

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

and

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

Respondents

REPLY RECORD

June 9, 2021

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Lawyers for the Applicants

TO: SERVICE LIST

INDEX

Tab	Description	Page No.
1	Reply Affidavit of Anthony Szeto sworn June 9, 2021	1
2	Exhibit A - Copy of Guarantees dated July 31, 2017	8
3	Exhibit B - Correspondence between S. Thakker and H. Fogul dated March 10, 2021	20
4	Exhibit C - Correspondence between H. Fogul to Counsel dated February 19, 2021	22

TAB 1

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CANADA INC., YG LIMITED PARTNERSHIP, and DANIEL CASEY

Respondents

**REPLY AFFIDAVIT OF ANTHONY SZETO
(Sworn June 9, 2021)**

I, Anthony Szeto, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a director and officer of 2504670 Canada Inc., one of the Applicants and a limited partner of the Partnership and, as such, have knowledge of the matters contained in this affidavit.
2. I have reviewed the Affidavit of David Mann, sworn June 4, 2021 (“**Mann Affidavit**”). I swear this affidavit in response to the Mann Affidavit.
3. In this reply affidavit, any capitalized terms have the same meaning as in my affidavit sworn on April 28, 2021.

4. I do not agree with many of the arguments that Mr. Mann makes in his affidavit, however, I will only respond to the following discrete points below. The fact that I do not expressly respond to every statement should not be taken as my acceptance of those facts.

Meetings with LPs Regarding the Empire Transaction

5. At paragraphs 8-11, Mann describes meetings that the General Partner had with the Other LPs. I was not part of those meetings nor were the other Applicants present at those meetings. We were not informed of the meetings in advance and were not aware of any of the discussions referenced in these paragraphs.

6. At paragraph 13, Mann states that the LPs wished to redeem all of their units. This is untrue; the Applicants never made this statement and, as stated above, we were not part of any meetings with the Respondents in July 2020.

7. During this time, I understand that Daniel Casey attempted to contact me directly notwithstanding knowing that we had retained, and had preferred to be contacted through, counsel. Despite knowing this, on August 30, 2020, Casey contacted me directly and stated that I said that I indicated in the meetings that I wanted my investment returned, which is referenced at paragraph 16 of the Mann Affidavit. This did not happen; as stated above, I was not present in these meetings. I forwarded the email to my counsel, Mr. Shaun Laubman, who responded on my behalf.

8. Mr. Laubman responded to Casey's counsel on the same day correcting a number of factual inaccuracies in Mr. Casey's email. In particular, Mr. Laubman responded to Mr. Casey's

claim that the Empire transaction represents my full entitlement under the LP Agreement by stating the following:

The LP Agreement provides that the unitholders are entitled to receive their investment plus a return of up to 100% of their investment. The offer that has been presented represents far less than that amount. Given the significant shortfall in the offer that has been represented, the refusal to disclose the APS and its economic terms is unacceptable... Without [the APS], our clients have no ability to assess the reasonableness of the offer and whether they are in fact getting their full entitlement.

9. Casey's email and Mr. Laubman's email to Casey's counsel was attached at **Exhibit E** to the Mann Affidavit.

10. The Applicants' minimum entitlement under the LP Agreement is similar to the amount that was personally guaranteed by Daniel Casey. Casey agreed to guarantee an amount equal to our initial contribution, plus an amount equal to the greater of (a) an amount equal to the initial contribution; and (b) a compounded and cumulative preferred annual return of 12.25% calculated from the date of the initial contribution. Attached as **Exhibit "A"** is a copy of the agreements that guaranteed a return of investment plus interest between the Applicants and Casey.

No Request for Funding Was Made

11. At paragraph 35, Mann states that the General Partner "met with the LPs on or around March 19, 2020" in which the General Partner asked for further funding. The Applicants were not invited to this meeting. At no point did the General Partner seek additional funding from the Applicants. We were not even informed of the default of the Timbercreek mortgage.

12. At paragraph 62, Mann takes issue with the fact that the Limited Partners criticized the General Partner without assisting the General Partner with further monetary contributions. As stated above, the Applicants were never asked to contribute additional funds. Regardless, the

General Partner deliberately and repeatedly withheld information from the Applicants; the Applicants were in no position to further invest in a project in which the General Partner was withholding financial information.

357A and 357.5 Yonge Street Sales Were Not Disclosed At the Time

13. The Limited Partners was not aware of any of the facts underlying the sale of 357A and 357.5 Yonge Street at the time. The General Partner failed to disclose the transaction, the reasons underlying it and the steps it was taking *at the time the properties were sold*. It only disclosed the sales when our counsel demanded the information after we discovered that the properties had been sold on our own.

The Applicants Were Not Present During “Disclosure” Meetings

14. At paragraph 48 of the Mann Affidavit, Mr. Mann claims that I sent Paul Lam as my representative to the meeting in March 2020. This is incorrect. Mr. Lam was not, and has never been, my representative with respect to any discussions with the General Partner. As referenced above, the Applicants were not made aware of, and therefore did not attend, the meeting in March 2020.

15. Further, at paragraph 50 of the Mann Affidavit, Mr. Mann referenced meetings with Mr. Eric Li on October 6, 2020 and again on November 11, 2020 and stated that the Applicants “would not meet”. This is incorrect. Again, we were not informed of any meetings with the General Partner on these dates. The General Partner did not invite us, either through our counsel or personally, to either of these meeting.

