

157. During the week of October 28, 2019, Athanasoulis told Casey that KingSett Capital, the mezzanine lender on the YSL Project, did not like the buyer of the YSL Retail and that she would raise the necessary money. The foregoing was not true. KingSett was never presented with the names of the potential Retail buyers.

158. The sale of the Retail component of the YSL Project was the last financing condition to be met.

159. Athanasoulis failed to prioritize this crucial financing issue. In November and December 2019, she refused Casey's direction to prioritize meeting the final outstanding financing condition with respect to the YSL Project.

II. Humber College

160. Humber College wanted to lease three floors at 59 Hayden Street, Toronto. On November 26, 2019 when advised by Athanasoulis of the potential lease of these three floors, Casey agreed with her recommendation and directed her to proceed as soon as possible with the lease to Humber College.

161. Athanasoulis delayed on numerous occasions to finalize the lease with Humber College. She did so, even though she was directed to do so as soon as possible and even though she knew that the sooner it was done, the sooner Cresford would receive this additional cash flow.

162. Athanasoulis delayed the process because the potential purchaser did not want Cresford to enter into the lease with Humber College.

III. KingSett Capital

163. A Special Condition on the loan from KingSett on the 33 Yorkville Project was that 75% of the construction hard costs would be covered by executed fixed price contracts prior to July 1, 2019.

164. Although Athanasoulis was aware in June 2019 that she was not going to take steps to meet this requirement, she never informed Casey of that decision.

165. Six months later in November 2019, Athanasoulis raised it as an urgent matter that must be dealt with immediately.

IV. Sale to Potential Purchaser

166. In the potential sale of Cresford, Athanasoulis and the Finance Group:

a) had made no attempt to value the business;

b) had given no thought to the tax implications of the sale;

c) did not have a plan for funding financial shortfalls. They assumed that financing shortfalls would have to be funded by equity which would significantly increase the investment required of any purchaser of the Projects;

d) had materially overstated the alleged financing shortfalls;

e) failed in their duty to attempt to maximize the value of the business;

f) did not consider alternatives to a sale to the potential purchaser nor appeared to even want to attempt to negotiate for a higher price after the purchaser's offer fell significantly short of Athanasoulis's estimate of the value of Cresford's business.

167. With respect to paragraph 65 of the Statement of Claim, if the office and townhouse components of Casa III had been properly marketed and sold at the appropriate time, there would not have been cash flow issues or outstanding commissions.

I. Athanasoulis – Improper Payments or Benefits Received

168. On September 30, 2019, Athanasoulis sent an invoice to Cresford on behalf of 2620794 Ontario Inc. Athanasoulis' spouse, Chris Panagiotopoulos, is the sole director, officer and shareholder of this numbered company.

169. The invoice in the amount of $1,000,000 is stated to be for "marketing consulting fees" on the YSL Project.

170. Neither 2620794 Ontario Inc., nor Chris Panagiotopoulos, provided any marketing consulting services to Cresford.

171. Athanasoulis signed the cheque on behalf of YG Limited Partnership payable to 2620794 Ontario Limited in the amount of $1,130,000 (includes HST). Casey did not know about this transaction until January 2020. Casey did not agree to or approve of this payment.

172. The banking resolutions at Cresford require two two signatures from the signing officers for any cheque over $10,000.00. The only exception was that Casey alone could sign a cheque for any amount. Without knowledge or consent of Casey, Athanasoulis delivered a Partnership Resolution on behalf of YG Limited Partnership to TD Candada Trust. This resolution was only signed by Athanasoulis. In this resolution, Athanasoulis represented that she also had the authority to sign alone for any amount.

173. Payment was made to a contractor in the amount of $508,000.00 on one of the projects prior to any services being provided by that contractor and without the approval of the Construction Manager. Athanasoulis was the sole signatory on this cheque.

174. Athanasoulis resides at 44 Glenallan Road, in the City of Toronto. Athanasoulis has furniture and cabinets at her residence that had been paid for by Cresford without approval by Cresford.

175. Despite written request to Athanasoulis to return to Cresford property in her possession that is owned or leased by Cresford, she has refused to do so.

176. In addition to the foregoing, Athanasoulis has charged unwarranted and unapproved expenses to Cresford that exceed $350,000.

J. Alleged Defamation – Paragraphs 93-102 of Statement of Claim

177. Casey denies that he made false and defamatory statements about Athanasoulis either before or after January 2, 2020.

