

District of: Ontario
Consolidated Court File No. 31-2734090
Division No. 09 - Toronto

**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.**

REPLY FACTUM OF CBRE LIMITED

September 23, 2022

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1. This factum is in reply to the responding factum served and filed by the LPs on September 20, 2022 (the “**LP Factum**”). Capitalized terms that are not defined in this factum have the meaning ascribed to them in CBRE's initial factum dated September 15, 2022.
2. Without limiting CBRE's many disagreements with other positions taken in the LP Factum, this reply factum addresses:
 - (a) certain factual statements in the LP Factum that are inaccurate or mischaracterize the evidence in the record;
 - (b) the LPs standing to intervene in this appeal;
 - (c) the Trustee's right to settle this appeal; and
 - (d) whether the Proposal was an agreement of purchase and sale such that CBRE is entitled to the Commission.

INACCURATE STATEMENTS / MISCHARACTERIZATIONS

3. At paragraph 58 of the LP Factum, the LPs dispute whether the Debtors support the Claim. The Debtors have publically supported the Claim and their counsel (who is unavailable to attend the hearing due to it falling on Rosh Hashanah) has written to the Proposal Trustee to confirm this position.
4. At paragraph 46 of their factum, the LPs state that Messrs. Dowbiggin and Gallagher “acted in reliance on [the Written Agreement] (not any oral agreement).”¹ This

¹ LP Factum at para 46.

is a mischaracterization of the evidence on cross-examination. Although Messrs. Dowbiggin and Gallagher were each asked if “the parties acted as though [the Written Agreement was] signed?”² and confirmed that they did – they were never asked any question that would distinguish acting consistently with the Written Agreement from acting consistently with the Oral Agreement – there is no basis for saying that they did not act consistently with both.

5. Finally, at paragraph 59 of the LP Factum, the LPs argue that Mr. Dowbiggin failing to “confirm the hearsay evidence of Mr. Gallagher although he could have” is a basis for disregarding the evidence of Mr. Gallagher that the negotiations were ongoing during the holdover period. Rule 39.01(4) of the Rules of Civil Procedure provides that an affidavit on a motion can include hearsay evidence based on information and belief.³ In this case, Mr. Gallagher’s statement is uncontroverted and consistent with Mr. Dowbiggin’s evidence. It is notable that the LPs chose not to ask Messrs. Gallagher or Dowbiggin any questions about this issue on cross-examination, although they could have.

6. The LPs similarly chose not to cross-examine Mr. Dowbiggin on his statement that “negotiations were ongoing from the point of Concord’s introduction until Cresford and Concord agreed that the property would be sold through a proposal”⁴ almost

² Transcript Brief, Tab 1, Examination of Edward Dowbiggin, q.30, p 11, ln 3-6; Tab 2, Examination of Casey Gallagher. 15, p. 8, ln 7-9.

³ RRO 1990, Reg. 194: *Rules of Civil Procedure*, rule 39.01(4).

⁴ Motion Record of CBRE, Tab 3, Affidavit of Edward (Ted) Dowbiggin sworn July 25, 2022 at para 24.

certainly because this clear evidence necessarily means that negotiations continued through the holdover period.

LPS LACK STANDING

7. At paragraphs 15 to 16 of the LP Factum, the LPs admit that they have no right to challenge the Claim under section 135(5) of the *BIA* because the Proposal Trustee has interfered – but appear to take the position that they are entitled to some other free-standing right to participate in the appeal. The LPs have provided no authority for this proposition.

8. Section 135 is a complete scheme for the admission and disallowance of proofs of claim under the BIA.⁵ The parties to the process are the claimant (in this case, CBRE) and the trustee. The LPs can point to no statutory right to intervene and no jurisprudence that supports their position.

9. The Ontario Court of Appeal has confirmed the correct interpretation of this section in *Green v Green*:

[70] Section 135(5) of the BIA provides that where the bankrupt or another creditor challenges a claim and the Trustee refuses to interfere, the “court may expunge or reduce a proof of claim.” Absent a successful challenge, a claim accepted by the Trustee is deemed a provable claim in the amount accepted by the Trustee, and this determination is “final and conclusive”: BIA, ss. 135(1.1), 135(4)...⁶
[Underline added]

⁵ *In the Matter of the Proposal to Creditors of Conforti Holdings Limited*, 2022 ONSC 3264 at paras 42, 45, leave to appeal denied, *Conforti Holdings Limited (Re)*, 2022 ONCA 651.