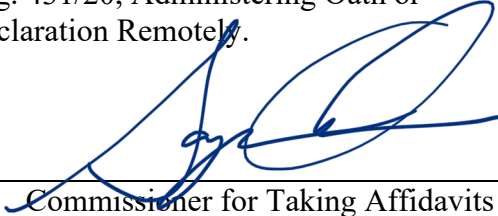
16. Contrary to the assertions made at paragraphs 51-54 of the Mann Affidavit, the General Partner did not provide “general updates” with respect to negotiations with Concord. The Applicants’ counsel, Ms. Sapna Thakker, had to repeatedly make requests for updates as it related to the Concord transaction. Most of Ms. Thakker’s correspondence was attached to my affidavit of April 28, 2021, but another example of the Limited Partners having to proactively ask for updates from the General Partner is attached at **Exhibit “B”**. On March 10, 2021, Ms. Thakker wrote to Mr. Fogul requesting an update with respect to the negotiations with Concord and further requesting that Mr. Fogul send over all drafts or final versions of the documentations relating to the Concord transaction.

“Unsecured Loans”

17. Contrary to Mr. Mann’s statements at paragraph 57-59, Cresford is not owed money as loaned and the Applicants’ dispute that any contribution made by Cresford is an “unsecured loan”.

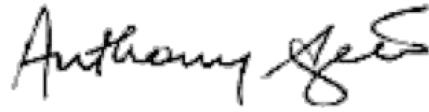
18. In fact, on February 19, 2021, Mr. Harry Fogul, counsel for Cresford, assured the Limited Partners that they would have “the ability to challenge the claim” when the YSL Project is completed. Attached as **Exhibit “C”** is a copy of Mr. Fogul’s email of February 19, 2021.

SWORN by Anthony Szeto of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 9, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

SAPNA THAKKER



ANTHONY SZETO

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

Applicants

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

CV-21-00661386-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

REPLY AFFIDAVIT OF ANTHONY SZETO

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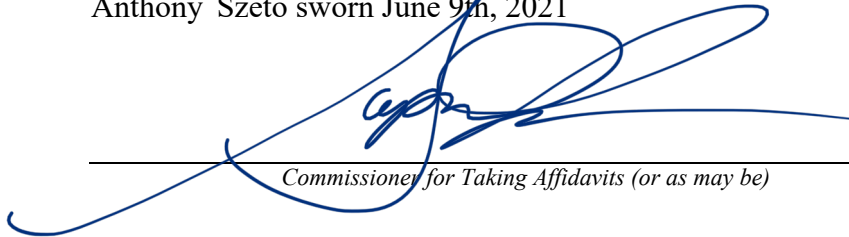
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Tel: 416 642 3132

Lawyers for the Applicants,
2504670 Canada Inc., 8451761 Canada Inc.
and Chi Long Inc.

This is Exhibit "A" referred to in the Reply Affidavit of
Anthony Szeto sworn June 9th, 2021



Commissioner for Taking Affidavits (or as may be)

GUARANTEE

TO: 2504670 ONTARIO INC. (the "Limited Partner")

WHEREAS the Limited Partner has agreed to subscribe for Class A Preferred Units (the "Units") of YG Limited Partnership (the "Partnership") for a subscription price of \$2,000,000.00 (the "Subscription Price") pursuant to a subscription agreement dated as of the 31st day of July, 2017, between the Limited Partner and the Partnership (as it may be amended from time to time, the "Subscription Agreement"), pursuant to which, among other things, the Limited Partner agreed to be bound by the amended and restated limited partnership agreement dated as of the 31st day of July, 2017, respecting the Partnership (as it may be amended from time to time, the "Partnership Agreement");

AND WHEREAS as a condition of the Limited Partner agreeing to subscribe for the Units for the aforesaid subscription price, the Limited Partner requires this Guarantee;

NOW THEREFORE, IN CONSIDERATION of the Limited Partner subscribing for the Units and paying the Subscription Price pursuant to the Subscription Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned (the "Guarantors") hereby irrevocably and unconditionally, as principal debtors and not as sureties, jointly and severally covenant to pay to the Limited Partner an amount equal to the amount of the Subscription Price plus an amount equal to the greater of:

- (a) an amount equal to the Subscription Price; and
- (b) a compounded and cumulative preferred annual return of twelve and twenty-five one-hundredths percent (12.25%) calculated from the date of the payment of the Subscription Price,

(the "Guaranteed Amount") on the earlier of the following dates:

- (i) the date of the sixth anniversary of the payment of the Subscription Price by the Limited Partner to the Partnership (for clarity, the date of payment of the Subscription Price is July 5, 2017); and
- (ii) the date that is 30 days after the date on which the last condominium unit or other portion of the Property (as defined in the Partnership Agreement) is sold and transferred to a bona fide arm's length purchaser, so that there are no remaining units or other portions of the Property remaining owned by the Partnership,

(the "Payment Date") and agree to indemnify the Limited Partner against any and all losses, damages, costs, charges and expenses which the Limited Partner may at any time or from time to time suffer, incur or become liable for by reason of or, in connection with or resulting from or occasioned by any breach by the Partnership or the General Partner (as defined in the Partnership Agreement) of any of the provisions contained in section 6.3 of the Partnership Agreement or by reason of the Limited Partner not receiving the amounts it is entitled to be paid under section 6.3 of the Partnership Agreement by the Payment Date.