178. Casey denies that he made the statements as alleged in paragraphs 96, 97 and 99 of the Statement of Claim.

179. With respect to paragraph 98 of the Statement of Claim, Dowbiggin was one of Casey's advisors in November and December 2019 with respect to the negotiations of a potential sale of Cresford. When Casey learned that Athanasoulis was making statements to others that were contrary to the interests of Casey and Cresford, he expressed his concerns and opinion to Dowbiggin. Casey told Dowbiggin that he believed Athanasoulis was attempting to devalue Cresford so that the sale to the potential purchaser would be completed and she would have some interest in the new business.

180. The comments to Dowbiggin were made in the context of his role as an advisor to Casey in the negotiation process. Casey honestly believed in the truth of his comments when he made them to Dowbiggin.

181. In the alternative, if the words as alleged in paragraphs 96 and 99 of the Statement of Claim should bear the meaning as asserted, which is not admitted but specifically denied, the words are justified and also fair comment.

182. During the negotiations with the potential purchaser, Athanasoulis provided inaccurate financial information and documentation to the potential purchaser. Casey's comments to the potential purchaser related to these inaccuracies.

183. Casey's comments were relevant, true and expressed to protect the legitimate business interests of Cresford.

184. The defendants deny that Athanasoulis's reputation has been diminished as a result of the alleged defamatory statements.

185. The defendants deny that Athanasoulis suffered any damages as a result of the alleged defamatory statements.

K. Resignation of Athanasoulis

186. Effective January 2, 2020, Athanasoulis resigned from her employment at Cresford. Athanasoulis was not constructively dismissed.

187. Contrary to the allegations in paragraphs 85, 86, 87 and 91 of the Statement of Claim, there was no impropriety in the steps that Casey took to arrange the sale of the Retail component in the YSL Project. Subsequent to the Letter of Intent referred to in paragraph 86 of the Statement of Claim, a binding agreement of purchase and sale was entered into with the purchaser of the Retail component in the YSL Project. This

agreement of purchase and sale met all of the requirements of the YSL Construction Loan. Contrary to the proposition set out in paragraph 85 of the Statement of Claim, neither Cresford or Casey ever intended to improperly divert funds to other projects.

188. On a number of occasions, in November and early December 2019, Athanasoulis threaten to resign, on little or no notice to Cresford, if Casey did not agree to sell Cresford to the potential purchaser.

189. In mid December 2019, Casey wanted to deal directly with major lenders and trades of Cresford. He wanted to assure them that he was actively involved in the Cresford business and that they could rely on him to ensure that Cresford met its obligations. Athanasoulis was not stripped of her employment responsibilities at Cresford, but rather Casey was taking a more active role at this critical point in Cresford's business. Casey expected that this critical point would be successfully dealt with and his increased involvement in Cresford's business would be diminished.

190. However on January 2, 2020, with no agreement to sell Cresford to the potential purchaser, Athanasoulis carried out on her threat and resigned from her employment position.

191. Contrary to the allegation in paragraph 91 of the Statement of Claim, Athanasoulis is not a director of YSL Inc. YSL Inc. does not exist. Athanasoulis is not a director of any of the Cresford related companies.

192. Subsequent to January 2, 2020, Cresford and Casey acquired information that substantiated previous concerns that Athanasoulis might have been in breach of her fiduciary duties to Cresford and Casey.

193. If Athanasoulis did not resign effective January 2, 2020, then Cresford and Casey, plead in the alternative, that the termination of her employment was for just and proper cause. Cresford and Casey rely upon material facts pleaded to establish that the termination of her employment was for just and proper cause.

L. Damages

194. The defendants deny that:

a) Athanasoulis is entitled to damages in lieu of notice;

b) any salary or benefits remain owed to Athanasoulis;

c) Athanasoulis was entitled to 0.15% of revenue earned by Cresford, either before or after January 2, 2020; and

d) Athanasoulis is entitled to any percentage of net profits as referred to in paragraph 105 of the Statement of Claim.

195. With respect to paragraph 106 of the Statement of Claim, the defendants deny that Athanasoulis's employment was terminated because she insisted that Casey deal honestly with Cresford's stakeholders. The defendants deny that any punitive, exemplary or aggravated damages are warranted in this matter. The defendants further deny that Athanasoulis has suffered significant mental and emotional distress as a result of any acts or omissions by Casey.