⁶ *Green v Green*, 2015 ONCA 541 at para 70

10. In other words, a challenge under section 135(5) of the *BIA* is the sole avenue for challenging a proof of claim. This interpretation is consistent with the decision in *Re Drummie* (a case relied on by the LPs), where the court held that:

[21] I am likewise unpersuaded that the court should expand the provisions of subsection 135(5) to insert a requirement that an application to expunge be required of the Trustee when the language of the text states clearly that it refers to the “application of a creditor or of the debtor, if the trustee declines to interfere in the matter”... The implication is clearly that the Trustee is free to act administratively without court authorization, the court’s intervention being triggered only by an application from specified parties.⁷ [Underline in original]

11. The LPs are not one of the “specified parties” and have no standing to seek the Court’s intervention.

PROPOSAL TRUSTEE NOT BOUND TO DISALLOWANCE

12. At paragraphs 17 to 18 of the LP Factum, the LPs assert that the Proposal Trustee was not entitled to settle this Claim because “Section 135(5) [*sic*] of the BIA provides that the disallowance of a claim is ‘final and conclusive’ unless there is an appeal from the disallowance” [underline added]. In this case, however, the Settlement occurred in the context of CBRE’s appeal of the Disallowance.

⁷ [Drummie, Re](#), 2004 NBQB 35 at paras 20-21.

THE PROPOSAL CONSTITUTES AN AGREEMENT OF PURCHASE AND SALE

13. At paragraph 51 of the LP Factum, the LPs argue that the payment did not entitle CBRE to the Commission because it was not a sale by agreement of purchase and sale. No support is given for this bald assertion.

14. The relevant question is what CBRE and YSL intended when they referred to a “binding agreement of purchase and sale.”⁸ In CBRE’s submission (supported by the Debtors and Proposal Trustee), this must mean an agreement by which some consideration is given for the conveyance of the YSL Property.

15. A proposal is a form of contract.⁹ Through the Proposal, Concord has acquired the YSL Property in exchange for a payment and the assumption of liabilities in the aggregate amount of \$168,737,563.00.¹⁰

16. The nature of the Proposal as effecting a purchase and sale is further confirmed by express language at section 6.01(e) where it states:

Para 6.01 Proposal Implementation Date Transactions

Commencing at the Effective Time, the following ...
transactions will occur, or be deemed to have occurred ...:

...

(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

⁸ Motion Record of CBRE, Tab 2, Affidavit of Casey Gallagher sworn July 25, 2022 [**Gallagher Affidavit**] Exhibit J: Written Agreement, s. 4.01.

⁹ [Jones v Ontario \(2003\), 66 OR \(3d\) 674 \(ONCA\)](#) at para 15: “There is no dispute in this case about the binding effect of the proposal. The proposal is, in effect, a contract between the debtor and his creditors.”

¹⁰ Gallagher Affidavit at para 43.

to the Proposal Sponsor in respect of the purchase of the Property and construction of the Project;¹¹

17. The LPs have proposed no alternative construction of the reference to “a binding agreement of purchase and sale” in the Holdover Provision that would exclude the conveyance of YSL for the Purchase Price. Any such proposed construction would be commercially absurd.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of September, 2022.



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¹¹ See Appendix A: Order of Justice Dunphy dated July 16, 2021 at Schedule "A", s.6.01(e).

SCHEDULE “A”
LIST OF AUTHORITIES

Tab	Title	Pinpoints
1	<u><i>In the Matter of the Proposal to Creditors of Conforti Holdings Limited</i>, 2022 ONSC 3264</u>	42, 45
2	<u><i>Conforti Holdings Limited (Re)</i>, 2022 ONCA 651</u>	
3	<u><i>Green v Green</i>, 2015 ONCA 541</u>	70
4	<u><i>Drummie, Re</i>, 2004 NBQB 35</u>	20-21
5	<u><i>Jones v Ontario</i> (2003), 66 OR (3d) 674 (ONCA)</u>	15

SCHEDULE “B”

TESTS OF STATUTES, REGULATIONS & BY-LAWS

R.R.O. 1990, Reg. 194: *RULES OF CIVIL PROCEDURE*

Contents — Motions

(4) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

Appendix A – Order of Justice Dunphy dated July 16, 2021

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

THE HONOURABLE MR.)