1. The Guarantors agree that:

- (a) the Limited Partner may, at any time and from time to time without notice to or any consent or concurrence by the Guarantors, grant time, renewals, extensions, indulgences, releases and discharges to, take additional security from and give up the same in any or all of the security that it is receiving from the Partnership, abstain from taking any enforcement proceedings that it may be entitled to and otherwise deal with the Partnership and others as the Limited Partner may see fit, including entering into any renewal agreements, extension agreements, amending agreements or dealing with the Units in any other manner and may apply all monies at any time received from the Partnership or others upon such part of the obligation of the Partnership as the Limited Partner deems best and change any such application in whole or in part without in any way limiting or lessening the liability of the Guarantors to the Limited Partner;

- (b) the Limited Partner shall not be bound to exhaust its recourse against the Partnership or others before requiring or being entitled to payment from the Guarantors;
- (c) no change or extension of time or other indulgence or release of the Partnership or anyone claiming through the Partnership, either before or after demand or claim against the Guarantors or any arrangement or other dealing by the Limited Partner with the Partnership or any other person, either before or after demand or claim against the Guarantors, or the bankruptcy or insolvency of the Partnership, or the release, exchange, acceptance or failure to perfect by the Limited Partner of any security, either before or after demand or claim against the Guarantors, shall in any way release, waive, vary, affect or prejudice the rights of the Limited Partner against the Guarantors, notwithstanding that the Limited Partner may not give notice thereof to the Guarantors, and the Guarantors hereby waive, to the maximum extent permitted by law, any requirement of notice, demand or prior action against the Partnership or any other security and hereby renounce all benefits of discussion and division;
- (d) the Guarantors shall have no right to be subrogated to the rights of the Limited Partner until all liabilities and obligations of the Partnership, and of the Guarantors under this Guarantee, to the Limited Partner have been satisfied in full;
- (e) the covenants of the Guarantors shall continue for the full term of the Partnership Agreement unless a release in writing has been authorized by the Limited Partner and shall be binding upon the heirs, executors, administrators, successors and permitted assigns of the Guarantors;
- (f) the Guarantors shall make payment to the Limited Partner forthwith after demand for payment is made in writing, which demand may be made only after a default under the Partnership Agreement has occurred in paying any amounts to which the Limited Partner is entitled;
- (g) it is the intention of the parties that if for any reason the Partnership or General Partner has no legal existence and is or becomes under no legal obligation to pay any moneys owing in respect of the Units to the Limited Partner, or if any such amounts become irrecoverable from the Partnership by operation of law or for any reason whatsoever, this covenant and the covenants, agreements and obligations of the Guarantors contained herein shall nevertheless be binding upon the Guarantors as principal debtors until such time as the Guaranteed Amount owing to the Limited Partner has been paid in full;
- (h) this covenant shall be in addition to and not in substitution for any other guarantees or other securities which the Limited Partner may now or hereafter hold in respect of the Units and the Limited Partner shall be under no obligation to marshal in favour of the Guarantors any other covenants or other securities or any moneys or other assets which the Limited Partner may be entitled to receive or may have a claim upon; and no loss of or in respect of or unenforceability of any other covenants or other securities which the Limited Partner may now or hereafter hold in respect of the Units whether occasioned by the fault of the Limited Partner or otherwise shall in any way limit or lessen the Guarantors' liability;
- (i) the Limited Partner shall not be obliged to make any demand upon, or take any proceedings, or action against the Partnership, the General Partner or any other person before pursuing its rights against the Guarantors pursuant hereto. In the event the Limited Partner in its absolute discretion makes demand upon the Guarantors, the Guarantors shall be held and be bound to the Limited Partner directly as principal debtors in respect of the payment of the amounts hereby guaranteed. Demand for payment shall be deemed to have been effectively made upon the Guarantors if and when an envelope containing such demand addressed to the Guarantors at 170 Merton Street, Toronto, Ontario, M4S 1A1 is delivered by courier; and

- (j) this Guarantee will remain in full force and effect until repayment in full of the Guaranteed Amount.
- 2. This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 3. Upon satisfaction in full of the obligations owing to the Limited Partner pursuant to section 6.3 of the Partnership Agreement, the Guarantors shall be released from this Guarantee.
- 4. A telefaxed or electronically transmitted copy of a signed counterpart of this Guarantee may be relied upon to the same extent as the original executed version.

The Guarantors have executed this Guarantee as of the 31st day of July, 2017.


DANIEL C. CASEY

2502295 ONTARIO INC.
Per: 
Daniel C. Casey

GUARANTEE

TO: 8451761 CANADA INC. (the "Limited Partner")

WHEREAS the Limited Partner has agreed to subscribe for Class A Preferred Units (the "Units") of YG Limited Partnership (the "Partnership") for a subscription price of \$2,000,000.00 (the "Subscription Price") pursuant to a subscription agreement dated as of the 31st day of July, 2017, between the Limited Partner and the Partnership (as it may be amended from time to time, the "Subscription Agreement"), pursuant to which, among other things, the Limited Partner agreed to be bound by the amended and restated limited partnership agreement dated as of the 31st day of July, 2017, respecting the Partnership (as it may be amended from time to time, the "Partnership Agreement");

AND WHEREAS as a condition of the Limited Partner agreeing to subscribe for the Units for the aforesaid subscription price, the Limited Partner requires this Guarantee;