196. The defendants submit that this action be dismissed with costs awarded against Athanasoulis on a substantiated indemnity basis.

COUNTERCLAIM

197. The defendants claim as against the Plaintiff, Maria Athanasoulis (Athanasoulis):

a) damages for breach of fiduciary duty, breach of contract and intentional interference with contractual relationships in the amount of $10,000,000;

b) damages suffered by the defendants as a result of Athanasoulis's mismanagement in the amount of $7,500,000;

c) a declaration that Athanasoulis has improperly received money and other benefits from Cresford and has not properly accounted for, repaid or returned monies and chattels to Cresford;

d) exemplary damages for breach of fiduciary duty;

e) damages for defamation of Casey in the amount to be provided prior to trial;

f) actual and special damages suffered by the corporate defendants as a result of defamatory statements made by Athanasoulis concerning the conduct of their business operations;

g) pre and post judgement interest;

h) costs against Athanasoulis on a substantial indemnity basis; and

i) such further and other relief as this Court deems just.

198. With respect to claims set out in paragraph 197 a-d above, the defendants plead, repeat and rely upon the material facts as set out in their Statement of Defence herein.

Defamation of Casey

199. Athanasoulis authored and mailed a letter dated January 2, 2020 to Otera Capital. Otera Capital is one of Cresford's lenders. The letter was sent to the attention of Leonard Damiani, Michael DiCesare and Paul Chin. Otera Capital received this letter and provided a copy of this letter to Casey.

200. In this letter, Athanasoulis identifies Casey and accuses him of:

a) carrying on Cresford's business in "incorrect financial ways";

b) leveraging "his equity requirements with offside loans in other projects";

c) by accepting a new loan, Casey "was fully aware that this new loan immediately put him offside with several of his financings including this new construction loan from Otera"; and

d) of "financial fraud".

201. The natural and ordinary meaning of the words used by Athanasoulis was to impute dishonest, unethical and fraudulent conduct by Casey.

202. The purpose of this letter was to disrupt the relationship between Cresford and Otera Capital and to cause damage to Casey's reputation and his business operations.

203. In this letter, Athanasoulis misrepresents the author by stating it was sent by Mann. Mann did not author or send this letter.

204. Similarly, Athanasoulis authored and mailed an undated letter to QuadReal Finance which is another of Cresford's lenders. This letter was sent to the attention of Dean Atkins, Kevin Weir and Lucy Edwards. This letter was mailed by Xpresspost on January 14, 2020. Representatives of QuadReal Finance provided Casey with a copy of this letter.

205. In this letter, Athanasoulis identifies Casey and then states:

a) "(Casey) continues to diminish any profits from these projects with offside equity loan arranged by Ted Dowbiggin to inject money into the company and to live his lifestyle";

b) "I am also enclosing a snapshot of the forming contract on Halo to confirm that it is over budget. Dan has asked us all to hide the real number to avoid a further equity injection until more offside equity loans can be arranged"; and

c) "As part of his decision not to sell, (Casey) terminated a number of key staff who aware of these issues and refused to go along with a fraudulent plan".

206. The natural and ordinary meaning of the words used by Athanasoulis was to impute dishonest, unethical and fraudulent conduct by Casey.

207. The purpose of this letter was to disrupt the relationship between Cresford and QuadReal Finance and to cause damage to Casey's reputation and his business operations.

208. In this letter, Athanasoulis misrepresents the author by stating it was sent by Mann. Mann did not author or send this letter.

209. In his forty plus years in the development industry, Casey has earned a stellar reputation for honest dealing with lenders, trades and consultants.

210. Athanasoulis's defamatory statements to Cresford's lenders were intended to harm and did harm Casey's reputation and caused damages to Casey and his business operations. Athanasoulis made these defamatory allegations out of spite and knew they were false at the time she made them.

Defamation of Corporate Defendants

211. The corporate defendants repeat and rely upon the material facts set out in paragraphs 199-210 above.

212. Athanasoulis published these false and defamatory words intending to cause financial harm to the corporate defendants.

213. The corporate defendants have suffered and will continue to suffer substantiated financial loss as a result of Athanasoulis' defamatory words.

