



**Second Report to Court of
KSV Restructuring Inc.
as Proposal Trustee of
Bad Boy Furniture Warehouse Limited**

November 15, 2023

Contents

Page

1.0	Introduction	1
1.1	Purposes of this Report.....	1
1.2	Currency	2
1.3	Restrictions	2
1.4	Court Materials	3
2.0	Background	3
2.1	Stay Order	3
2.2	Creditors	4
3.0	Consulting Agreement	8
4.0	Proposal Trustee’s Support for the Consulting Agreement	11
5.0	Wage Earner Protection Plan	12
5.1	Cash Flow.....	13
6.0	Company’s Request for an Extension.....	13
7.0	Conclusion and Recommendation	14

Appendices

Appendix	Tab
NOI Certificate	A
List of Store Locations.....	B
November 10 Order	C
Endorsement of Justice Penny dated November 10, 2023	D
Accommodation Agreement (without Schedule A)	E
Proposal Trustee’s First Report to Court (without appendices).....	F
Consulting Agreement.....	G
Cash Flow Forecast and Company’s Report on Cash Flow.....	H
Proposal Trustee’s Report on Cash Flow Forecast	I

Court File No.: BK-23-03008133-0031

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BAD BOY FURNITURE WAREHOUSE LIMITED

OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

SECOND REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
BAD BOY FURNITURE WAREHOUSE LIMITED

November 15, 2023

1.0 Introduction

1. This report (“**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as proposal trustee (the “**Proposal Trustee**”) of Bad Boy Furniture Warehouse Limited (the “**Company**”) in connection with a Notice of Intention to Make a Proposal (the “**NOI**”) filed by the Company on November 9, 2023 (the “**Filing Date**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in **Appendix “A”**.
2. The principal purpose of these proceedings (the “**NOI Proceedings**”) is to create a stabilized environment to allow the Company the opportunity to consider its restructuring options, while it sells its inventory through a liquidation sale to be conducted at its retail locations and to collect its accounts receivable owing from customers in its Builder Business (as defined below).

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) discuss an accommodation agreement (the “**Accommodation Agreement**”) among the Company, the guarantors, and the Company’s senior secured creditor, Laurentian Bank of Canada (“**LBC**”), that sets out the terms pursuant to which LBC has agreed to allow the Company to borrow under its operating line facility (the “**Operating Facility**”) during these NOI Proceedings;

- c) discuss a consulting agreement dated November 15, 2023 (the “**Consulting Agreement**”) between the Company and Infinity Asset Solutions Inc. (“**Infinity**” or the “**Consultant**”), pursuant to which the Consultant is to provide services to the Company in respect of the liquidation sale (the “**Sale**”) of the Company’s inventory and merchandise (the “**Merchandise**”) and furniture, fixtures and equipment (the “**FF&E**”), and the sale guidelines pursuant to which the Sale will be conducted (the “**Sale Guidelines**”);
- d) discuss a declaration (the “**WEPPA Declaration**”) sought by the Company that it meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-22 (“**WEPPR**”), such that its employees, upon termination, would be entitled to receive payments under the *Wage Earner Protection Program Act*, SC 2005, c 47 (“**WEPPA**”);
- e) discuss the Company’s request for an extension of the deadline for the Company to file a proposal (the “**Proposal Period**”) to January 23, 2024;
- f) report on the Company’s weekly cash flow projection for the period from November 10, 2023 to January 26, 2024; and
- g) provide the Proposal Trustee’s rationale for recommending that the Court grant the Order sought by the Company (the “**Liquidation Approval Order**”), approving:
 - i. the Accommodation Agreement;
 - ii. the Consulting Agreement and the Sale Guidelines;
 - iii. the WEPPA Declaration; and
 - iv. an extension of the Proposal Period to January 23, 2024.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon the Company’s unaudited financial information, the Company’s books and records and discussions with the Company’s representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information on which it relied in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Company's financial information presented herein. Future oriented financial information relied upon in this Report is based upon the Company's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

1.4 Court Materials

1. Court materials filed in these NOI Proceedings, including the Proposal Trustee's first report to court dated November 9, 2023 (the "**First Report**") are available on the Proposal Trustee's website at: <https://www.ksvadvisory.com/experience/case/bad-boy> (the "**Case Website**").

2.0 Background

1. The Company was incorporated under the laws of Ontario on July 17, 1990. The Company sells furniture, appliances, and electronics through 12 retail stores across Ontario (the "**Stores**") and via an e-commerce platform. The Company also sells appliances to real estate developers and property managers (the "**Builder Business**"). Historically, retail sales (including e-commerce) have accounted for the majority of the Company's revenue. The retail business and the Builder Business are collectively referred to herein as the "Business".
2. The Company's head office and main warehouse is located at 3550 Sideline 24, Pickering, Ontario (the "**Warehouse**"). The Company's flagship store is located at 1119 Kennedy Road, Scarborough, Ontario. A list of the Company's store locations is provided in **Appendix "B"**.
3. The Company is owned by Lastman Furniture Inc., which is wholly-owned by Blayne Lastman, the Company's President, Chief Executive Officer and sole Director.
4. As of the Filing Date, the Company had approximately 275 employees, including head office, Warehouse, and Store employees. The Company has reduced its headcount by approximately 20 employees since the Filing Date, largely at its head office and Warehouse.
5. The Company's workforce is not unionized. The Company does not offer its employees a pension plan, except for a defined benefit individual pension plan for Mr. Lastman.

2.1 Stay Order

1. On November 10, 2023, the Company brought a motion seeking an order (the "**Stay Order**"), among other things:
 - a) approving Court-ordered charges for (i) the professionals retained in these proceedings; and (ii) the Company's Director and Officers in respect of the Company's post-filing obligations and liabilities for which the Director and Officers could be liable if such obligations and liabilities are not paid by the Company (the "**Court-ordered Charges**"); and

- b) expanding the scope of the stay of proceedings in these proceedings to be consistent with the stay in a CCAA proceeding, in order to minimize disruption to the Company's business during these NOI Proceedings.
2. On November 10, 2023, the Court issued the Stay Order granting the Company its requested relief. Copies of the Stay Order and the endorsement of the Honourable Mr. Justice Penny issued on that date are provided in **Appendix "C"** and **"D"**, respectively.

2.2 Creditors

1. LBC is the principal secured creditor of the Company. Pursuant to a Financing Offer dated December 31, 2019 (as amended, the "**Financing Agreement**"), LBC made available to the Company, as borrower, the Operating Facility and certain other facilities. The Proposal Trustee understands that LBC has security over all of the Company's property, assets and undertaking pursuant to a general security agreement dated December 21, 2012 and certain other security (collectively, the "**Existing LBC Security**"). The Company's obligations under the Financing Agreement are guaranteed by Solid Gold Warranty Ltd. ("**Solid Gold**") and Lastman Furniture Inc. ("**LFI**") (both of which are affiliates of the Company) and by Blayne Lastman and his wife, in each case subject to the terms and limitations of such guarantees.
2. Availability under the Operating Facility is limited to the lesser of \$5 million and an "Admissible Borrowing Base" determined by reference to the Company's accounts receivable and inventory. As of the Filing Date, the Company's indebtedness to LBC was approximately \$3.8 million.
3. On November 8, 2023, LBC issued a notice of default and demand (the "**Demand Notice**") in respect of the obligations under the Financing Agreement and the guarantees, and a notice of intention to enforce security pursuant to section 244(1) of the BIA.
4. As a result of constructive pre-filing discussions among KSV, on behalf of the Company, the Company and LBC, which discussions have continued since the commencement of these proceedings, LBC and the Company have negotiated an Accommodation Agreement, pursuant to which LBC has agreed to continue to make the Operating Line available to the Company during these proceedings. The table below contains a summary of key terms of the Accommodation Agreement. Capitalized terms used and not defined in the table have the meanings given to them in the Accommodation Agreement. A copy of the Accommodation Agreement (without Schedule A) is provided in **Appendix "E"**.

Parties	LBC, as Lender The Company, as Borrower Solid Gold, LFI, Blayne Lastman and Adrienne Dale Lastman, as Guarantors
Accommodation Period	The Accommodation Period terminates on the earliest of (a) February 16, 2024, subject to extension by the Lender in its sole discretion, or (b) the occurrence of an Accommodation Termination Event.
Accommodation Provisions	Subject to the terms and conditions of the Accommodation Agreement, during the Accommodation Period, the Lender will: (a) forbear from exercising any rights or remedies with respect to the Existing Defaults, and (b) continue to make Advances to the Borrower up to the lower of (i) the Maximum Facility Amount (which is \$5 million), and (ii) the Admissible Borrowing Base.
Borrower Covenants	The Accommodation Agreement contains covenants of the Borrower, including that (a) the Borrower will deliver a rolling 13-week Budget on Wednesday of each week during the Accommodation Period, (b) during each week, the Borrower's net cash flows will not vary by a cumulative amount in excess of the greater of (i) negative 10% on a net basis, and (ii) \$100,000, relative to the applicable Budget, (c) the Borrower will deliver to the Lender a Turnaround Plan, in form and substance satisfactory to the Lender, by December 11, 2023, and (d) the outstanding indebtedness under the Financing Agreement will not be compromised or affected in any proposal made by the Borrower.
Accommodation Termination Events	The Accommodation Period terminates if the Lender gives written notice to the Borrower of an Accommodation Termination Event, which include: (a) the outstanding indebtedness under the Financing Agreement exceeds the Admissible Borrowing Base, (b) any Credit Party fails to perform any term, covenant or obligation contained in the Accommodation Agreement or any Loan Document, other than an Existing Default, (c) the NOI Proceeding is terminated for any reason other than the successful implementation of a BIA Proposal, or (d) any order is made in the NOI Proceedings that the Lender determines in its sole discretion is adverse to the Lender, which shall include any order granted without the consent of the Lender to lift the stay of proceedings in respect of the Borrower, to grant any charge in priority to the Existing LBC Security other than the Court-ordered Charges, or permit any person to exercise pre-post set-off.
Fees and Expenses	In consideration for entering into the Accommodation Agreement, the Lender is to be paid a \$40,000 fee, which is to be added to the balance of the Operating Facility. In addition, the Borrower agrees to pay, on demand, the out-of-pocket expenses of the Lender incurred in connection with the Accommodation Agreement and the NOI Proceedings.
Release	The Accommodation Agreement contains a broad release by the Credit Parties in favour of the Lender and the other Creditor Releasees.

5. Osler, Hoskin & Harcourt LLP (“**Osler**”), the Proposal Trustee’s counsel, has reviewed LBC’s security. Based on its review, Osler has provided the Proposal Trustee with a verbal opinion confirming the validity and enforceability of LBC’s security, subject to customary restrictions, assumptions and qualifications. As of the date of this Report, Osler was in the process of drafting its opinion. A copy of the opinion can be made available to the Court upon its request, once finalized.
6. The Accommodation Agreement contemplates that the funding to be provided by LBC under the Operating Facility during the NOI Proceedings will be secured by the Existing LBC Security. Accordingly, while the Company is seeking Court approval of the Accommodation Agreement and an authorization for the Company to borrow pursuant to the Accommodation Agreement and the Financing Agreement, it is not seeking approval of a Court-ordered charge securing such borrowings on a super-priority basis.
7. The Proposal Trustee is of the view that the Court should approve the Accommodation Agreement so that the Company has the liquidity under the Operating Facility that it requires to continue its business operations and to fund the cost of these NOI Proceedings. Without the LBC Facility, the Company would be required to immediately discontinue its business, which would impair recoveries to creditors, eliminate any prospect of a restructuring and result in the immediate termination of employment for the Company’s workforce.
8. Pursuant to a search of the Ontario *Personal Property Security Act* conducted on November 6, 2023, the Proposal Trustee understands that the following parties, in addition to LBC, have registered security interests in certain of the Company’s assets (collectively, the “**Additional Registered Encumbrances**”):
 - a) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which have made five separate registrations secured against five motor vehicles, respectively;
 - b) Panasonic Canada Inc. which has a registration that predates the LBC registration but is limited to inventory bearing the trademarks “Panasonic”, “National” or “Panafax”. The Company has advised the Proposal Trustee that the book value of this inventory as of the date of this Report is less than \$50,000; and
 - c) Konica Minolta Business Solutions (Canada) Ltd., which has a registration against a photocopier.