FRIDAY, THE 16TH

JUSTICE DUNPHY)

DAY OF JULY, 2021

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

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



ORDER
(Proposal Approval)

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

ON READING the Motion Record of YSL and the Third Report of KSV Restructuring Inc. in its capacity as proposal trustee of YSL (in such capacity, the "**Proposal Trustee**") dated June 18, 2021, the Supplement to the Third Report dated June 22, 2021, and the Fourth Report of the Proposal Trustee dated July 15, 2021, the Affidavits of Anthony Szeto sworn April 28 and June 9, 2021, the Affidavits of Lue (Eric) Li sworn on May 3 and June 9, 2021, the Affidavit of Patrick Smith sworn June 16, 2021, the Affidavit of Cliff McCracken sworn June 22, 2021, the

Responding Motion Record of Maria Athanasoulis dated June 22, 2021, the Affidavit of Josh Foster sworn June 11, 202, the transcript of the cross-examination of David Mann dated June 11, 2021, and such other material as filed in respect of the applications, and on hearing the submissions of counsel for YSL, Concord Properties Developments Corp., the Proposal Trustee, Timbercreek Mortgage Services Inc., Maria Athanasoulis, and 2504670 Canada Inc., 8451761 Canada Inc., Chi Long Inc., YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation and Taihe International Group Inc., and such other counsel as were present at hearings held June 23, 2021, June 28, 2021, July 9, 2021 and July 16, 2021, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Diana McMillen sworn June 21, 2021, filed,

SERVICE

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

DEFINITIONS

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

APPROVAL OF THE PROPOSAL

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

IMPLEMENTATION OF THE PROPOSAL

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

ADDITIONAL PROVISIONS

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and as against all Persons against whom it may otherwise be enforced.
12. **THIS COURT ORDERS** that the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
13. **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 #3

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 an amendment to the First Amended Proposal was filed in accordance with section 50(2) of the BIA on June 15, 2021 (the "**Second Amended Proposal**");

AND WHEREAS, the Second Amended Proposal was approved by the Requisite Majority of creditors at the Creditors' Meeting held June 15, 2021;

AND WHEREAS, pursuant to the Amended Reasons for Interim Decision issued July 2, 2021 (the "**Interim Decision**"), the Second Amended Proposal was not approved by the Court in the form presented and the Company and the Proposal Sponsor were permitted to amend the Second Amended Proposal to address the issues set out in the Interim Decision;

AND WHEREAS the Company and the Proposal Sponsor wish to amend the Second Amended Proposal on the terms and conditions set out herein with the intention of addressing the issues set out in the Interim Decision;

NOW THEREFORE the Company hereby submits the following third 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 Cash Pool**" means a cash pool in the amount of \$30,900,000 to be comprised of (i) all cash on hand in the Company's accounts as at the Proposal Implementation Date; (ii) any and all amounts refunded to or otherwise received by the Company in connection with the transfer of the YSL Project to the Proposal Sponsor as at the Proposal Implementation Date, and (iii) the balance to be provided by the Proposal Sponsor, subject to the refund of any surplus to the Proposal Sponsor in accordance with Section 5.01(a);

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

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

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

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

"**Assumed Contracts**" means, subject to section 8.01(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 Proposal Implementation Date, 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 27, 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 8.01 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);

"**Construction Lien Creditor**" means a creditor with a Construction Lien Claim;

"**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" means, in respect of a Convenience Creditor Claim, the lesser of (a) \$15,000, and (b) the amount of the Proven Claim of such Convenience Creditor;

"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 duly convened meeting of the Affected Creditors which took place on June 15, 2021;

"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 Affected Creditor Cash Pool 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, and includes, without limitation, the Claims of all limited partners of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"Existing Equity" means the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"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 8.01(j);

"Interim Decision" has the meaning ascribed to it in the recitals;

"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;

"Pro Rata Share" means the fraction that is equal to (a) the amount of the Proven Claim of an Affected Creditor that is not a Convenience Creditor, divided by (b) the aggregate amount of all Proven Claims held by Affected Creditors who are not Convenience Creditors;

"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 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 Developments 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 were 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;

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

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

"**Westmount**" means Westmount Guarantee Services Inc.;

"**YSL**" has the meaning ascribed to it in the recitals; and

"**YSL Project**" means the mixed-use commercial and residential condominium development to be constructed on the Property.