February 21, 2020

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Plaintiff Defendants

Court File No. CV-20-00634836-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF DEFENCE AND COUNTERCLAIM OF THE DEFENDANTS

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

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST
Proceedings commenced at Toronto

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TAB 3

CONSOLIDATED COURT FILE NO. 31-2734090

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

THE HONOURABLE MR.	)	WEDNESDAY, THE 23rd
	)	
JUSTICE DUNPHY	)	DAY OF JUNE, 2021

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

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

ORDER
(Proposal Sanction)

THIS MOTION, made by YSL Residences Inc. ("**YSL Inc.**"), and YG Limited Partnership ("**YG LP**", and together with YSL Inc., "**YSL**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "**BIA**"), for an Order, among other things: (i) abridging the time for service of the Motion Record and other materials relied upon for this motion, and validating service thereof; (ii) approving the Amended Proposal #2 filed with the Official Receiver on June 15, 2021, which proposal was accepted by the requisite majority of creditors of YSL at a meeting on June 15, 2021, in the form attached hereto as Schedule "**A**" (the "**Proposal**"); and (iii) such further and other relief as counsel may request and this Honourable Court may deem just was heard this day by videoconference due to the COVID-19 Pandemic.

ON READING the Motion Record of YSL and the Third Report of KSV Restructuring Inc. in its capacity as proposal trustee of YSL (in such capacity, the "**Proposal Trustee**") dated June 18, 2021 and on hearing the submissions of counsel for YSL, Concord Properties Developments Corp. and for the Proposal Trustee and such other counsel as were present, no one

appearing for any other person on the service list, although properly served as appears from the affidavit of [●] dated June [●], 2021, filed,

SERVICE

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

DEFINITIONS

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

APPROVAL OF THE PROPOSAL

3. **THIS COURT ORDERS** that the Proposal be and is hereby approved.

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

IMPLEMENTATION OF THE PROPOSAL

5. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized, directed and empowered to perform its functions and to fulfill its obligations under the Proposal to facilitate the Implementation of the Proposal.

6. **THIS COURT ORDERS** that the Proposal Trustee and any other Person required to make distributions, deliveries or allocations or take any steps or actions related thereto pursuant

to the Proposal, are hereby authorized and directed to complete such distributions, deliveries or allocations and to take any such related steps or actions, as the case may be, in accordance with the terms of the Proposal, and such distributions, deliveries and allocations, and steps and actions related thereto, are hereby approved.

7. **THIS COURT ORDERS** that, effective upon the Implementation of the Proposal and commencing at the Effective Time, the events or transaction set out in section 6.01 of the Proposal will occur, or be deemed to have occurred and be taken and effected in the order setout therein.

8. **THIS COURT ORDERS** that YSL is authorized and directed to take all actions necessary or appropriate to enter into, adopt, execute, deliver, implement, and consummate all matters contemplated under the Proposal and all agreements, transactions, and documents contemplated by the Proposal.

9. **THIS COURT ORDERS** that any issuance of any securities or other consideration pursuant to the Proposal will be free and clear of any charge, mortgage, lien, pledge, claim, restriction, hypothec, adverse interest, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interest and rights.

ADDITIONAL PROVISIONS

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and as against all Persons against whom it may otherwise be enforced.

11. **THIS COURT ORDERS** that the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

12. **THE COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the parties and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative

bodies are hereby respectfully requested to make such orders and to provide such assistance to the parties and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to grant representative status to the Proposal Trustee in any foreign proceeding.

____

SCHEDULE "A"

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

AMENDED PROPOSAL #2

WHEREAS, pursuant to Notices of Intention to Make a Proposal dated April 30, 2021, YSL Residences Inc. and YG Limited Partnership (collectively, "**YSL**" or the "**Company**") 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;

AND WHEREAS a creditor proposal was filed in accordance with section 50(2) of the BIA on May 27, 2021 (the "**Original Proposal**");

AND WHEREAS an amendment to the Original Proposal was filed in accordance with section 50(2) of the BIA on June 3, 2021 (the "**First Amended Proposal**");

AND WHEREAS the Company and the Proposal Sponsor wish to amend the First Amended Proposal on the terms and conditions set out herein;

NOW THEREFORE the Company hereby submits the following second amended proposal under the BIA to its creditors (as amended, 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 Claims 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, multiplied by (ii) the formula: 0.58 x (X/Y) where "X" = the Maximum Proposal Claims Amount and "Y" = the aggregate total amount of Proven Claims;

"**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;