Pursuant to the Stay Order, the Additional Registered Encumbrances have priority over the Court-ordered Charges.

9. As of November 4, 2023, the Company's unsecured liabilities totaled \$13.8 million (based on a preliminary list of creditors¹) and excluding certain off-balance sheet obligations, including, *inter alia*, amounts owing in respect of potential contract terminations (such as landlord claims) and employee claims. The Company's preliminary accounts payable listing was summarized in the First Report, a copy of which is provided in **Appendix "F"**, without attachments.
10. As described in the First Report, the Company has, in the ordinary course of business, historically taken deposits and payments from customers for future delivery of merchandise. These monies were not held in trust by the Company and the Company did not represent to its customers that they would be. As of the Filing Date, the Company's records reflected that it had received customer deposits totalling approximately \$4.5 million, including, in certain circumstances, deposits representing payment-in-full.
11. In light of the commencement of the NOI Proceedings, the Company has advised customers that it is not in a position to fulfill uncompleted orders or refund customer deposits. The Company has advised customers to contact their own credit card provider to determine if a refund is available from the credit card company. Where possible, the Company, in consultation with the Proposal Trustee, intends to work with customers to complete orders if the cost of the merchandise is less than the balance owing. However, the Company does not have the funds available to repay customer deposits and LBC is not prepared to advance additional funding to the Company for that purpose. The Proposal Trustee notes that, given their quantum, the payment of customer deposits in priority to the secured obligations owing to LBC would materially impact the Company's restructuring and the outcome of these NOI Proceedings.
12. Since the Filing Date, many customers have contacted the Company and the Proposal Trustee to inquire about their deposits. The Proposal Trustee has posted a notice to customers on the Case Website and directed customers who have questions concerning a deposit to send an email to the Company or the Proposal Trustee at customers@noobody.com and badboy@ksvadvisory.com, respectively. The Proposal Trustee has dedicated staff to assist the Company in responding to customers on as timely a basis as possible.
13. As of the date of this Report, the Proposal Trustee is considering the priority of customer claims to certain inventory that the Company had in its possession and that was available to deliver to customers on the Filing Date. The amount of inventory at issue is estimated on a preliminary basis to be approximately \$75,000. The Proposal Trustee will make a recommendation to the Court once this issue has been fully investigated.

¹ Subject to change.

14. The Company is working diligently to stabilize the Business, including engaging with the builders and vendors to supply to the Builder Business. Since the Filing Date, the Company, with the assistance of the Proposal Trustee, has spoken with the majority of the Company's significant vendors and the Builder Business customers. Some progress has been made with certain Builder Business customers, while discussions are ongoing with others.

3.0 Consulting Agreement²

1. In order to maximize value and reduce the cost structure of the Business, it is necessary to proceed immediately with the Sale of Merchandise and FF&E located at the Company's retail Stores and Warehouse. In connection with the proposed Sale, the Company has entered into a Consulting Agreement with the Consultant, subject to Court approval. The Consultant has extensive experience carrying out liquidations in the home furnishing sector, including, among others, Barrymore Furniture and Imperial Carpet & Home Inc. A copy of the Consulting Agreement is provided in **Appendix "G"**.
2. The Sale is to be carried out in accordance with the Sale Guidelines attached to the proposed Liquidation Approval Order. The Sale Guidelines set out, among other things, the manner in which the Sale is to be advertised, Stores are to be vacated, and FF&E is to be sold or disposed at the end of the Sale. The Sale Guidelines also address the operating hours for the Sale and certain of the landlords' rights during the Sale. The Sale Guidelines also provide that the Consultant shall have various protections, including that it will not be deemed a successor employer of the Company's employees. The Sale Guidelines are based on those recently approved in other retail liquidation proceedings, including the Nordstrom Canada, Bed, Bath & Beyond, David's Bridal and Scotch & Soda proceedings. The Sale Guidelines have been developed over time based on agreements among restructuring professionals, liquidators and landlords. The Company and the Proposal Trustee have discussed the Sale Guidelines with counsel to certain of the Company's landlords.

² Unless otherwise defined, capitalized terms in this section have the meaning provided to them in the Consulting Agreement.

3. The table below provides a summary of the Consulting Agreement.

Parties	Company and Infinity Asset Solutions Inc.
Sale Timing and Sale Term	The target commencement date of the Sale is November 17, 2023. The Sale will end for each Store on a date to be mutually agreed upon by the Company and the Consultant in consultation with the Proposal Trustee; provided however, that in no event will the Sale at any particular Store end later than February 15, 2024 (the “ Sale Term ”) other than (a) with the consent of the applicable landlord, or (b) pursuant to further Court order.
Consultant obligations	Consultant shall, among other things: (i) provide supervisors to assist the Company in conducting the Sale; (ii) oversee the liquidation and disposal of the Merchandise and FF&E to assist the Company in maximizing the net proceeds from the Sale; (iii) recommend and implement, with approval of the Company, appropriate advertising to effectively sell the Merchandise and FF&E during the Sale; (iv) recommend and implement the appropriate merchandising, pricing and discounting of the Merchandise; (v) determine the need for and facilitate transfers of Merchandise between Stores, the timing of Merchandise consolidation among Stores and any applicable warehouse or storage facilities; (vi) cooperate with the Company to ensure a smooth wind-down for the Stores; and (vii) provide other related services as set out in the Consulting Agreement.
Transfer of inventory between stores	The Sale Guidelines permit the transfer of Company-owned merchandise between its stores.
Budget	The Consultant is entitled to charge back to the Company all reasonable expenses incurred by the Consultant in connection with the Sale.
Fee Structure	For the provision of its consulting services, the Consultant is entitled to: <ul style="list-style-type: none"> a) a “Base Fee” (net of applicable HST) on the sale of Merchandise equal to (i) 3% on the first \$4 million in gross proceeds from the sale of Merchandise (the “Gross Retail Sales”); (ii) 2% on all Gross Retail Sales over \$4 million and up to \$6 million; and (iii) 1% on all Gross Retail Sales over \$6 million; and b) a “FF&E Fee” on the sale of FF&E equal to 15% of the gross proceeds of sale (net of applicable HST).
Operating expenses	For the account of the Company, including but not limited to all rent, advertising and employee costs.

Title to the Merchandise	Shall remain with the Company during the Sale Term until such time as it is sold to customers.
On-Line Sale Auctions	The Consultant is permitted to conduct a series of virtual On-Line Sale Auctions (but not in-person live auctions). The Consultant is entitled to charge and retain a premium of 18% of the gross proceeds (net of applicable GST/HST) of the Merchandise and FF&E sold at the On-Line Sale Auctions.
Invoicing	Consultant shall invoice the Company bi-weekly with each invoice setting forth: (i) Sale Expenses incurred directly by Consultant; and (ii) the applicable Base Fee and FF&E Fee earned. Within five business days of the submission of such invoice to the Company, such invoices are to be paid in full by the Company.
Sale Reconciliation	No later than twenty (20) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement.
Employees	Consultant shall not be a successor employer in relation to the Company's employees. The Company will remain the employer and will be responsible for any termination and severance costs of its employees. The Consultant may use its own third-party contractors where it deems necessary and shall remain responsible for same and the Company shall not be an employer of such Consultant's contractors.
Indemnification by the Consultant	Consultant shall reimburse, indemnify, defend and hold the Company and the Proposal Trustee and their respective officers, directors, partners, agents, employees and representatives, harmless from and against any damage, loss, expense (including reasonable attorneys' fees) or penalty, or any claim or action therefore, by or on behalf of any person, arising out of the performance or failure of performance of the Consulting Agreement by Consultant, or due to any acts or omissions by the Consultant or its contractors in breach or violation of applicable law.
Insurance	Consultant shall have and maintain all necessary insurance in regard to its services under the Consulting Agreement.

4.0 Proposal Trustee's Support for the Consulting Agreement

1. For the following reasons, the Proposal Trustee supports the retention of the Consultant to assist the Company to complete the Sale and recommends that the Court approve (i) the Company entering into the Consulting Agreement, and (ii) the Sale Guidelines:

Consulting Agreement

- a) Infinity is a well-known liquidator with extensive experience in retail liquidations. It has the expertise to assist the Company in carrying out the Sale. Infinity has recently been providing the Company and the Proposal Trustee with advice concerning the conduct of the Sale and is ready to commence the Sale immediately should the Liquidation Approval Order requested be granted;
- b) Infinity's fee is commission-based. The professional fees associated with running an extensive process calling for proposals from additional liquidators will exceed any benefit given Infinity's commission structure and the projected economics of the Sale. Additionally, the Company is presently generating significant negative cash flow which needs to be curtailed immediately through the timely commencement of the liquidation. Should the Company continue to incur significant operating losses, recoveries for stakeholders will be impaired and the Company's opportunity to restructure will be at risk. The fee is reasonable and consistent with market and other company liquidation sales in which KSV has been involved.
- c) Similarly, the FF&E fee is consistent with market and other company liquidations in which KSV has been involved; and
- d) KSV has retained Infinity on other liquidations. Infinity has experience in other furniture and home décor sales, as noted above. The Proposal Trustee believes that Infinity has the experience and skills to efficiently perform its mandate.

Sale Guidelines

- a) The Sale Guidelines have evolved over time, are based on precedent from other store closing sales, and have been approved in several other proceedings;
- b) The Sale Guidelines are acceptable to the Company and Infinity and are supported by counsel for certain landlords. The lawyers involved from these firms have extensive experience acting for landlords in retail liquidations and have been involved in the evolution of the Sale Guidelines. The Company's counsel, Goodmans LLP, and Osler have consulted with landlord counsel from the outset of these proceedings;

- c) While the outside date of the Sale Term (February 15, 2024) extends beyond the 45-day statutory maximum extension of the Proposal Period sought by the Company (to January 23, 2024), Infinity has advised, and the Proposal Trustee agrees, that conducting the Sale over a period of approximately three months at certain of the Company's Stores is necessary in order to maximize sale proceeds and clear inventory from the Company's Warehouse. It is likely that the Company will seek further extensions of the stay of proceedings to advance the liquidation and to further its restructuring efforts; and
- d) The Sale Guidelines will further the conduct of an efficient, profit maximizing Sale while protecting the rights of each of the affected parties.

5.0 Wage Earner Protection Plan

1. The Company expects to reduce its geographical and operating footprint as part of its restructuring efforts, including closing certain Stores and reducing its workforce. The Company has terminated a small number of employees since the Filing Date and there will be further employee terminations in connection with the closure of retail Stores during and/or upon the completion of the Sale. In the event that there is no going-concern outcome for the Company, it will be necessary for the Company to terminate all of its employees other than those retained to wind-down Business operations.
2. It is the intention that all employees will be paid in full their wages and vacation pay during the NOI Proceedings and upon termination, but if terminated, will not be paid any termination and severance pay on termination. Accordingly, the Company, with the support of the Proposal Trustee, believes that it is appropriate that the Company assist its employees to be able to forthwith file claims under WEPPA for any unpaid termination and severance pay.
3. Section 5(1) of the WEPPA provides that an individual is eligible to receive payment under the WEPPA if, among other things, (i) the individual is owed eligible wages by a former employer; (ii) the former employer is subject to proceedings under Division I of Part III of the BIA; and (iii) a court determines under subsection 5(5) that the criteria prescribed by the regulation are met.
4. Section 5(5) of the WEPPA provides that on application by any person in proceedings under Division I of Part III of the BIA, a court may determine that a former employee meets the criteria prescribed by WEPPA. Section 3.2 of the WEPPR provides that for purposes of section 5(5) of the WEPPA, "a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations".
5. In the Proposal Trustee's view, it is appropriate for the Court to grant this relief as a significant number of individuals employed by the Company will be terminated during or after the completion of the Sale, and all of the employees are assisting with the wind-down of the Business. Granting this relief will enable terminated employees to access their statutory entitlements with respect to unpaid termination and severance pay under WEPPA.