NOW THEREFORE, IN CONSIDERATION of the Limited Partner subscribing for the Units and paying the Subscription Price pursuant to the Subscription Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned (the "Guarantors") hereby irrevocably and unconditionally, as principal debtors and not as sureties, jointly and severally covenant to pay to the Limited Partner an amount equal to the amount of the Subscription Price plus an amount equal to the greater of:

- (a) an amount equal to the Subscription Price; and
- (b) a compounded and cumulative preferred annual return of twelve and twenty-five one-hundredths percent (12.25%) calculated from the date of the payment of the Subscription Price,

(the "Guaranteed Amount") on the earlier of the following dates:

- (i) the date of the sixth anniversary of the payment of the Subscription Price by the Limited Partner to the Partnership (for clarity, the date of payment of the Subscription Price is July 5, 2017); and
- (ii) the date that is 30 days after the date on which the last condominium unit or other portion of the Property (as defined in the Partnership Agreement) is sold and transferred to a bona fide arm's length purchaser, so that there are no remaining units or other portions of the Property remaining owned by the Partnership,

(the "Payment Date") and agree to indemnify the Limited Partner against any and all losses, damages, costs, charges and expenses which the Limited Partner may at any time or from time to time suffer, incur or become liable for by reason of or, in connection with or resulting from or occasioned by any breach by the Partnership or the General Partner (as defined in the Partnership Agreement) of any of the provisions contained in section 6.3 of the Partnership Agreement or by reason of the Limited Partner not receiving the amounts it is entitled to be paid under section 6.3 of the Partnership Agreement by the Payment Date.


1. The Guarantors agree that:

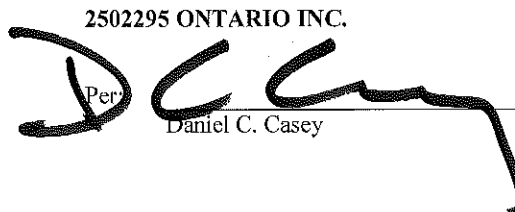
- (a) the Limited Partner may, at any time and from time to time without notice to or any consent or concurrence by the Guarantors, grant time, renewals, extensions, indulgences, releases and discharges to, take additional security from and give up the same in any or all of the security that it is receiving from the Partnership, abstain from taking any enforcement proceedings that it may be entitled to and otherwise deal with the Partnership and others as the Limited Partner may see fit, including entering into any renewal agreements, extension agreements, amending agreements or dealing with the Units in any other manner and may apply all monies at any time received from the Partnership or others upon such part of the obligation of the Partnership as the Limited Partner deems best and change any such application in whole or in part without in any way limiting or lessening the liability of the Guarantors to the Limited Partner;

- (b) the Limited Partner shall not be bound to exhaust its recourse against the Partnership or others before requiring or being entitled to payment from the Guarantors;
- (c) no change or extension of time or other indulgence or release of the Partnership or anyone claiming through the Partnership, either before or after demand or claim against the Guarantors or any arrangement or other dealing by the Limited Partner with the Partnership or any other person, either before or after demand or claim against the Guarantors, or the bankruptcy or insolvency of the Partnership, or the release, exchange, acceptance or failure to perfect by the Limited Partner of any security, either before or after demand or claim against the Guarantors, shall in any way release, waive, vary, affect or prejudice the rights of the Limited Partner against the Guarantors, notwithstanding that the Limited Partner may not give notice thereof to the Guarantors, and the Guarantors hereby waive, to the maximum extent permitted by law, any requirement of notice, demand or prior action against the Partnership or any other security and hereby renounce all benefits of discussion and division;
- (d) the Guarantors shall have no right to be subrogated to the rights of the Limited Partner until all liabilities and obligations of the Partnership, and of the Guarantors under this Guarantee, to the Limited Partner have been satisfied in full;
- (e) the covenants of the Guarantors shall continue for the full term of the Partnership Agreement unless a release in writing has been authorized by the Limited Partner and shall be binding upon the heirs, executors, administrators, successors and permitted assigns of the Guarantors;
- (f) the Guarantors shall make payment to the Limited Partner forthwith after demand for payment is made in writing, which demand may be made only after a default under the Partnership Agreement has occurred in paying any amounts to which the Limited Partner is entitled;
- (g) it is the intention of the parties that if for any reason the Partnership or General Partner has no legal existence and is or becomes under no legal obligation to pay any moneys owing in respect of the Units to the Limited Partner, or if any such amounts become irrecoverable from the Partnership by operation of law or for any reason whatsoever, this covenant and the covenants, agreements and obligations of the Guarantors contained herein shall nevertheless be binding upon the Guarantors as principal debtors until such time as the Guaranteed Amount owing to the Limited Partner has been paid in full;
- (h) this covenant shall be in addition to and not in substitution for any other guarantees or other securities which the Limited Partner may now or hereafter hold in respect of the Units and the Limited Partner shall be under no obligation to marshal in favour of the Guarantors any other covenants or other securities or any moneys or other assets which the Limited Partner may be entitled to receive or may have a claim upon; and no loss of or in respect of or unenforceability of any other covenants or other securities which the Limited Partner may now or hereafter hold in respect of the Units whether occasioned by the fault of the Limited Partner or otherwise shall in any way limit or lessen the Guarantors' liability;
- (i) the Limited Partner shall not be obliged to make any demand upon, or take any proceedings, or action against the Partnership, the General Partner or any other person before pursuing its rights against the Guarantors pursuant hereto. In the event the Limited Partner in its absolute discretion makes demand upon the Guarantors, the Guarantors shall be held and be bound to the Limited Partner directly as principal debtors in respect of the payment of the amounts hereby guaranteed. Demand for payment shall be deemed to have been effectively made upon the Guarantors if and when an envelope containing such demand addressed to the Guarantors at 170 Merton Street, Toronto, Ontario, M4S 1A1 is delivered by courier; and