"**Amended Proposal**" has the meaning ascribed to it in the recitals;

"**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 to be identified by the Proposal Sponsor prior to the Creditors' Meeting, 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;

"**Conditional Claim**" means any Claim of an Affected Creditor that is not a Proven Claim as at the Filing Date because one or more conditions precedent to establish such Affected Creditor's entitlement to payment by the Company had not been completed in accordance with any applicable contractual terms as at the Filing Date, and such Affected Creditor has indicated in its proof of claim that the Claim should be treated as a Conditional Claim;

"**Conditional Claim Completion Deadline**" means 5:00pm (Toronto time) on September 13, 2021;

"**Conditional Claim Condition**" has the meaning ascribed to it in Section 2.03(a);

"**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 $15,000, and (b) any Proven Claim of an Affected Creditor in an amount greater than $15,000 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 June 14, 2021;

"**Convenience Creditor Election Form**" means the form, substantially in the form attached hereto as Schedule "B", 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 April 30, 2021, being the date upon which Notices of Intention to Make a Proposal were filed by the Company with the Official Receiver in accordance with the BIA;

"**First Amended Proposal**" has the meaning ascribed to it in the recitals;

"**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 Claims Amount**" means $65,000,000;

"**Maximum Proposal Fund Amount**" means the amount necessary to pay each Affected Creditor its Affected Creditor Pro Rata Share;

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

"**Original Proposal**" has the meaning ascribed to it in the recitals;

"**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 Amended 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;

"**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 30, 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/yg-limited-partnership;

"**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 $15,000 that has elected to be a Convenience Creditor by submitting a Convenience Creditor Election Form shall be valued for voting purposes as $15,000;

"**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 Claim 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 Claim 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, 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 and Conditional Claims:

(i) all Affected Creditor Claims (other than Convenience Creditors and Affected Creditors holding Conditional Claims where one or more Conditional Claim Conditions have not been completed) 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 Claims 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 Creditors shall receive in respect of such Convenience Creditor Claims, the Convenience Creditor Consideration, net of the Superintendent's Levy;

(b) Subject to Section 2.03, 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 Conditional Claims Protocol

If an Affected Creditor submits a proof of claim to the Proposal Trustee indicating that its Claim against the Company is a Conditional Claim due to the fact that one or more pre-conditions to such Affected Creditor's right to payment by the Company had not been satisfied as at the Filing Date due to the acts or omissions of such Affected Creditor, then:

(a) such Affected Creditor shall have until the Conditional Claim Completion Deadline to complete or otherwise satisfy all outstanding pre-conditions to payment in accordance with the terms of the applicable agreement between such Affected Creditor and the Company (all such conditions, "**Conditional Claim Conditions**"), and provide notice of such completion to the Proposal Trustee along with reasonable proof thereof;

(b) if such Affected Creditor provides the Proposal Trustee with proof of the completion of all applicable Conditional Claim Conditions prior to the Conditional Claim Completion Deadline, then, subject to the Proposal Trustee's confirmation of same, such Affected Creditor's Conditional Claim shall be deemed to be a Proven Claim, and such Affected Creditor shall be entitled to a distribution in accordance with Section 2.02(a)(i), and, effective immediately upon issuance of such distribution to the Affected Creditor by the Proposal Trustee, the releases set out in Section 7.01 shall become effective; and

(c) if such Affected Creditor has not satisfied one or more Conditional Claim Conditions by the Conditional Claim Completion Deadline, then, effective immediately upon the Conditional Claim Completion Deadline, such Affected Creditor's Conditional Claim shall be irrevocably and finally extinguished and such Affected Creditor shall have no further right, title or interest in and to its Conditional Claim and the releases set out in Section 7.01 shall become effective in respect of such Conditional Claim.

2.04 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 6.01(h).

2.05 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.

2.06 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.

2.07 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 2:00 p.m. (Toronto time) on June 15, 2021. Due to COVID-19, the Creditors' Meeting shall be held online and may be accessed at the following website:

https://zoom.us/j/93541423177?pwd=eU1oQkh5a3o5QWtWbzhhM0IzaDYyUT09

Meeting ID: 935 4142 3177

Passcode: 912017

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, or in the case of any Claim that is a Conditional Claim as at the time of the Creditors' Meeting, then the dollar value for voting purposes at the Creditors' Meeting shall be the dollar amount of such disputed claim or Conditional Claim, as the case may be, 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 or Conditional Claim for distribution purposes.