5.1 Cash Flow

1. Pursuant to the BIA, the Company is required to prepare a cash flow forecast for the stay extension period.
2. The Company's Cash Flow Forecast for the period November 10, 2023 to January 26, 2024 (the "**Period**"), together with Management's Report on the Cash-Flow Statement as required by subsection 50.4(2)(c) of the BIA, is provided in **Appendix "H"**.
3. The Cash Flow Forecast was prepared by the Company with the assistance of the Proposal Trustee. The Company's receipts during the Period are comprised of the sale of its inventory, and its projected disbursements are primarily for payroll, benefits, occupancy costs, sundry operating expenses and professional costs.
4. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Company's Cash Flow Forecast as required by subsection 50.4(2)(b) of the BIA is attached as **Appendix "I"**.
5. Subject to approval of the Accommodation Agreement and the continuing ability of the Company to borrow under the Operating Line (subject to the Admissible Borrowing Base), the Cash Flow Forecast indicates that the Company will have sufficient liquidity to operate through the extended Forecast Period.

6.0 Company's Request for an Extension

1. The Company is seeking a 45-day extension of the Proposal Period to January 23, 2024. The Proposal Trustee supports the extension request for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) an extension will enhance the likelihood of the Company being able to make a viable proposal to its creditors; and
 - c) the extension should not materially prejudice the Company's creditors, as the Company is projected to have sufficient funding to satisfy its post-filing obligations in the amounts contemplated by the Cash Flow Forecast (subject to Court approval of the Accommodation Agreement) and an extension of the Proposal Period will enable the Company to take steps (including collecting accounts receivable and conducting the Sale) to maximize estate proceeds for the benefit of creditors.
2. The Proposal Trustee notes that the extended Proposal Period sought by the Company (January 23, 2024) will expire prior to the end date of the Sale (February 15, 2024). This arises because section 50.4(9) of the BIA provides that any individual extension of the Proposal Period cannot exceed 45 days. The Consultant has advised that it believes the Sale should be conducted over a period of approximately three months in order to maximize proceeds. The Proposal Trustee agrees with this view. Accordingly, it will be necessary for the Company to seek and obtain a further extension of the Proposal Period in January 2024 in order for the Sale to be completed without disruption.

7.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court grant the Liquidation Approval Order in the form sought by the Company.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
BAD BOY FURNITURE WAREHOUSE LIMITED
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-3008133
Estate No. 31-3008133

In the Matter of the Notice of Intention to make a proposal of:

Bad Boy Furniture Warehouse Limited

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

November 09, 2023

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: November 09, 2023, 14:52

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Appendix “B”

Bad Boy Warehouse Furniture Limited
List of Store Locations and Landlords

Location	Address	Landlord
Pickering (Head Office/Warehouse)	3550 Sideline 24, Pickering, ON L0H 1J0	SBB Industrial (Seaton) Limited Partnership
Scarborough	1119 Kennedy Road, Scarborough, ON M1P 2K8	N. Turk Investments Limited
Mississauga	1970 Dundas Street East, Mississauga, ON L4X2W7	RioCan Holdings (GTA Marketplace) Inc.
North York	1255 Finch Avenue West, North York, ON, M3J 2G4	Centura Real Estate Corp.
Whitby	1615 Dundas Street East, Whitby, ON L1N 2L1	First Capital Asset Management ULC
Barrie	42 Caplan Avenue, Barrie, ON, L4N 0M5	Barrie-View Farms Limited
London	1040 Wharncliffe Road South, London, ON N6L 1H2	Westwood Power Centre Inc.
Kitchener	1138 Victoria Street North, Kitchener, ON N2B 3C9	Ontario Land Holdings Inc.
Burlington	3305 Fairview St., Burlington, ON L7N 3N9	RioCan Management Inc.
Brampton	499 Main Street South, Brampton, ON L6Y 1N7	RioCan Management Inc.
Ancaster	60 Martindale Crescent, Unit 4, Ancaster, ON L9K 1J9	60 Martindale Crescent (Hamilton) Limited
Kingston	636 Gardiners Rd, Kingston Unit #12, Kingston, ON K7M 3X9	RioCan Management Inc.
Ottawa	1695 Merivale Road, Ottawa, ON K2G 3K2	Claridge Homes Merivale Inc.

Appendix “C”

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

THE HONOURABLE

)

FRIDAY, THE 10TH

JUSTICE PENNY

)

DAY OF NOVEMBER, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BAD BOY FURNITURE WAREHOUSE LIMITED
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by Bad Boy Furniture Warehouse Limited (the “**Company**”) for an order, *inter alia*: (a) extending the stay of proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) by ordering the continuation of services and certain other protections in respect of the Company; (b) approving the Administration Charge (as defined and described below); (c) approving the Director’s Charge (as defined and described below); and (d) granting certain other relief was heard this day virtually via videoconference.

ON READING the Company’s Notices of Motion, the First Report of KSV Restructuring Inc., in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), dated November 9, 2023 (the “**First Report**”), filed, on being advised that the Company filed a notice of intention to make a proposal pursuant to section 50.4(1) of the BIA on November 9, 2023 (the “**NOI Filing Date**”), and on hearing the submissions of respective counsel for the Company, the Proposal Trustee and such other counsel as were present as shown on the Participant Information Form, no one else appearing although duly served:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Company's Notice of Motion and First Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the First Report.

NO INTERFERENCE WITH RIGHTS

3. **THIS COURT ORDERS** that until the expiry of the date by which the Company must file a proposal pursuant to section 50.4(1) of the BIA (including as such date may be extended pursuant to section 50.4(9) of the BIA, the "**Proposal Outside Date**"), no individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence, permit, lease, purchase order or other arrangement, whether written or oral (each, an "**Agreement**"), in favour of or held by the Company, except with the written consent of the Company and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

4. **THIS COURT ORDERS** that until the expiry of the Proposal Outside Date, all Persons having an Agreement with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, merchant and credit card processing services, insurance, transportation services, utility or other services to the Company, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, and that the Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Company in accordance with normal payment practices of the Company or such other practices as

may be agreed upon by the supplier or service provider and the Company and the Proposal Trustee, or as may be ordered by this Court.

5. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that are or may become due from the Company to such Person in respect of obligations relating to the period prior to the NOI Filing Date, against any amounts that are or may become due from such Person to the Company in respect of obligations arising on or after the NOI Filing Date, in each case without the consent of the Company and the Proposal Trustee, or as may be ordered by this Court. For greater certainty and without limiting the generality of the foregoing, no merchant or credit card service provider (a “**Provider**”) shall be entitled to set off any monies that are in its possession or control as of the NOI Filing Date, or that come into its possession and control subsequent to the NOI Filing Date, against any amounts that may be owing to the Provider, or may become owing to the Provider, in respect of transactions prior to the NOI Filing Date, including in respect of any customer chargebacks relating to sales by the Company prior to the NOI Filing Date.

6. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under the lease or as otherwise may be negotiated between the Company and the Landlord from time to time (“**Rent**”) twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments following the date of this Order, any Rent relating to the period commencing from and including the NOI Filing Date shall also be paid.

7. **THIS COURT ORDERS** that no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the NOI Filing Date, nor shall any Person be under any obligation on or after the NOI Filing Date to advance or re-advance any monies or otherwise extend any credit to the Company.

SALE OF NON-MATERIAL ASSETS

8. **THIS COURT ORDERS** that the Company shall have the right to sell, dispose of, transfer or assign redundant or non-material assets not exceeding \$150,000 in any one transaction or \$300,000 in the aggregate, without further order of the Court, to permit the Company to proceed with an orderly restructuring of the Company's business.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the NOI Filing Date, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Administrative Professionals on a bi-weekly basis, or as they may otherwise agree, and is hereby authorized to pay or to have paid retainers to the Administrative Professionals as security for the payment of their respective fees and disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$250,000, as security for payment of their respective professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order, in respect of this proceeding. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

INDEMNIFICATIONS AND CHARGE

11. **THIS COURT ORDERS** that the Company shall indemnify its directors and officers against obligations and liabilities that they may incur as a director or officer of the Company after the NOI Filing Date, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Director’s Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$790,000, as security for the indemnity provided in paragraph 11 of this Order. The Director’s Charge shall have the priority set out in paragraphs 14 and 16 herein.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Director’s Charge; and (b) the Company’s directors and officers shall only be entitled to the benefit of the Director’s Charge to the extent that they do not have coverage under any directors and officers insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 11 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Director’s Charge (collectively, the “**Charges**”), as among them, with respect to the Property shall be as follows:

First – Administration Charge

Second – Director’s Charge

15. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including any statutory, deemed or constructive trust), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, including claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (the “**Ontario PPSA**”) or any other personal, movable or real property registration system, provided that the Charges shall rank subordinate to the Encumbrances evidenced by the

Ontario PPSA registrations listed on Schedule “A” to this Order (collectively, the “**Priority PPSA Registrations**”).

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order subsequently made; (c) the provisions of any federal or provincial statutes; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any Agreement which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Company pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

19. **THIS COURT ORDERS** that any Charge created by this Order over a lease of real property in Canada shall only be an Encumbrance in the Company’s interest in such real property lease.

SERVICE OF DOCUMENTS

20. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the “**Rules of Civil Procedure**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/bad-boy>.

21. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Company’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

22. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Company and the Proposal Trustee and their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, e-mail or facsimile transmission to the Company’s creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown on the records of the Company and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of transmission thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Time; (b) the next business day following the date of forwarding or transmission thereof, if sent by courier, personal delivery, facsimile transmission or electronic

message sent after 5:00 p.m. Eastern; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

GENERAL

23. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, agency or regulatory or administrative bodies, having jurisdiction in Canada, the United States of America or any other jurisdiction, to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, agencies and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order without the need for entry or filing.



A handwritten signature in blue ink, appearing to read "Perry J.", is written above a horizontal line.

SCHEDULE “A”
PRIORITY PPSA REGISTRATIONS

1. Registration No. 20061220 1453 1530 in favour of Panasonic Canada Inc.
2. Registration No. 20200720 1008 1532 3556 in favour of Mercedes-Benz Financial.
3. Registration No. 20210415 1228 1532 4094 in favour of Mercedes-Benz Financial.
4. Registration No. 20220624 1336 4085 3823 in favour of Mercedes-Benz Financial.
5. Registration No. 20220824 1657 1532 3588 in favour of Mercedes-Benz Financial.
6. Registration No. 20220928 1308 5064 5980 in favour of Konica Business Solution (Canada) Ltd.
7. Registration No. 20221229 1538 1532 0001 in favour of Mercedes-Benz Financial.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF BAD BOY
FURNITURE WAREHOUSE LIMITED IN THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO**

Estate / Court File No. 31-3008133

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

ORDER

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

Bradley Wiffen LSO#: 64279L
Tel: 416.597.4208
Email: bwiffen@goodmans.ca

Brennan Caldwell LSO#: 81627N
Tel: 416.849.6986
Email: bcaldwell@goodmans.ca

Lawyers for Bad Boy Furniture Warehouse
Limited

Appendix “D”



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-23-03008133-0031

DATE: November 10, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: BAD BOY FURNITURE WAREHOUSE LIMITED et al

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Wiffen, Bradley	Bad Boy Furniture Warehouse Limited	bwiffen@goodmans.ca
Caldwell, Brennan		bcaldwell@goodmans.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Courtis, Trevor	Laurentian Bank of Canada	tcourtis@mccarthy.ca
Sandler, Tracy	KSV Restructuring Inc., as Proposal Trustee	tsandler@osler.com

For Other:

Name of Person Appearing	Name of Party	Contact Info
Kofman, Ben	Proposal Trustee	bkofman@ksvadvisory.com

ENDORSEMENT OF JUSTICE PENNY:

[1] Bad Boy Furniture Warehouse Limited has filed a Notice of Intention to Make a Proposal under subsection 50.4(1) of the *Bankruptcy and Insolvency Act*. KSV Restructuring Inc. is the proposal trustee.