- (j) this Guarantee will remain in full force and effect until repayment in full of the Guaranteed Amount.
- 2. This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 3. Upon satisfaction in full of the obligations owing to the Limited Partner pursuant to section 6.3 of the Partnership Agreement, the Guarantors shall be released from this Guarantee.
- 4. A telefaxed or electronically transmitted copy of a signed counterpart of this Guarantee may be relied upon to the same extent as the original executed version.

The Guarantors have executed this Guarantee as of the _____ day of _____, 2017.


DANIEL C. CASEY

2502295 ONTARIO INC.

Per Daniel C. Casey

GUARANTEE

TO: CHI LONG INC. (the "Limited Partner")

WHEREAS the Limited Partner has agreed to subscribe for Class A Preferred Units (the "Units") of YG Limited Partnership (the "Partnership") for a subscription price of \$700,000.00 (the "Subscription Price") pursuant to a subscription agreement dated as of the 31st day of July, 2017, between the Limited Partner and the Partnership (as it may be amended from time to time, the "Subscription Agreement"), pursuant to which, among other things, the Limited Partner agreed to be bound by the amended and restated limited partnership agreement dated as of the 31st day of July, 2017, respecting the Partnership (as it may be amended from time to time, the "Partnership Agreement");

AND WHEREAS as a condition of the Limited Partner agreeing to subscribe for the Units for the aforesaid subscription price, the Limited Partner requires this Guarantee;

NOW THEREFORE, IN CONSIDERATION of the Limited Partner subscribing for the Units and paying the Subscription Price pursuant to the Subscription Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned (the "Guarantors") hereby irrevocably and unconditionally, as principal debtors and not as sureties, jointly and severally covenant to pay to the Limited Partner an amount equal to the amount of the Subscription Price plus an amount equal to the greater of:

- (a) an amount equal to the Subscription Price; and
- (b) a compounded and cumulative preferred annual return of twelve and twenty-five one-hundredths percent (12.25%) calculated from the date of the payment of the Subscription Price,

(the "Guaranteed Amount") on the earlier of the following dates:

- (i) the date of the sixth anniversary of the payment of the Subscription Price by the Limited Partner to the Partnership (for clarity, the date of payment of the Subscription Price is July 21, 2017); and
- (ii) the date that is 30 days after the date on which the last condominium unit or other portion of the Property (as defined in the Partnership Agreement) is sold and transferred to a bona fide arm's length purchaser, so that there are no remaining units or other portions of the Property remaining owned by the Partnership,

(the "Payment Date") and agree to indemnify the Limited Partner against any and all losses, damages, costs, charges and expenses which the Limited Partner may at any time or from time to time suffer, incur or become liable for by reason of or, in connection with or resulting from or occasioned by any breach by the Partnership or the General Partner (as defined in the Partnership Agreement) of any of the provisions contained in section 6.3 of the Partnership Agreement or by reason of the Limited Partner not receiving the amounts it is entitled to be paid under section 6.3 of the Partnership Agreement by the Payment Date.

1. The Guarantors agree that:

- (a) the Limited Partner may, at any time and from time to time without notice to or any consent or concurrence by the Guarantors, grant time, renewals, extensions, indulgences, releases and discharges to, take additional security from and give up the same in any or all of the security that it is receiving from the Partnership, abstain from taking any enforcement proceedings that it may be entitled to and otherwise deal with the Partnership and others as the Limited Partner may see fit, including entering into any renewal agreements, extension agreements, amending agreements or dealing with the Units in any other manner and may apply all monies at any time received from the Partnership or others upon such part of the obligation of the Partnership as the Limited Partner deems best and change any such application in whole or in part without in any way limiting or lessening the liability of the Guarantors to the Limited Partner;