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, if 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 Affected Creditor Cash Pool, 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 was only one class of creditors, being the Affected Creditors Class. For the purposes of voting on the Proposal, each Convenience Creditor was 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 unresolved Claims pursuant to Section 5.03:
 - i. all Affected Creditors (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 Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, made by the Proposal Trustee from the Affected Creditor Cash Pool from time to time in accordance with Article V hereof, provided that aggregate Distributions to an Affected Creditor shall not exceed 100% of the value of such Affected Creditor's Proven Claim; 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 5.02, 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

Subject to Section 7.01, all Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred as against the Property on the Proposal Implementation Date in accordance with Section 6.011.1(1)(1)(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 CREDITORS' MEETING AND AMENDMENTS

3.01 Meeting of Affected Creditors

As set out in the Interim Decision, the Requisite Majority approved the Proposal at the Creditors' Meeting.

3.02 Assessment of Claims

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.

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.

3.03 Modification to Proposal

Subject to the provisions of the BIA, after the Creditors' Meeting (and both prior to and subsequent to the issuance of 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 FUNDING AND DISTRIBUTIONS

5.01 Proposal Sponsor to Fund

- (a) On the Proposal Implementation Date, the Proposal Sponsor shall deliver to the Proposal Trustee by way of wire transfer (in accordance with wire transfer instructions provided by the Proposal Trustee at least three (3) business days prior to the Proposal Implementation Date) the amount necessary to establish the Affected Creditor Cash Pool in accordance with the provisions of this Proposal, provided that any surplus amounts over and above the Affected Creditor Cash Pool amount of \$30,900,000 that are returned to the Company in connection with the transfer of the YSL Project to the Proposal Sponsor shall be promptly returned to the Proposal Sponsor, including, without limitation, the cash collateral to be released by TD Bank when the letters of credit held by the City of Toronto and the Toronto Transit Commission are replaced by letters of credit to be provided by the Proposal Sponsor; and
- (b) The Proposal Trustee shall hold the Affected Creditor Cash Pool in a segregated account and shall distribute such cash, net of any reserves established in respect of unresolved Claims, in accordance with Section 5.03 of the Proposal.
- (c) The Proposal Sponsor shall effect payments in respect of the Unaffected Claims to those parties entitled to such payments directly and shall provide the Proposal Trustee with proof of such payments, as applicable.

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 each Affected Creditor with a Proven Claim, in an amount equal to such Affected Creditor's Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, and net of any amounts held in reserve in respect of unresolved Claims, in accordance with Section 5.03.

Thereafter, the Proposal Trustee may make further Distributions to Affected Creditors from time to time from the reserves established pursuant to Section 5.03, as unresolved Claims are resolved in accordance with the terms of Section 3.02.

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 Affected Creditor Cash Pool 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 Affected Creditor Cash Pool 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 V 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

In the event that any residual amount remains in the Affected Creditor Cash Pool following the Proposal Trustee's final Distribution to Affected Creditors as provided herein, such residual funds shall be held by the Proposal Trustee pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court.

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, in accordance with Section 5.01(c) calculated as at the Closing Date;
- (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, unless otherwise agreed between the Secured Creditor and the Proposal Sponsor with the consent of the Proposal Trustee, be discharged from title to the Property;
- (c) the Proposal Sponsor shall provide to the Proposal Trustee the amount necessary to establish the Affected Creditor Cash Pool, in accordance with Section 5.01(a), 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 unresolved Claims pursuant to Section 5.03, 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 as against the Property; 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 foregoing, 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 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 or waiver (in the sole discretion of the Proposal Sponsor) 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 (a) 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, and (b) the Company and/or the Proposal Sponsor shall be at liberty to pay security into Court (by way of a bond or similar instrument) in respect of any Construction Lien Claim;
- (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 the day that is three Business Days following the issuance of the Approval Order, 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 and the Proposal Sponsor shall have delivered a certificate to the Proposal Trustee that all of the conditions precedent to the Implementation of the Proposal have been satisfied or waived (the "**Implementation Certificate**").

Upon the Proposal Trustee's receipt of the Implementation Certificate, the Affected Creditor Cash Pool and the funding required by Section 6.01(d), 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 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 unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge will be paid in cash by the Proposal Sponsor on the Proposal Implementation Date.

ARTICLE XI
INDEMNIFICATION

11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Proposal Sponsor for: (a) 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; and (b) all Administrative Fees and Expenses reasonably incurred but not covered by the payment set out in Section 10.01.

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 having received the Implementation Certificate, and all Distributions to Affected Creditors having been administered in accordance with Article V, 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.

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Dated at Toronto, this 15th day of July, 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

<u>Instrument Number</u>	<u>Description</u>
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)

**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 Approval)**

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

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
Division No. 09 – Toronto

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

REPLY FACTUM OF CBRE LIMITED

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