[2] The Company sells furniture, appliances and electronics through 12 retail stores across Ontario and through an e-commerce platform. The Company also sells appliances to real estate developers and property

managers. It has approximately 275 employees, including head office, warehouse and store employees. The Company's workforce is not unionized. The Company does not offer a pension plan to its employees at large.

[3] The Company's principal secured creditor is Laurentian Bank of Canada (LBC) which provides the Company with an operating line facility that is margined against accounts receivable and inventory. The outstanding obligations under the operating facility are approximately \$3.8 million. LBC made demand and issued enforcement notices under the BIA. As a result, the Company commenced these NOI Proceedings on November 9, 2023 in order to obtain the benefit of a stay of proceedings under the BIA and to provide stability while the Company reviews and advances its restructuring options. LBC is supportive of these efforts and supports the relief sought on this motion.

[4] The Company is significantly in arrears to many of its vendors, including substantially all appliance vendors. The Company is also in arrears to most of its furniture suppliers. The Company is also having significant challenges sourcing inventory, which is affecting its retail business and its builder business. Some developers in have purported to terminate their contracts with the Company. The Company is in financial crisis.

[5] The Company also takes deposits from customers at the time of sale for the future delivery of merchandise. Customer deposits received by the Company are deposited into the Company's bank account and then applied in reduction of the operating facility, i.e., they are not held in trust. The Company's records reflect that it has received customer deposits totaling approximately \$4.5 million. It is the Company's intention to advise its retail customers who paid deposits and have not yet received their order to contact their credit card company to attempt to obtain a refund of their deposits. Where possible, the Company, in consultation with the Proposal Trustee, also intends to work with customers to complete orders if the cost of the merchandise is less than the balance owing, or if other arrangements can be made with the customer.

[6] The Company seeks two orders today. First, it seeks an order expanding the BIA statutory stay of proceedings by ordering the continuation of services and certain other protections to the Company. Second, the Company seeks an order granting two priority charges, an administration charge and a director's charge.

[7] The proposed order would prohibit any person from discontinuing, terminating or ceasing to perform any contract, agreement, lease, license, purchase order or other arrangement, in favour of or held by the Company, provided that no person would be required to extend any credit to the Company or be prohibited from requiring immediate payment for goods or services provided after the NOI filing date.

[8] While this type of relief has typically been granted in the context of CCAA and receivership proceedings, it has also been granted in the context of NOI proceedings: see *Sanderson-Harold Company Limited, c.o.b. as Paris Kitchens* (8 June 2022), Toronto 31-2835198 (ONSC (Bank & Ins Div)) at paras. 3 and 4, *Nilex Inc.* (8 November 2022) Edmonton, 24-2878531 (ABKB) at paras 3 and 4, and *Scotch & Soda Canada Inc.* (16 May 2023), Toronto BK-23-02941767-0031 (ONSC) at paras. 8-12. The granting of such orders is consistent with the Supreme Court of Canada's decision in *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para. 24, which highlighted the importance of harmonization between Canada's primary insolvency statutes, the CCAA and BIA.

[9] The proposed order would also prohibit any person from using alleged "pre-post set off" to withhold post-filing amounts payable to the Company on account of pre-filing obligations owing by the Company. In particular, it would prohibit any merchant or credit card service provider from setting off any monies that are in its possession as of the NOI Filing Date, or that come into its possession and control subsequent to the NOI filing date, against any amounts that are or may become owing by the Company to the Provider in respect of transactions effected prior to the NOI filing date, including customer chargebacks. Such relief is said to be necessary to ensure that merchant card service providers, customers and other parties continue to pay for goods

and services supplied by the Company during the NOI proceedings. This is because payment of accounts receivable is crucial to funding the efforts necessary for any proposal to be made.

[10] This type of relief is consistent with the Supreme Court of Canada's decision in *Montreal (City) v Restructuration Deloitte Inc.*, 2021 SCC 53 at para 20. There, a majority of the Supreme Court determined in the CCAA context, that "a supervising judge has the discretion to authorize pre-post compensation [set off] only in exceptional circumstances, given the high disruptive potential of this form of compensation." In reaching that conclusion, the majority noted that "the status quo period could be rendered pointless if creditors were allowed to effect pre-post compensation without restraint", since the debtor's inability to obtain revenue from the provision of post-filing services would be a major stumbling block in the restructuring process. The proposed order would preserve the right of any person to bring a motion before the Court seeking the right to exercise pre-post set off.

[11] The Proposal Trustee is supportive of this relief and believes that expanding the scope of the stay of proceedings as requested is appropriate. The continued operation of the Company is beneficial to the stakeholders as a whole and will assist the Company to achieve its objectives in these proceedings.

[12] The Company is seeking an administration charge securing the fees and disbursements of counsel to the Company, the Proposal Trustee and counsel to the Proposal Trustee in the maximum amount of \$250,000.

[13] The Company is also seeking a charge against its property in favour of the director and officers of the Company in the maximum amount of \$790,000. There is only one director, who is also an officer, and one other officer. Both are critical to the success of any proposal. There is no D&O insurance. Thus, as well as incentivizing the directors to remain to assist with the proposal proceedings, this charge will also protect the employees and certain other stakeholders. Again, the Proposal Trustee is supportive of the granting, and proposed quantum, of the director's charge (which has been tailored to the amount of potential liabilities during the proposal proceedings).

[14] This is the first order made in these proceedings. Not all stakeholders were given notice. However, the financial crisis facing the Company, and the need for stability if there is to be any prospect of an orderly proposal, require that an order be made on an urgent basis. To the extent other stakeholders have other issues, they can be addressed in future proceedings as necessary.

[15] I am satisfied that the orders sought are within the jurisdiction of this court to grant and that they are appropriate and necessary in the circumstances. Order to issue in the form signed by me this day.

[16] This matter will return to court on November 17, 2023. Thirty minutes has been booked at 12:30 PM on the Commercial List, as that is all that is currently available. However, the start time may change if more time becomes available on the 17th.

A handwritten signature in black ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.

Appendix “E”

ACCOMMODATION AGREEMENT

THIS ACCOMMODATION AGREEMENT (this "Agreement"), dated as of November 15, 2023 (the "Effective Date"), is entered into by and among BAD BOY FURNITURE WAREHOUSE LIMITED, an Ontario corporation (the "Borrower"), SOLID GOLD WARRANTY LTD., an Ontario corporation, LASTMAN FURNITURE INCORPORATED, an Ontario corporation, GARY BLAYNE LASTMAN and ADRIENNE DALE LASTMAN (together with the Borrower, the "Credit Parties") and LAURENTIAN BANK OF CANADA (the "Lender"). Capitalized terms used but not defined herein have the meanings given to them in the Financing Agreement (as defined below).

RECITALS:

- A. The Borrower and the Credit Parties are parties to a Financing Offer dated December 31, 2019, as amended by Amendment No. 1 dated August 13, 2020 and Amendment No. 2 dated May 18, 2022 (as so amended, the "Financing Agreement").
- B. In Guarantees given on December 21, 2012 (the "Guarantees"), Solid Gold Warranty Ltd., Lastman Furniture Incorporated, Gary Blayne Lastman and Adrienne Dale Lastman (the "Guarantors") each guaranteed payment of the Guaranteed Liabilities (as defined in the Guarantees) of the Borrower to the Lender up to the maximum amount, if any, specified in the applicable Guarantee.
- C. As security for the performance of the Borrower's obligations under the Financing Agreement, the Borrower and/or the Guarantors, as applicable, granted to the Lender the Security, including:
 - (a) a security interest over all of the Borrower's personal property of every nature and kind whatsoever and wheresoever situate now or at any time and from time to time owned by the Borrower or in which or in respect of which the Borrower has any interest or rights of any kind together with all proceeds thereof and therefrom, renewals thereof, accessions thereto and substitutions therefor pursuant to a general security agreement between the Borrower and the Lender dated December 12, 2012 (the "GSA");
 - (b) an assignment of life insurance on the life of Gary Blayne Lastman and Adrienne Dale Lastman pursuant to an Insurance Assignment, Warranty and Undertaking from the Borrower to the Lender dated December 21, 2012; and
 - (c) a Postponement of Claim given by each of Solid Gold Warranty Ltd., Lastman Furniture Incorporated and Gary Blayne Lastman dated December 21, 2012 regarding advances made to the Borrower.
- D. Certain Events of Default have occurred and are continuing under the Financing Agreement.
- E. On November 8, 2023, the Lender delivered (i) a demand for repayment of all indebtedness under the Credit Facilities from (a) the Borrower pursuant to the Financing Agreement, and (b) each of the Guarantors pursuant to their respective Guarantees (the "Demand"); and (ii) a Notice of Intention to Enforce Security pursuant to section 244(1)

of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (“BIA”) and Rule 124 of the *Bankruptcy and Insolvency General Rules*, CRC, c. 368 to the Borrower (the “Notice”).

- F. On November 9, 2023, the Borrower filed a Notice of Intention to make a proposal pursuant to section 50.4(1) of the BIA (the “NOI”) with the official receiver and thereby commenced proceedings bearing Court File No. 31-3008133 (the “BIA Proposal Proceedings”);
- G. The NOI appointed KSV Restructuring Inc. as the proposal trustee (in such capacity, the “Proposal Trustee”);
- H. On November 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order (the “NOI Order”) in the BIA Proposal Proceedings granting certain relief including: (i) the Administration Charge (as defined in the NOI Order) in the maximum amount of \$250,000; and (ii) the Director’s Charge (as defined in the NOI Order) in the maximum amount of \$790,000;
- I. The Credit Parties have asked the Lender to:
 - (a) forbear from exercising its rights and remedies in respect of the Events of Default; and
 - (b) further accommodate the Credit Parties by agreeing to continue to make Advances to the Borrower up to the lower of the Maximum Facility Amount (which, for greater certainty, is \$5,000,000.00) and the Admissible Borrowing Base.
- J. The Lender is willing to provide such forbearance and accommodation, subject to and upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

- 1. Definitions. In addition to the capitalized terms defined in the above recitals, when used in this Agreement, the following capitalized terms will have the following meanings:
 - (a) “Accommodation Period” means the period of time commencing on the Effective Date and ending on the Accommodation Termination Date;
 - (b) “Accommodation Termination Date” means the earliest of:
 - (i) February 16, 2024, subject to extension by the Lender, in its sole discretion; or
 - (ii) the occurrence of an Accommodation Termination Event that is declared by the Lender in accordance with section 6 to have terminated the Accommodation Period;
 - (c) “Accommodation Termination Event” is defined in section 6;
 - (d) “BIA Proposal” means a proposal stemming from the BIA Proposal Proceedings;

- (e) “Budget” means a rolling 13-week cash flow, income statement, balance sheet and projected margin position for the Borrower on a consolidated basis, appended hereto as Schedule A, as updated and extended from time to time in accordance with section 5(c);
- (f) “Existing Defaults” means the Events of Default that have occurred prior to the date of this Agreement, including (a) the Defaults (as defined in the Demand), (b) the filing of the NOI and commencement of the BIA Proposal Proceedings, and (c) the issuance of the NOI Order;
- (g) “Obligations” has the meaning given to it in the GSA;
- (h) “Outstanding Indebtedness” is defined in section 2(c); and
- (i) “Turnaround Plan” means a written plan for the restructuring of the debts and business of the Borrower, satisfactory to the Lender in its sole discretion.