- (b) the Limited Partner shall not be bound to exhaust its recourse against the Partnership or others before requiring or being entitled to payment from the Guarantors;
- (c) no change or extension of time or other indulgence or release of the Partnership or anyone claiming through the Partnership, either before or after demand or claim against the Guarantors or any arrangement or other dealing by the Limited Partner with the Partnership or any other person, either before or after demand or claim against the Guarantors, or the bankruptcy or insolvency of the Partnership, or the release, exchange, acceptance or failure to perfect by the Limited Partner of any security, either before or after demand or claim against the Guarantors, shall in any way release, waive, vary, affect or prejudice the rights of the Limited Partner against the Guarantors, notwithstanding that the Limited Partner may not give notice thereof to the Guarantors, and the Guarantors hereby waive, to the maximum extent permitted by law, any requirement of notice, demand or prior action against the Partnership or any other security and hereby renounce all benefits of discussion and division;
- (d) the Guarantors shall have no right to be subrogated to the rights of the Limited Partner until all liabilities and obligations of the Partnership, and of the Guarantors under this Guarantee, to the Limited Partner have been satisfied in full;
- (e) the covenants of the Guarantors shall continue for the full term of the Partnership Agreement unless a release in writing has been authorized by the Limited Partner and shall be binding upon the heirs, executors, administrators, successors and permitted assigns of the Guarantors;
- (f) the Guarantors shall make payment to the Limited Partner forthwith after demand for payment is made in writing, which demand may be made only after a default under the Partnership Agreement has occurred in paying any amounts to which the Limited Partner is entitled;
- (g) it is the intention of the parties that if for any reason the Partnership or General Partner has no legal existence and is or becomes under no legal obligation to pay any moneys owing in respect of the Units to the Limited Partner, or if any such amounts become irrecoverable from the Partnership by operation of law or for any reason whatsoever, this covenant and the covenants, agreements and obligations of the Guarantors contained herein shall nevertheless be binding upon the Guarantors as principal debtors until such time as the Guaranteed Amount owing to the Limited Partner has been paid in full;
- (h) this covenant shall be in addition to and not in substitution for any other guarantees or other securities which the Limited Partner may now or hereafter hold in respect of the Units and the Limited Partner shall be under no obligation to marshal in favour of the Guarantors any other covenants or other securities or any moneys or other assets which the Limited Partner may be entitled to receive or may have a claim upon; and no loss of or in respect of or unenforceability of any other covenants or other securities which the Limited Partner may now or hereafter hold in respect of the Units whether occasioned by the fault of the Limited Partner or otherwise shall in any way limit or lessen the Guarantors' liability;
- (i) the Limited Partner shall not be obliged to make any demand upon, or take any proceedings, or action against the Partnership, the General Partner or any other person before pursuing its rights against the Guarantors pursuant hereto. In the event the Limited Partner in its absolute discretion makes demand upon the Guarantors, the Guarantors shall be held and be bound to the Limited Partner directly as principal debtors in respect of the payment of the amounts hereby guaranteed. Demand for payment shall be deemed to have been effectively made upon the Guarantors if and when an envelope containing such demand addressed to the Guarantors at 170 Merton Street, Toronto, Ontario, M4S 1A1 is delivered by courier; and

- (j) this Guarantee will remain in full force and effect until repayment in full of the Guaranteed Amount.
- 2. This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 3. Upon satisfaction in full of the obligations owing to the Limited Partner pursuant to section 6.3 of the Partnership Agreement, the Guarantors shall be released from this Guarantee.
- 4. A telefaxed or electronically transmitted copy of a signed counterpart of this Guarantee may be relied upon to the same extent as the original executed version.

The Guarantors have executed this Guarantee as of the _____ day of July, 2017.



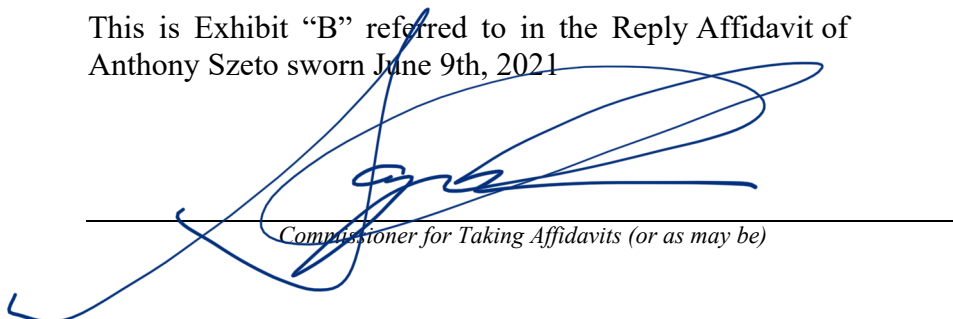
DANIEL C. CASEY

2502295 ONTARIO INC.

Per: 

Daniel C. Casey

This is Exhibit "B" referred to in the Reply Affidavit of
Anthony Szeto sworn June 9th, 2021



Commissioner for Taking Affidavits (or as may be)

From: [Sapna Thakker](#)
To: "Harry Fogul"
Cc: [Matt Gottlieb](#); [Shaun Laubman](#)
Subject: YSL - Update
Date: March-10-21 9:12:01 AM

Harry,

Do you have an update with respect to the Project and the negotiations with Concord? Also, please send over all drafts or final versions of agreements/relevant documentation that relate to the "Concord Transactions".

Thanks,
Sapna

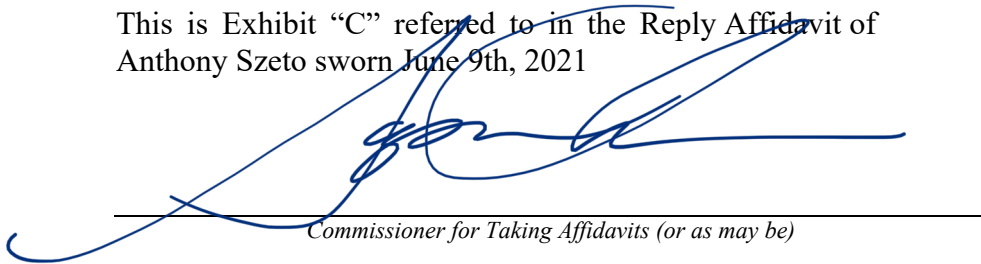
Sapna Thakker
Direct 416 642 3132
Cell 437 213 3408
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Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King St W
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This is Exhibit "C" referred to in the Reply Affidavit of
Anthony Szeto sworn June 9th, 2021



Commissioner for Taking Affidavits (or as may be)

From: [Harry Fogul](#)
To: [Sapna Thakker](#); [Shaun Laubman](#); [Matt Gottlieb](#); [Alexander Soutter](#)
Subject: YSL Project
Date: February-19-21 12:14:08 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

The following are our answers to your e-mail dated February 18, 2020.