Notwithstanding the foregoing, each Convenience Creditor with a Proven Claim of $15,000 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 $15,000 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) $15,000, and (y) the amount of its Proven Claim (either (x) or (y), being the applicable "**Convenience Creditor Consideration**").

Except as expressly provided herein, the Proposal Trustee's determination of claims pursuant to this Proposal and the BIA shall only apply for the purposes of this Proposal, and such determination shall be without prejudice to a Creditor's right to submit a revised proof of claim in subsequent proceedings in respect of the Company should this Proposal not be implemented.

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 and Conditional 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 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 or Conditional 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 or Conditional Claim, as the case may be, had been a Proven Claim at the time of such Distribution. Upon the resolution of each Disputed Claim in accordance with the BIA, or upon final resolution of any Conditional Claim, any funds which have been reserved by the Proposal Trustee to deal with such Disputed Claim or such Conditional Claim, as applicable, 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, except with respect to their right to receive a Distribution, if applicable, and in such case, only to the extent of such Distribution;

(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 (other than Conditional Claims with Conditional Claim Conditions not satisfied as at the Effective Time) 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 in connection with this Proposal and the Project, 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, its affiliates, the former directors and officers, and general partner of the Company shall not be released in respect of any (x) Equity Claim as defined in section 2 of the BIA or any analogous claim in respect of a partnership interest or (y) any claim by a former employee of the Company or its affiliates relating to unpaid wages or other employment remuneration.

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 at a Court hearing scheduled for June 23, 2021 at 10:00am.

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 the list of Assumed Contracts provided by the Proposal Sponsor (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 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 30, 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.

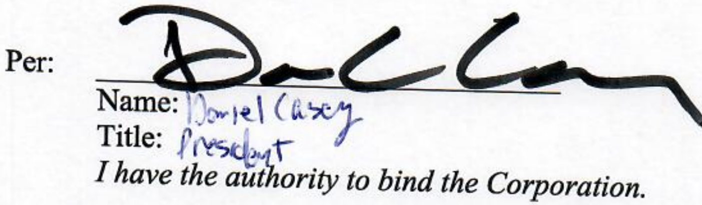
14.03 Governing Law

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*]

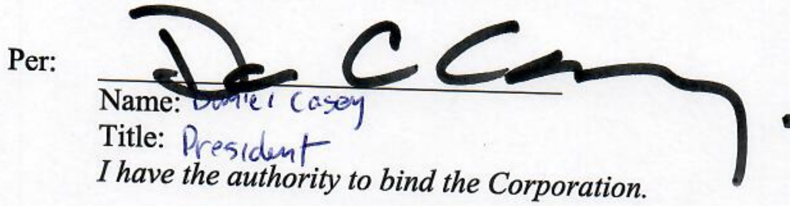
Dated at Toronto, this 15th day of June, 2021.

YSL RESIDENCES INC.

Per:


Name: Daniel Casey
Title: President
I have the authority to bind the Corporation.

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

Per:


Name: Daniel Casey
Title: President
I have the authority to bind the Corporation.

SCHEDULE A

PERMITTED ENCUMBRANCES

Instrument Number		Description
EP138153	-	Canopy Agreement with the City of Toronto
EP146970	-	Encroachment Agreement with the City of Toronto
CT114131	-	Encroachment Agreement with the City of Toronto
CT169812	-	Canopy Agreement with the City of Toronto
CA11215	-	Development Agreement with the City of Toronto
CA231470	-	Encroachment Agreement with the City of Toronto
AT5142530	-	Heritage Easement Agreement with the City of Toronto
AT5154721	-	Heritage By-Law
AT5154722	-	Heritage By-Law
AT5157423	-	Heritage By-Law
AT5157424	-	Heritage By-Law
AT5246455	-	Section 37 Agreement
AT5473163	-	Application to Register a Court Order (Equitable Mortgage)

SCHEDULE B

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 Amended Proposal of YSL pursuant to the *Bankruptcy and Insolvency Act* (Canada) dated June 3, 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) $15,000, 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)

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

Consolidated Court File No. 31-2734090

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

ORDER

(Proposal Sanction)

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

TAB 4

Estate/Court File No.: 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 NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.

SERVICE LIST
(as of June 18, 2021)

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

Consolidated Court File No. 31-2734090

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

MOTION RECORD

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