2. Acknowledgments of the Credit Parties. Each of the Credit Parties acknowledges and agrees that:

- (a) this Agreement constitutes a Financing Document within the meaning of the Financing Agreement;
- (b) the Existing Defaults have occurred and are continuing. As a result of the Existing Defaults and the delivery of the Demand and Notice, the Lender is in a position to exercise all its rights and remedies pursuant to the Financing Agreement, the other Financing Documents and otherwise, subject only to the terms of this Agreement and the stay of proceedings in the BIA Proposal Proceedings;
- (c) as of November 14, 2023, the Borrower was indebted to the Lender under the Financing Agreement in the amount of CAD \$3,285,809.69 plus interest, fees and other amounts that continue to accrue or become payable or become otherwise chargeable or reimbursable in accordance with the terms and conditions of the Financing Agreement (collectively, the “**Outstanding Indebtedness**”);
- (d) the Outstanding Indebtedness is valid and each of the Credit Parties is liable for the Outstanding Indebtedness and has no rights of offset, defenses, claims or counterclaims with respect to any of the obligations under the Financing Documents;
- (e) As the Lender previously advised in an e-mail dated October 20, 2023 and in the Demand, the financing rates on Advances under Facility A – LOC were increased effective as of October 20, 2023 to:
 - (i) Prime Rate Advance: Prime Rate + 2.00% Applicable Margin; and
 - (ii) US Base Rate Advance: US Base Rate + 2.00% Applicable Margin;
- (f) after the expiry or termination of the Accommodation Period (subject to any extensions as set out herein), the Lender is not required to grant any further

extension of time or credit or other form of accommodation or indulgence beyond that contemplated in this Agreement;

- (g) but for this Agreement, the Lender has no commitment or other obligation to extend further credit to the Borrower; and
- (h) time continues to be of the essence in performance of the obligations set out in the Financing Documents.

3. To be Read with Financing Agreement. This Agreement is an amendment to the Financing Agreement. Unless the context of this Agreement otherwise requires, the Financing Agreement and this Agreement shall be read together and shall have effect as if the provisions of the Financing Agreement and this Agreement were contained in one agreement.

4. Accommodation. Subject to the terms and conditions of this Agreement,

- (a) the Lender hereby agrees to forbear during the Accommodation Period from exercising any and all rights and remedies, and taking any and all actions permitted to be taken by it under the Financing Agreement and the other Financing Documents, with respect to the Existing Defaults. Such forbearance will automatically, and without action, notice, demand or any other step, expire on and as of the Accommodation Termination Date. The foregoing will not constitute a forbearance of any other rights or remedies under the Financing Documents in respect of any breaches, violations and defaults (other than the Existing Defaults) under any of the Financing Documents and, on and after the end of the Accommodation Period, the Lender will be entitled to exercise all rights and remedies with respect to the Existing Defaults as if such forbearance had never been granted; and
- (b) the Borrower may make requests for Advances and the Lender will continue to make Advances to the Borrower up to the lower of the Maximum Facility Amount and the Admissible Borrowing Base during the Accommodation Period, subject to the terms and conditions of the Financing Agreement and the other Financing Documents.

5. Covenants of the Credit Parties. Without limitation to the covenants and other obligations of the Credit Parties under the other Financing Documents, each of the Credit Parties agrees:

- (a) notwithstanding the forbearance in respect of the Existing Defaults pursuant to section 4, any and all actions which are permitted under the Financing Agreement in the absence of an Event of Default are no longer permitted, with the exception that the Borrower may make requests for Advances and the Lender will continue to make Advances during the Accommodation Period subject to the terms of this Agreement (for the avoidance of doubt, where the Budget indicates that funding of working capital will be required by the Borrower beyond the Admissible Borrowing Base, this Agreement does not provide for funding of working capital beyond the Admissible Borrowing Base and any additional funds that may be required by the Credit Parties shall be the sole responsibility of the Credit Parties);

- (b) in no event will the Lender's honouring of any requests or making of any Advances or forbearance in respect of the Existing Defaults be deemed to be a waiver of any other noncompliance with the terms of the Financing Agreement or any of the other Financing Documents that has occurred or hereafter may occur;
- (c) that, during the Accommodation Period, the Admissible Borrowing Base will be calculated on a weekly basis by Wednesday of each week;
- (d) that, for greater certainty, the definition of "Prior Creditors Rights" in the Financing Agreement includes, without limitation, the lesser of (i) accrued vacation pay which is estimated at approximately \$440,000.00 as of the date of this Agreement, and (ii) amounts owing for wages up to \$2,000 per worker;
- (e) to deliver to the Lender, on Wednesday of each week during the Accommodation Period:
 - (i) an updated Budget covering the then-current week and the next 12 weeks, together with a reconciliation (and an explanation of any material variance) reconciling (i) the Borrower's actual cash flow on a consolidated basis for the period ended not earlier than the Friday of the prior week compared to (ii) forecasted cash flow of the Borrower on a consolidated basis as set forth in the most recently delivered Budget for such period, such updated Budget to be in form and content satisfactory to the Lender; and
 - (ii) a calculation of the Admissible Borrowing Base by the Proposal Trustee as of that date;
 - (iii) account statements for TD Bank account # 01025-5253528 for the prior week.
- (f) that, during each week of the Accommodation Period, the Borrower's cash flows shall not vary by a cumulative negative amount in excess of the greater of (i) 10% on a net basis, and (ii) \$100,000, with such calculations based on the most recently updated Budget, delivered in accordance with section 5(c), as compared to the initially delivered Budget;
- (g) to deliver, at the reasonable request of the Lender, any additional evidence or documentation requested by the Lender;
- (h) to obtain an order of the Court approving this Agreement by November 17, 2023;
- (i) to obtain an order of the Court authorizing the Borrower to undertake a liquidation sale in respect of its inventory, merchandise and furniture, fixtures and equipment, in form and content satisfactory to the Lender, by November 17, 2023;
- (j) to deliver to the Lender, by December 11, 2023, the Turnaround Plan, in form and substance satisfactory to the Lender in its sole discretion;

- (k) that the Outstanding Indebtedness shall not be compromised or otherwise subject to or affected by any proposal or plan of arrangement made or advanced by the Borrower;
- (l) that in and in respect of the BIA Proposal Proceedings and any other insolvency proceedings of the Borrower:
 - (i) the Borrower will provide advance notice to the Lender before filing any application, motion, proposal, plan or other court process and will provide the Lender and their counsel with draft court materials and any draft proposal in respect of such application, motion, proposal, plan or other court process proposed by the Borrower, prior to serving and filing such materials and shall use reasonable efforts to provide to the Lender or its counsel not less than two days prior to serving and filing such materials;
 - (ii) the Borrower will pay when due all amounts owing from time to time to the Lender;
 - (iii) if an Accommodation Termination Event occurs, the Lender will have the immediate right (I) to cease making further Advances or other financial accommodations without notice or observance of any other formality and (II) terminate the Accommodation Period;
 - (iv) the Borrower will promptly notify the Lender if any party claims a right to payments in priority to the Security;
 - (v) the Credit Parties shall authorize and direct the Proposal Trustee to provide financial and other information to the Lender upon request, and to notify the Lender if the Proposal Trustee has actual knowledge of the occurrence of an Accommodation Termination Event;
- (m) in order to induce the Lender to enter into this Agreement, the Lender is to be paid a \$40,000 fee (the "Fee"), which is to be added to the balance under Facility A – LOC;
- (n) to pay, on demand, the out-of-pocket expenses of the Lender from time to time (including its legal fees and disbursements and any fees and disbursements of any financial advisor that may be retained by the Lender) in connection with this Agreement and the BIA Proposal Proceedings, provided that any such payment shall not factor in the cash flow variance calculation contemplated in section 5(f); and
- (o) to observe and perform all of its obligations under the Financing Documents, as amended hereby.

6. Accommodation Termination Events. In addition to any other rights and remedies of the Lender pursuant to this Agreement and the other Financing Documents, the Lender in its sole discretion may, by written notice to the Borrower, declare the Accommodation Period to have terminated, such termination to be effective as of the time specified in such notice (which may be immediate), if any one or more of the following events has occurred (each, a "Accommodation Termination Event"):

- (a) any of the Credit Parties defaults in the payment of any amount due and payable to the Lender pursuant to this Agreement or any other Loan Document;
- (b) any of the representations or warranties made or deemed to have been made by a Credit Party in this Agreement or any other Loan Document prove to be incorrect as of the date given;
- (c) the Outstanding Indebtedness exceeds the Admissible Borrowing Base;
- (d) any Credit Party after the date hereof fails or neglects to observe or perform any term, covenant, condition or obligation contained or referred to in this Agreement, any other Loan Document or any future agreement between the Lender and such Credit Party, other than an Existing Default;
- (e) a "default", "Default" or an "Event of Default" (other than the Existing Defaults) occurs under this Agreement, the Financing Agreement or any other Financing Document;
- (f) the affected creditors, as a class, do not vote in favour of any BIA Proposal by the requisite majorities or the BIA Proposal Proceedings are terminated for any reason other than the successful implementation of a BIA Proposal;
- (g) any order is made in the BIA Proposal Proceedings without the consent of the Lender that the Lender determines in its sole discretion is adverse to the Lender, whether on application by the Borrower, a creditor or any other person, which shall include:
 - (i) any order granted to lift the stay of proceedings in respect of the Borrower;
 - (ii) any order amending the maximum amount of, and/or priority of, the Administration Charge or the Director's Charge;
 - (iii) with the exception of the Administration Charge and the Director's Charge, any order granting any security or charge in priority to the Security;
 - (iv) any order permitting any person to exercise pre-post set-off; and
 - (v) any order amending or varying the NOI Order.
- (h) any Credit Party is not in compliance with any order made in the BIA Proposal Proceedings; or
- (i) any insolvency proceeding is commenced in respect of a Credit Party other than the BIA Proposal Proceeding.

7. Representations and Warranties. In order to induce the Lender to enter into this Agreement and to agree to forbear and otherwise accommodate the Credit Parties in the manner provided herein, each Credit Party represents and warrants to the Lender that the following statements are true and correct in all material respects:

- (a) this Agreement has been duly executed and delivered by such Credit Party and constitutes a legal, valid and binding obligation of such Credit Party enforceable against it in accordance with its terms;
 - (b) except for the Existing Defaults, to the best of the Credit Parties' knowledge, no event has occurred and is continuing (after giving effect hereto) or will result from the consummation of this Agreement that would constitute an Event of Default;
 - (c) as of the date hereof, there are no arrears for any statutory remittances, withholding taxes or other amounts that, if unpaid, would have the benefit of a security interest or deemed trust in priority to the Security, including goods and services tax under the *Excise Tax Act* (Canada) and any source deduction remittances to Canada Revenue Agency, except those accruing in the normal course and not yet due;
 - (d) as of the date hereof, all employee wages and other amounts owing to employees are up-to-date, and there are no amounts owing in respect of wages, salary, termination pay, severance pay, vacation pay, pension benefit contributions or other benefits except (I) those accruing in the normal course and not yet due in accordance with the established practices and arrangements of the Credit Parties, and (II) accrued vacation pay not exceeding \$440,000.00 as of the date of this Agreement; and
 - (e) the Budget represents, and when updated and extended from time to time will represent at the time it is delivered to the Lender, its best estimate of the likely consolidated results of operations of the Borrower during the periods set forth in such Budget and what is, to the best of its knowledge, achievable as provided therein. This representation and warranty will be deemed repeated each time the Borrower delivers an updated weekly 13-week cash flow and availability forecast pursuant to section 5(c).
8. Liability and Continuing Security. Each Credit Party hereby agrees that, solely to the extent required of its respective obligations under the Financing Documents, as applicable: (i) it promises to pay when due, all of the Obligations, and (ii) the Security to which it is a party secure all Obligations, including all Obligations arising before, during or after the Accommodation Period or in connection with this Agreement. Each Credit Party hereby ratifies and confirms the validity and enforceability of, and its respective obligations under, each of the Financing Documents to which it is a party.
9. No Other Amendment or Waiver. This Agreement will not constitute an amendment or waiver of any provision of the Financing Agreement not expressly referred to herein. No failure to exercise and no delay in exercising, on the part of the Lender, any right, remedy, power or privilege under the Financing Agreement or under the other Financing Documents will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege under the Financing Agreement or under the other Financing Documents preclude any other or further exercise of any other right, remedy, power or privilege. Except as expressly modified hereby, all the terms, provisions and conditions of the Financing Agreement are and will remain unchanged and will continue in full force and effect. If there is any conflict between the express provisions of this Agreement and any of the other Financing Documents, this Agreement governs.