1. We will continue to keep you updated on the progress of the YSL Project including providing you with drafts and final copies of agreements. We will also provide you with information that materially affects your clients position as Limited Partners. We do not agree that the Limited Partners can take part in any negotiations or discussions.

2. The Waterfall was created last Fall by Concord partly based on information provided by the General Partner. Cresford's position was and is that it is an unsecured creditor for \$38.1 million ahead of the Limited Partners. You have indicated that you disagree with that position. Ted Dowbiggin has advised Cliff McCracken at Concord of your position with respect to Cresford's unsecured claim. I have also so advised Concord's counsel on several occasions. This fact was not hidden from Concord. Concord is not adjudicating the issue. When Otera advised Concord that it wanted Cresford out of the YSL Project and some ideas were exchanged between Concord and Otera and one of the issues was the Cresford unsecured claim. If Concord took an assignment of that claim it merely said that the claim's position in the waterfall was the same as initially indicated as were all other claims. It is not making a final determination of what may happen. You have the ability to challenge the claim. Whether the claim is worth anything will not be known until the project is completed. There is no bad faith on the part of the General Partner or Cresford.

3. We provided the accounting required by Justice Cavanagh's Order and if you review our e-mail to you dated February 16, 2021 below you will see that we noted that we would provide "additional back-up" (source documents).

4. 2769746 Ontario Inc. ("2769746") is a Concord related entity.

5. (a) 2769746 advanced to Timbercreek \$1,519,100.91 to cover the outstanding realty taxes as of December 31, 2020.

(b) Concord facilitated the \$2.9 million payment by 2769746 through inter-lender arrangements which have resulted in the obligations of the YSL Project

to

Timbercreek during the forbearance period to continue accruing.

(c) All conditions precedent set out in Forbearance Amendment #3 were satisfied on January 29, 2021.

(d) Some payments have been made to Timbercreek for the YSL Project since August 2020. Earlier payments will be set out in the \$38.1 million analysis which you will receive later today. September 1, 2020 (August interest \$604,000) from Cresford to Timbercreek on behalf of the YSL Project. Then Westmount funded the amounts set out in Forbearance Amendment #2 in November 2020 including interest for September and October 2020, the Forbearance Fee, legal fees and other amounts set out in that Agreement. Realty taxes for 2020 were sent by 2769746 to Timbercreek as noted above.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773

E hfogul@airdberlis.com

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From: Sapna Thakker <sthakker@lolg.ca>

Sent: February 18, 2021 1:25 PM

To: Harry Fogul <hfogul@airdberlis.com>

Cc: Shaun Laubman <slaubman@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Alexander Soutter <ASoutter@tgf.ca>

Subject: RE: YSL Project

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Harry,

None of your responses make it clear that you will copy and involve the LPs going forward. We are not looking for an explanation as to why or why not you think that we are entitled to be involved. We just want confirmation to you will keep us involved going forward. Please confirm or I will have to seek instructions.

Further, your request that we identify how the GP has been advantaged in the Forbearance Agreement misses the point. We are concerned that the GP is acting in the best interests of itself, and not in the interest of the GP. The most recent example is the GP negotiating a deal with Concord to have its receivable in the "same place in the waterfall", despite knowing that the LPs do not agree that this amount is ranks in priority to its interest. The fact that the GP has not disclosed to Concord

that the treatment of this amount is contested is bad faith.

Thank you for your position with respect to what Justice Cavanagh's Order meant with respect to "an accounting". We disagree. Please confirm that you will provide our client with source documents.

In addition, please confirm that the numbered company 2769746 Ontario Inc. is a Concord related entity.

Furthermore, we would like you to clarify what payments Concord has made to date into the Project. There are a number of conditions in the Forbearance Agreements that require payment (or confirmation thereof) from Concord, for example, section 3.1(iv) suggests that Concord has paid to the Mortgage Loan Investors roughly \$2.9 million. What does this refer to? Have the rest of the conditions precedent been satisfied? Have there been any payments made from the Project to Timbercreek? Please provide an update. We should not have to chase the GP for these updates especially in light of Justice Cavanagh's Order.

Thanks,

Sapna

Sapna Thakker

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From: Harry Fogul <hfogul@airdberlis.com>

Sent: February-16-21 6:16 PM

To: Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Alexander Soutter <ASoutter@tgf.ca>

Subject: YSL Project

We wish to respond to the second paragraph of e-mail below. We will respond to the first paragraph tomorrow.

The Order of Justice Cavanagh dated January 13, 2021 provides in paragraph 3, “.....the General Partner shall provide an accounting of the monies put into the YSL Project and to disclose their uses.....” In accounting language this means a statement of sources and uses of funds also called a statement of cash flow. You were provided with a Balance Sheet and a Statement of Cash Flow for 2016,2017,2018,2019, and for 6 months ending June 30, 2020 as required by the Order. You are now asking for back -up which was not part of the Order. We will provide additional back-up as soon as it can be assembled. We are currently dealing with information to be provided by February 19, 2021. Speaking of not being responsive we have twice asked for examples in the Forbearance Amendment#3 negotiations where you indicated that Cresford received some advantages and the Limited Partners were disadvantaged. We have not received a response.