10. Release. Each Credit Party unconditionally and irrevocably acquits and fully and forever releases and discharges the Lender and its respective affiliates, partners, subsidiaries, officers, employees, agents, attorneys, principals, directors, trustees and advisors and shareholders, and their respective heirs, legal representatives, successors and assigns (collectively, the "Creditor Releasees") from any and all claims, demands, causes of action, obligations, remedies, suits, damages and liabilities of any nature whatsoever, whether now known, suspected or claimed, whether arising under common law, in equity or under statute, which such Credit Party ever had or now has against any of the Creditor Releasees and which may have arisen at any time prior to the date hereof and which were in any manner related to this Agreement, any of the other Financing Documents or related documents, instruments or agreements or the enforcement or attempted or threatened enforcement by any of the Creditor Releasees of any of their respective rights, remedies or recourse related thereto (collectively, the "Creditor Released Claims"). Each Credit Party covenants and agrees that it will not, and will cause the other Credit Parties not to, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against any of the Creditor Releasees any action or other proceeding based upon any of the Creditor Released Claims. Notwithstanding the foregoing, in no event will the foregoing be interpreted, construed or otherwise deemed as an admission or suggestion by the Lender of any wrong doing or liability owed to any Credit Party or any other Person.
11. Entire Agreement. This Agreement contains and constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements and understandings, whether written or oral, of the parties hereto.
12. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect.
13. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the Court.
14. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and will not constitute a part of this Agreement for any other purpose or be given any substantive effect.
15. Counterparts. This Agreement may be executed by facsimile, portable document format (".pdf") or other electronic means of transmission and simultaneously in one or more counterparts and by different parties hereto in separate counterparts, each of which when executed will be deemed an original, but all of which taken together will constitute one and the same instrument.
16. Successors and Assigns. This Agreement will be binding upon and inures to the benefit of and is enforceable by the respective successors and permitted assigns of the parties hereto.
17. References to the Financing Agreement and Interpretation. On and after the Effective Date of this Agreement, each reference in the Financing Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Financing Agreement, and each reference in the other Financing Documents to the "Financing

Agreement”, “thereunder”, “thereof” or words of like import referring to the Financing Agreement will mean and be a reference to the Financing Agreement as amended by this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Agreement. In this Agreement words importing the singular number only include the plural and *vice versa*, and words importing any gender include all genders. In this Agreement, the term “including” means “including without limiting the generality of the foregoing”.

[Remainder of page intentionally left blank; signature pages follow on next page]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

**BAD BOY FURNITURE WAREHOUSE
LIMITED, as Borrower**

By:  _____

Name:

Title:

LAURENTIAN BANK OF CANADA, as
Lender

By:  _____

Name: Michael Tsang

Title: Senior Manager, Special Loans

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned:

- (a) hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents and agrees to the provisions of this Agreement; and
- (b) ratifies and confirms, as applicable (i) its respective obligations under each of the Financing Documents to which it is a party, which obligations will continue in full force and effect, (ii) that each Guarantee continues to guarantee the Guaranteed Liabilities (as such term is defined in such Guarantee) to the extent set out in such Guarantee.

Dated as of November ____, 2023

SOLID GOLD WARRANTY LTD.

By: 

Name:

Title:

LASTMAN FURNITURE INCORPORATED

By: 

Name:

Title:

Shirley
Witness

)
)
) *[Signature]*
) **GARY BLAYNE LASTMAN**

)
) Samantha Lastman
) Print Name

Shirley
Witness

)
) *Adrienne Lastman*
) **ADRIENNE DALE LASTMAN**

)
) Samantha Lastman
) Print Name

Appendix “F”



**First Report to Court of
KSV Restructuring Inc.
as Proposal Trustee of
Bad Boy Warehouse Furniture Limited**

November 9, 2023

Contents

Page

1.0	Introduction	1
1.1	Purposes of this Report.....	1
1.2	Currency	2
1.3	Restrictions	2
1.4	Court Materials	2
1.5	KSV's Prior Mandate.....	3
2.0	Background	3
2.1	Financial Position.....	4
2.2	Creditors	4
3.0	Stay of Proceedings	6
4.0	Court-Ordered Charges	7
4.1	Administration Charge	7
4.2	Director's Charge	8
4.3	Priority of Court Ordered Charges.....	8
5.0	Next Steps.....	9
6.0	Conclusion and Recommendation	9

Appendices

Appendix	Tab
Certificates of Filing.....	A
List of Store Locations and Landlords	B



Court File No.: _____

ONTARIO**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)****IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BAD BOY FURNITURE WAREHOUSE LIMITED****OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO****FIRST REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
BAD BOY FURNITURE WAREHOUSE LIMITED****November 9, 2023****1.0 Introduction**

1. This report (“Report”) is filed by KSV Restructuring Inc. (“KSV”), in its capacity as proposal trustee (the “Proposal Trustee”) of Bad Boy Furniture Warehouse Limited (the “Company”) in connection with a Notice of Intention to Make a Proposal (the “NOI”) filed on November 9 2023 (the “Filing Date”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”). A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in Appendix “A”.
2. The principal purpose of these proceedings (the “NOI Proceedings”) is to create a stabilized environment to allow the Company the opportunity to consider its restructuring options, while it sells its inventory in a contemplated liquidation sale and collects its accounts receivable owing from customers in its Builder Business (as defined below). The Company intends to seek approval of the sale terms and a consulting agreement with a liquidator at a future motion in the NOI Proceedings, which the Company and the Proposal Trustee expect to be served in the near term.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) discuss the rationale for the Company’s request for an order expanding the scope of the stay of proceedings in these proceedings as it relates to the terms of supply and service to the Company on a basis consistent with the provisions of the model Initial Order in a proceeding under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”);

- c) discuss the rationale for the Company seeking approval of the following Court-ordered charges and priority of those charges:
 - i. a charge in the amount of \$250,000 (the “Administration Charge”) for the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, Osler, Hoskin & Harcourt LLP (“Osler”), and the Company’s counsel, Goodmans LLP (“Goodmans”, and together with the Proposal Trustee and Osler, the “Administrative Professionals”); and
 - ii. a charge in the amount of \$790,000 (the “D&O Charge”) for the indemnification of the Company’s director and officers against obligations and liabilities that they may incur after the commencement of these proceedings; and
- d) recommend that the Court grant the relief sought by the Company in the proposed Order, and the reasons therefore.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon the Company’s unaudited financial information, the Company’s books and records and discussions with the Company’s representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information on which it relied in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Company’s financial information presented herein. Future oriented financial information relied upon in this Report is based upon the Company’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

1.4 Court Materials

1. Court materials filed in these proceedings will be made available on the Proposal Trustee’s website at: <https://www.ksvadvisory.com/experience/case/bad-boy>.

1.5 KSV's Prior Mandate

1. KSV Advisory Inc. ("KSV Advisory"), an affiliate of KSV, was first engaged by the Company to provide non-restructuring advisory services pursuant to an engagement letter in March 2021 (the "Engagement Letter"). The initial engagement lasted a few months and KSV Advisory had no further material role with the Company until March 2023. KSV Advisory was re-engaged by the Company to provide it with consulting services pursuant to an engagement letter dated March 21, 2023 (the "March 21 Engagement Letter"). That mandate also lasted a couple of months. Thereafter, KSV Advisory provided periodic consulting services to the Company, with the services being more intensive recently. The March 21 Engagement Letter states that KSV Advisory's mandate would terminate if the Company commences an insolvency proceeding and KSV is appointed as the court officer in that proceeding, as at such point KSV's duties and obligations are as an officer of the court.

2.0 Background

1. The Company was incorporated under the laws of Ontario on July 17, 1990. The Company sells furniture, appliances, and electronics through 12 retail stores across Ontario and through an e-commerce platform. The Company also sells appliances to real estate developers and property managers (the "Builder Business"). Presently, retail sales (including an e-commerce component) account for approximately 65% to 70% of the business, and the Builder Business accounts for the balance.
2. The Company's head office and main warehouse is located at 3550 Sideline 24, Pickering, Ontario. The Company's flagship store is located at 1119 Kennedy Road, Scarborough, Ontario. A list of the Company's store locations, with addresses and landlord names, is provided in Appendix "B".
3. The Company is owned by Lastman Furniture Inc., which is wholly-owned by Blayne Lastman, the Company's President, Chief Executive Officer and sole Director.
4. The Company presently has approximately 275 employees, including head office, warehouse and store employees.
5. The Company's workforce is not unionized. The Company does not offer its employees a pension plan, except for a defined benefit individual pension plan for Mr. Lastman. This pension plan satisfies the definition of a multi-employer plan, other than the requirement that the entities be unrelated. The accumulated plan deficit as at September 30, 2022 was approximately \$490,000.

2.1 Financial Position

1. A summary of the Company's preliminary unaudited financial position as at September 30, 2023 is presented in the table below.

	(\$000s)
Assets	
Accounts receivable	5,411
Inventory	10,691
Receivable from parent company	1,476
Furniture, fixtures and equipment	2,274
Goodwill	3,305
Other assets	1,909
Total assets	25,066
Liabilities & Shareholders' Equity	
Operating line	4,000
Accounts payable and accrued liabilities	15,392
Customer deposits	4,544
Leasehold improvements	2,473
Total liabilities	26,409
Shareholders' Equity	(1,343)
Total liabilities and shareholders' equity	25,066

2.2 Creditors

1. Laurentian Bank of Canada ("LBC") provides the Company with a secured operating line facility that is margined against accounts receivable and inventory. The Proposal Trustee understands that LBC has security over all of the Company's business and assets pursuant to a general security agreement.
2. Over the last few weeks, the Company, through the Proposal Trustee, reached out to LBC to advise them of the deteriorating financial situation faced by the Company, and on the request of LBC, undertook to provide financial and other information to LBC. On November 8, 2023, LBC issued a notice of default and demand (the "Demand Notice") in respect of the obligations under the operating line facility and a notice of intention to enforce security pursuant to section 244(1) of the BIA. Pursuant to the Demand Notice, the amount owing by the Company to LBC is approximately \$4.4 million¹. Constructive discussions have continued, and information has been, and will continue to be, provided to LBC.
3. The Proposal Trustee's counsel had not yet provided an opinion on the validity and enforceability of LBC's security; however, the Proposal Trustee's counsel intends to review LBC's security forthwith and the Proposal Trustee will report on the results of the security review in its next report to Court if the opinion is available at that time.

¹ This is before application of cash on hand in a Company bank account.

4. Pursuant to a *Personal Property Security Act (Ontario)* search conducted on November 6, 2023, the Proposal Trustee understands that the following parties, in addition to LBC, have also registered security against the Company's assets (collectively, the "Additional Registered Encumbrances"):
 - a. Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which has made five registrations secured against five respective motor vehicles;
 - b. Panasonic Canada Inc. that has a registration that predates the LCB registration but is limited to inventory bearing the trademarks "Panasonic", "National" or "Panafax". The Company has advised the Proposal Trustee that the book value of this inventory as of the date of this Report is less than \$50,000; and
 - c. Konica Minolta Business Solutions (Canada) Ltd., which has a registration against a photocopier.

5. A preliminary summary of the Company's unsecured creditors as of November 4, 2023 is provided in the table below.

Unsecured Creditors	(\$)
Whirlpool Canada LP	2,376,502
Solid Gold Warranty LTD ²	1,810,463
Sofa by Fancy	1,353,734
Samsung Appliances	840,924
Electrolux Home Products	822,703
MC Commercial Inc.	621,921
Kwality Imports	475,362
LG Electronics Canada Inc.	404,410
Elements International	334,734
Edgewood Furniture Limited	334,175
RioCan Real Estate Investment Trust	317,382
Curtis International LTD	185,016
MC Commercial Inc. C/O T9901	176,437
Owen and Company Limited	144,114
MANW28AH USA Inc.	140,228
Other	3,454,356
Total	13,792,460

² This is a related company.

6. The Company is significantly in arrears to many of its vendors, including substantially all appliance vendors including Whirlpool Canada LP, Samsung Appliances and Electrolux Home Products, Inc. The Company is also in arrears to most of its furniture suppliers, including Sofa by Fancy, Elements International and Edgewood Furniture Limited. The Company is presently having significant challenges sourcing inventory, which is affecting its retail business and its Builder Business. Certain developers in the Builder Business have purported to terminate their contracts with the Company. In order to meet its contractual obligations to developers during these proceedings, the Company will require the ability to purchase inventory, as more fully detailed in Section 3 below.
7. In the ordinary course of business, the Company takes deposits from customers at the time of sale for the future delivery of merchandise. These monies are not held in trust by the Company and the Company does not represent to its customers that they will be. These amounts are paid to the Company and then applied against the LBC operating line. As of the date of this Report, the Company's records reflect that it has received customer deposits totalling approximately \$4.5 million³. It is the Company's intention to advise its retail customers who paid deposits and who have not yet received their orders to contact their credit card company to attempt to obtain a refund of their deposits. Where possible, the Company, in consultation with the Proposal Trustee, also intends to attempt to work with customers to complete orders if the cost of the merchandise is less than the balance owing. The Company will also consider if other arrangements can be made with the customer.

3.0 Stay of Proceedings

1. To provide the Company with the greatest opportunity to operate while it considers its restructuring options, the Company needs to operate without disruption during the NOI proceedings.
2. In order for the Company to deliver appliances to certain real estate development clients of the Builder Business and to minimize claims against accounts receivable owing by these developers to the Company, the Company requires the ability to purchase inventory. Accordingly, the Company is requesting that the Court issue an order requiring vendors to continue to supply to the Company, provided that such vendors are not required to provide additional credit to the Company. The Proposal Trustee is of the view that this will mitigate further disruption to the Builder Business, protect the Company's accounts receivable owing from the developers, while not placing any credit risk on the vendors. This will allow accounts receivable collections to be maximized for the benefit of the Company's creditors. The ability to source inventory on cash-on-delivery (or other negotiated terms) will also allow the Company to complete retail sales, including, in certain instances, sales to customers who paid deposits.

³ Estimated. These amounts are subject to change.

3. During these proceedings, the Company will also require the continued use of its merchant credit card services, which are handled by First Data Canada Ltd. (“First Data”). If customers seek returns of their deposits, there is a risk that First Data will attempt to setoff any monies generated from post-filing transactions against deposits that are refunded to the Company’s customers. This would impair the Company’s ability to operate and effectively provide First Data with a security interest that ranks in priority to LBC. First Data is not a secured creditor of the Company. Accordingly, the Order sought by the Company prevents First Data from setting off any monies in its possession as of the Filing Date, or subsequent to the Filing Date, against any amounts it pays to the Company’s customers in respect of refunds of pre-filing sales.
4. The orderly operation of the business will be facilitated by incorporating into the requested Order the enhanced stay provisions from the model Initial Order issued in a CCAA proceeding as they relate to requiring suppliers and service providers to continue to provide goods and services without disruption, provided they are not required to do so on credit. The stay of proceedings under the Initial Order in a CCAA proceeding is significantly broader than the statutory stay of proceedings in proposal/NOI processes under the BIA. KSV was the proposal trustee in a number of cases where the debtor sought and obtained such relief, including The Sanderson-Harold Company Limited (cob as Paris Kitchens), Scotch & Soda Canada Inc./Scotch & Soda Retail Canada Inc. and Nilex Inc., among several others.
5. Expanding the scope of the stay of proceedings is in the spirit of stabilizing the Company’s operations and allowing it the greatest opportunity to preserve normal course operations during the NOI Proceedings while it considers its restructuring and other options. Any supply disruptions will impair the Company’s ability to continue to operate in the normal course and the prospect of identifying going-concern solutions. Accordingly, the Proposal Trustee believes that expanding the scope of the stay of proceedings is appropriate as the continued operation of the Company will assist it to achieve its objectives in these proceedings.

4.0 Court-Ordered Charges

4.1 Administration Charge

1. The Company is seeking Court approval of the “Administration Charge” for the fees and disbursements of the Administrative Professionals, including their unpaid fees and costs preparing for these proceedings.
2. The Proposal Trustee supports the Administration Charge for the following reasons:
 - a. it is a standard feature of Canadian restructuring proceedings;
 - b. it is required to protect the Administrative Professionals retained in these proceedings for their fees and costs given the Company’s limited liquidity at this time;
 - c. none of the Administrative Professionals has received a material retainer; and
 - d. the Administrative Professionals in these proceedings require the protections resulting from the Administration Charge in order to continue in their respective roles.

3. The proposed Order provides that the Administration Charge will constitute a charge on all present and future assets and property of the Company, including all proceeds thereof (the "Property") that ranks in priority to all Encumbrances (as defined in the proposed Order) other than the Additional Registered Encumbrances.

4.2 Director's Charge

1. The Company is also seeking Court approval of the D&O Charge for the indemnification of its director and officers against obligations and liabilities that they may incur as a director or officer of the Company after the commencement of these NOI Proceedings (primarily payroll and sales taxes), except with respect to any obligation or liability incurred as a result of the director or officer's gross negligence or wilful misconduct.
2. The Proposal Trustee understands that the Company is current on all pre-filing obligations for which the director may be personally liable, including payroll obligations and sales taxes, subject to any stub periods for which taxes or payroll amounts are not yet due. The Company contemplates that all such amounts will continue to be paid in the ordinary course. The proposed D&O Charge provides protection for the director and officers if the Company fails to, or is unable to, pay certain obligations arising after the Filing Date which may give rise to liability for the director and officers.
3. In these proceedings, the main risk of the director's and officers' exposure is unpaid payroll, accrued vacation pay and sales taxes. Payroll presently totals approximately \$250,000 per pay period (every two weeks), accrued vacation pay presently totals approximately \$440,000 and monthly sales tax obligations are estimated to total approximately \$100,000. The D&O Charge is intended to cover these obligations.
4. The Company does not have a director and officer insurance policy.
5. The D&O Charge is proposed to rank in priority to all Encumbrances other than the Administration Charge and the Additional Registered Encumbrances.
6. The Proposal Trustee is of the view that the D&O Charge is reasonable in the circumstances and that the continued involvement of the director and officers is beneficial to the Company, their stakeholders, and these proceedings. The continued involvement of these individuals will assist to reduce professional costs and to enhance recoveries.

4.3 Priority of Court Ordered Charges

1. The proposed priority of the Court ordered charges is as follows:
 - a) Administration Charge; and
 - b) D&O Charge.

5.0 Next Steps

1. The Company is considering a liquidation sale in certain or all of its stores so that it can wind-down on an orderly basis the inefficient portions of its business. The Company expects to bring a motion in the near-term seeking approval of the terms of such liquidation sale and the retention of a liquidator.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief being sought by the Company.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
BAD BOY FURNITURE WAREHOUSE LIMITED
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “G”



November 15, 2023

Blayne Lastman
Bad Boy Furniture Warehouse Limited
3550 Sideline 24
Pickering, ON L0H 1J0

Attention Mr. Lastman:

Retail Liquidation Proposal – Bad Boy Furniture Warehouse Limited

We understand that Bad Boy Furniture Warehouse Limited (“**Bad Boy**”) has filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**NOI Proceedings**”). KSV Restructuring Inc. is the proposal trustee appointed under the NOI Proceedings (the “**Proposal Trustee**”). We further understand that Bad Boy intends to seek an Order (the “**Liquidation Approval Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) approving a liquidation sale of all of its (a) inventory and merchandise (collectively, the “**Merchandise**”), and (b) furniture, fixtures and equipment (including display racks, interior design props and fixtures) at the Stores or the Warehouse (each as defined below) (collectively, the “**FF&E**”).

The following sets out our proposal to act as a consultant to Bad Boy for the Court-approved Sale of the Merchandise located at twelve (12) branded Bad Boy retail locations in Ontario (the “**Stores**”). “**Sale**”, as used herein, shall mean a “Store Closing”, “Everything Must Go”, “Everything on Sale” or similar-themed sale. If accepted, this proposal shall form the agreement between the parties (the “**Agreement**”).

A. FEES AND EXPENSES

1. Consultant: Infinity Asset Solutions Inc. (the “**Consultant**”) will act as a Consultant to Bad Boy for the purpose of conducting the Sale and will provide the liquidation services set out herein (the “**Liquidation Services**”).
2. Fees: The Consultant proposes the following fee structure be paid to the Consultant for the provision of the Liquidation Services:
 - a. On the sale of the Merchandise, the Consultant will earn a base fee (the “**Base Fee**”) equal to and net of applicable HST/GST of:
 - i. 3% on the first \$4,000,000 in gross proceeds from the sale of Merchandise, net of applicable HST/GST (the “**Gross Retail Sales**”);

- ii. 2% on all Gross Retail Sales over \$4,000,000 and up to \$6,000,000; and
 - iii. 1% on all Gross Retail Sales over \$6,000,000.
- b. In addition to the Base Fee, the Consultant will be entitled to charge back to Bad Boy, and Bad Boy shall pay, all reasonable expenses incurred by the Consultant in connection with the Sale, including in relation to reasonable site travel and related out of pocket costs.
- c. On the sale of FF&E, which sale shall be effected either through private sale or On-Line Sale Auctions (defined below), the Consultant will earn a commission of 15% of the gross proceeds of sale, net of applicable HST/GST (the “**FF&E Fee**”). Bad Boy shall be responsible for all expenses incurred in selling, removing and/or disposing of such fixtures.

B. SALE STRATEGY AND LIQUIDATION SERVICES

The following summarizes the strategy the Consultant plans to use to achieve the most practical method of conducting the Sale, which is designed to maximize value in the time frame outlined herein:

1. **Sale Term:** The Sale will commence on the same day as the Court approves the proposed Liquidation Approval Order, or the first day on which the Stores are open for business thereafter, and end on a date for each Store to be mutually agreed upon between Bad Boy and the Consultant in consultation with the Proposal Trustee, but in no event will the sale end later than February 15, 2024 (the “**Sale Term**”), other than (a) with the consent of the applicable landlord, or (b) pursuant to further Court order.
2. **Strategy:** The Consultant’s disposition strategy is designed to maximize value in an optimized time frame. Based on an understanding of the Merchandise that Consultant has viewed and given Bad Boy’s obligations under its leases, the duration of Sale at each Store will vary depending on the particular Store. In addition to the conduct of the Sale in the Stores, it may be necessary to conduct a series of auctions (“**On-Line Sale Auctions**”) as part of the Sale to maximize realizations in the required time frame. In no event, however, will such On-Line Sale Auctions be “in person” live auctions.
3. **Liquidation Services:** The Consultant will manage the Sale through provision of the following services and in accordance with the Sale Guidelines (defined below):
 - a. The Consultant will conduct a managed “Retail Liquidation Sale” at the Stores. The Sale will be conducted at all of the Stores for the first 30 days (the “**Initial Sale Period**”). After conclusion of the Initial Sale Period, certain Stores determined by Bad Boy in consultation with the Consultant and the Proposal Trustee will be closed by Bad Boy and consolidated into the remaining open Stores. Disclaimer notices are intended to be issued by Bad Boy for these Stores on the day prior to the commencement of the Sale with effect thirty (30) days from the date of the

disclaimer notice. Thereafter, the Sale will be conducted by the Consultant at some or all of the remaining Stores as determined by Bad Boy and the Consultant, in consultation with the Proposal Trustee.