Harry Fogul
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From: Sapna Thakker <sthakker@lolg.ca>
Sent: February 16, 2021 9:01 AM
To: Harry Fogul <hfogul@airdberlis.com>
Cc: 'Alexander Soutter' <ASoutter@tgf.ca>; Matt Gottlieb <mgottlieb@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>
Subject: RE: YSL Project

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Harry,

Your email is not responsive. Please confirm that the LPs will be involved in all communications with Cresford, Concord and Timbercreek going forward. We have not heard from you with respect to any updates and we are concerned that your client is not providing timely updates and ongoing

disclosure pursuant to the court Order. Our clients are operating in the dark, which is completely contrary to Justice Cavanagh's Order. Depending on your response to our request, we may have to seek judicial guidance.

The balance sheets do not provide any clarity with respect to movement of money to and from the Project. Please provide the source documents Cresford relied upon when preparing these balance sheets immediately.

Thanks,
Sapna

Sapna Thakker

Direct 416 642 3132
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sthakker@lolg.ca

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From: Harry Fogul <hfogul@airdberlis.com>

Sent: February-05-21 12:25 PM

To: Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>

Cc: 'Alexander Soutter' <ASoutter@tgf.ca>

Subject: YSL Project

The General Partner does not have access to the Finnegan Marshall Report as it was undertaken at the request of Westmount.

The Forbearance Amendment # 3 was negotiated largely between Concord and Timbercreek as the main issues revolved around Concord putting up \$4 million

to deal with the Realty Taxes, the Forbearance Fee, Timbercreek's legal and other fees and ongoing interest on the Timbercreek Loan. Timbercreek was not prepared to loosen the events of default and in fact wanted to strengthen them. The General Partner had no leverage to force its views on Timbercreek. Cresford did not obtain any benefit under the forbearance other than trying to keep the transaction alive to protect the YSL Project as a whole. Please advise what advantages Cresford secured in Forbearance Amendment#3 and what disadvantages were imposed on the Limited Partners,

We believe the General Partner exercised its powers and discharged its duties honestly and in good faith and in the best interests of the Limited Partners in accordance with S.3.5 of the Partnership Agreement. We do not believe that there is a default under S.7.1 (a) unless you are referring to S. 3.5 above which is disputed. There is no dispute regarding S 7.1(c) but the General Partner has been doing its best to avoid a Receivership which would be detrimental to all parties including the Limited Partners.

Yes you can try to proceed under S 11.2 (a) if you can prove, fraud, wilful misconduct or gross negligence.

At this point in time S.11.2(b) (ii) is not applicable as there is no Order against the General Partner.

You refer to a new General Partner. If 9615334 Canada Inc. resigned, who do you have in mind as the new General Partner as Cresford would have a say in selecting the new General Partner as it is also a Limited Partner. I suspect Cresford would require an independent GP with no connections to Cresford or the Limited Partners and one with experience in building a large condominium project. Importantly how would the General Partner be paid.

After preparing the response as set out above to your e-mail below, the issues you raise may be moot. Cresford has been advised by Concord that the financial institution that it was negotiating with to fund the project has advised Concord that it does not like the current structure and would not finance the project under the current structure. We expect to hear from Concord on whether it intends to go forward with the project on some basis or abandon it. If Concord abandons the project, there will be several defaults under Forbearance Amendment #3 and a receivership of the YSL Project will likely be the result.

Harry Fogul
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From: Sapna Thakker <sthakker@lolg.ca>

Sent: February 4, 2021 12:51 PM

To: Harry Fogul <hfogul@airdberlis.com>

Cc: Shaun Laubman <slaubman@lolg.ca>; Matt Gottlieb <mgottlieb@lolg.ca>

Subject: YSL - Cresford

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Harry,

Thank you for providing us with versions of the Forbearance Agreement. We look forward to receiving the remaining disclosure items as ordered by Justice Cavanaugh.

Upon our review of the Forbearance Agreement terms and documents received to date, our clients are very concerned with the way in which the General Partner is negotiating with Cresford and Timbercreek. We are concerned that Cresford is negotiating the agreements in its best interest, rather than negotiating terms in the best interests of the Limited Partners.

These concerns are especially serious given that there have been multiple "Events of Default" under section 7.1 of the Partnership Agreement, including, but not limited to items (a) and (c). The General Partner is in breach of section 3.5(a) by not exercising its powers and discharging its duties honestly, in good faith and in the best interests of the Limited Partners.

In addition, we refer you to section 11.2(b)(ii) of the Partnership Agreement, which states that the General Partner ceases to be the GP if an order for relief against the GP is entered into under the BIA (section 11.2(b)(ii)).

In light of our clients' concerns, we are requesting that we become involved in the negotiations with Concord. This means, among other things, we will be copied in on emails and have a say on the negotiated terms. **If you are not agreeable to such an arrangement, we will be seeking instructions to commence proceedings to replace the General Partner. We would appreciate your confirmation by this Friday.**

Additionally, have you received the Finnegan Marshall report yet? If so, can you please send us a copy?

Thanks,
Sapna

Sapna Thakker

Direct 416 642 3132

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sthakker@lolg.ca

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2504670 CANADA INC. et al.
Applicants

31
-and- CRESFORD CAPITAL CORPORATION et al.
Respondents

Court File No.21-00661386-00CL

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Lawyers for the Applicants