- b. The Consultant, in consultation with Bad Boy and the Proposal Trustee, will coordinate and manage the cadence and quantum of sale discounts and reductions at the Stores for the Sale, as well as the consolidation of Merchandise between and among the Stores and the warehouse located at 3550 Sideroad 24, Pickering (the "**Warehouse**").
- c. While the Sale is in progress at the Stores, Consultant may also concurrently conduct a series of Global Webcast On-Line Sale Auctions, taking advantage of Consultant's proprietary database of potential bidders in conjunction with the on-line bid platform, BidSpotter and their vast database. The market exposure is intended to achieve the best possible monetary realization available. If it deems necessary, the Consultant, in consultation with Bad Boy and the Proposal Trustee, would conduct a series of "On-Line Public Auction Sales" over a period of the next 30 days following the Initial Sale Period, with a total sales program of up to four On-Line Sale Auctions. Each On-Line Sale Auction would have a selection of furnishings and accessories in the range of 200 to 300 Lots per sale as determined by the Consultant utilizing Merchandise at the Stores and Warehouse.
- d. Concurrently with the Sale of Merchandise, the Consultant will manage the sale of the FF&E at the Stores and at the Warehouse, and where appropriate through On-Line Sale Auctions conducted pursuant to paragraph (c) above. The FF&E must be sold or removed from all Stores by the Consultant by the end of the Sale Term, unless such FF&E can be abandoned at the Store in accordance with the Sale Guidelines and Bad Boy, in consultation with the Proposal Trustee, agrees to such abandonment.
- e. The Consultant will cooperate with Bad Boy to ensure a smooth wind-down for the Stores and removal of all Merchandise and FF&E from the Warehouse.
- f. The Consultant will advise on certain aspects of the marketing in conjunction with Bad Boy. The Consultant will recommend and implement, with the approval of Bad Boy, appropriate advertising to effectively sell the Merchandise during the Sale. The Consultant's branding will be included on all of the liquidation Sale promotional materials.

C. ADDITIONAL TERMS AND CONDITIONS

1. Conduct of Sale:

- a. Title to all Merchandise shall remain with Bad Boy at all times during the Sale Term until the Merchandise is sold by or on behalf of Bad Boy. All sales of Merchandise in the Stores shall be made on behalf of Bad Boy.
- b. All sales shall be final and made on an “as is, where is” basis, with no right of return. Notices shall be posted at point-of-sales at each Store advising of same. All receipts shall be marked “final sale”. Bad Boy and the Consultant shall not accept returns of Merchandise sold and delivered to customers prior to the commencement of the Sale Term. Bad Boy and the Consultant shall not sell, honour or accept gift cards, gift certificates, coupons or similar promotional discounts issued, granted or offered prior to the date of the NOI Proceedings, during the Sale Term.
- c. Bad Boy shall, in consultation with the Consultant and the Proposal Trustee, run an advertising program appropriate for the Sale. The costs and expenses of such program shall be paid as an expense of the Sale by Bad Boy.
- d. The Consultant will use its Infinity Auction Sale Platform and will provide auction accounting to Bad Boy on a sale basis for each On-Line Sale Auction run by the Consultant, if any. Proceeds for the On-Line Sale Auctions will be received by and deposited into Bad Boy’s bank accounts.
- e. All sales under the retail aspect of the Sale would be tracked under the Bad Boy retail point of sale and accounting system, and all sale proceeds will be received by and deposited into Bad Boy’s bank accounts. Bad Boy shall be solely responsible for collecting and remitting all sales taxes and Consultant shall have no liability in respect thereof.
- f. All costs and expenses of the Sale, including without limitation costs of employees, rents, utilities, advertising, Store closing/consolidation of Merchandise will be to the account of and paid by Bad Boy and shall be at no cost to the Consultant.
- g. The Consultant will be entitled to use the name “As Authorized by KSV Restructuring Inc., Proposal Trustee for Bad Boy” or wording similar to add “urgency” to the marketing and Sale process. The Consultant may advertise the Sale at the Stores as an “everything on sale”, “everything must go”, “Store Closing”, and/or similar themed sale at the Stores in accordance with the sale guidelines appended as a Schedule to the Liquidation Sale Order (the “**Sale Guidelines**”). The Consultant will work with Bad Boy to determine appropriate wording to be used in all external marketing and advertising for the sale of the Merchandise and FF&E. Consultant will adhere to the terms of the Sale Guidelines at all times. The Sale may not be advertised at the Stores as a “Liquidation Closing

Sale”, “bankruptcy sale” or “going out of business sale” without the consent of the applicable landlord.

- h. At the conclusion of the Sale, the Consultant shall leave each Store in a broom-swept, clean condition, reasonable wear and tear excepted.

2. Staffing of Sale:

- a. Bad Boy will use its best efforts to supply the current sales, warehouse and other employees who have the necessary knowledge of and expertise with respect to the Merchandise and the sales and marketing thereof. Bad Boy will be responsible for any termination and severance costs of its employees and at all times will remain the employer of such employees. Consultant shall not be, nor shall it be deemed to be, a successor employer in relation to such employees.
- b. The Consultant shall provide a mutually agreed upon Sale management team, to assist in conducting the Sale including any necessary staffing for any On-Line Sale Auctions, who at all times shall be independent contractors engaged by the Consultant (“**Consultant’s Contractors**”). The Consultant’s Contractors shall not be, nor shall they be deemed to be, employees or agents of Bad Boy. Bad Boy shall have no liability or responsibility, including any successor employer liability, in relation to Consultant’s Contractors.

3. Insurance:

Consultant shall have and maintain all necessary insurance in regard to its services under this Agreement.

4. On-Line Auctions and Buyer’s Premium:

The Consultant shall be entitled to charge and retain, free of any claim, a premium on all On-Line Sale Auction sales equal to eighteen percent (18%) of the gross proceeds, net of applicable GST/HST, of the Merchandise and FF&E sold at the On-Line Sale Auction (the “**Buyer’s Premium**”). For greater certainty, (a) the Buyer’s Premium shall apply only to sales effect through the On-Line Sale Auction and shall not be charged in connection with any sales generated through the retail Sale process at the Stores; (b) the Buyer’s Premium shall not form part of the gross proceeds for determination of the Base Fee or the FF&E Fee, as applicable; and (c) the Buyer’s Premium, where earned, shall be in addition to the Base Fee and the FF&E.

The Consultant will supply oversight management and set-up staffing through its Consultant Contractors for the On-Line Sale Auctions where required for the auction set-up and removal in its sole discretion.

5. Indemnity:

The Consultant shall reimburse, indemnify, defend and hold Bad Boy and the Proposal Trustee, and their respective officers, directors, partners, agents, employees and representatives, harmless from and against any damage, loss, expense (including reasonable attorneys' fees) or penalty, or any claim or action therefore, by or on behalf of any person, arising out of the performance or failure of performance of this Agreement by the Consultant, or due to any acts or omissions by the Consultant or its Consultant's Contractors in breach or violation of applicable law, including but not limited to breaches or violations of human rights legislation.

6. Invoicing:

- a. Consultant shall invoice Bad Boy bi-weekly, with each invoice setting forth for the applicable invoice period (i) any Sale Expenses incurred directly by the Consultant and (ii) the applicable Base Fee and FF&E Fee earned. Within five (5) business days of the submission of such invoices, such invoices shall be paid in full by Bad Boy.
- b. No later than twenty (20) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated to be paid under this Agreement.

7. Miscellaneous Terms:

- a. Bad Boy shall seek Court approval of this Agreement and the Sale Guidelines pursuant to the Liquidation Approval Order. Bad Boy and the Consultant expressly acknowledge and agree that the acceptance of this proposal by Bad Boy is subject to the issuance of the Liquidation Approval Order approving, among other things, this Agreement and the conduct of the Sale. In the event that the Liquidation Approval Order is not granted by the Court, this Agreement shall have no force or effect.
- b. This Agreement shall be governed by and interpreted in accordance with the internal laws of the Province of Ontario, without reference to any conflict of law provisions.
- c. In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.
- d. This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes all prior negotiations and undertakings, and can only be modified by a writing signed by Bad Boy and the Consultant.


- e. Nothing in this Agreement shall be construed as resulting in Bad Boy or the Consultant being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.
- f. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns, provided that the Consultant shall not be permitted to assign or syndicate its rights or obligations under this Agreement without the prior written consent of Bad Boy and the Proposal Trustee.
- g. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery of this Agreement or an executed counterpart hereof by electronic means shall be deemed a good and valid execution and delivery hereof or thereof.
- h. Nothing contained herein shall be deemed to create any relationship between Consultant and Bad Boy other than that of an independent contractor. It is stipulated that the parties are not partners or joint venturers.
- i. Consultant agrees that it shall hold in confidence and keep confidential all confidential and proprietary information received in the course of the Sale and performance of the services (the “**Confidential Information**”), and Consultant shall not use or directly or indirectly disclose or reproduce in any manner any such Confidential Information except as contemplated by this Agreement. Consultant agrees not to disclose any of the Confidential Information to any third party, individual, corporation, partnership, or entity of any kind whatsoever, without first obtaining written consent from Bad Boy. Any permitted disclosure by Consultant is also subject to Bad Boy obtaining a mutually agreeable non-disclosure agreement consistent with the terms of this Agreement from the third party. The Consultant shall dispose of or return all Confidential Information at the termination of the Sale.

This proposal is valid until 5.00 pm Friday, **November 17, 2023**. Time is of the essence.

We thank you for the opportunity to submit this proposal for your consideration.

Yours truly,

INFINITY ASSET SOLUTIONS INC.



Bruce Lyle
President

AGREED AND ACCEPTED by Bad Boy Furniture Warehouse Limited.

Dated this November 15 2023

Signature _____

Authorized Signing Officer

Appendix “H”

Bad Boy Furniture Warehouse Limited
Projected Cash Flow Statement
For the Period Ending January 26, 2024
(Unaudited; \$000s)

Week no.	Note	Week/Month ended											Total
		17-Nov	24-Nov	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec	5-Jan	12-Jan	19-Jan	26-Jan	
	1	1	2	3	4	5	6	7	8	9	10	11	
Receipts													
	2	900	1,100	1,100	1,100	1,100	851	851	851	851	205	205	9,112
	3	-	148	223	300	253	270	299	419	631	630	587	3,780
	4	-	-	-	-	-	-	-	-	-	100	250	350
Total Receipts		900	1,248	1,322	1,400	1,353	1,121	1,150	1,270	1,482	934	1,042	13,223
Disbursements													
Operating Disbursements													
		55	137	462	326	358	426	426	321	181	107	33	2,834
		225	125	181	100	206	91	118	66	118	88	126	1,443
	5	634	-	432	-	257	-	-	231	-	181	-	1,735
		-	-	-	119	-	-	-	-	34	-	-	153
	6	262	190	208	126	206	226	244	233	111	151	-	2,181
	7	-	300	-	-	350	143	-	-	627	111	-	1,531
		-	-	150	-	-	-	206	-	-	-	-	356
		6	6	6	5	5	4	4	4	3	3	2	46
Total Disbursements		1,182	758	1,438	676	1,382	889	980	865	1,197	600	311	10,278
Net Cash Flow		(282)	490	(116)	724	(29)	232	171	405	285	335	730	2,944

The above financial projections are based on management's assumptions detailed in Appendix *1-1*.
The note references correspond to the assumption numbers shown in Appendix *1-1*.

BAD BOY FURNITURE WAREHOUSE
LIMITED

Per: Gayne Luchman
Date: November 15, 2023

KSV RESTRUCTURING INC. IN ITS CAPACITY AS TRUSTEE UNDER THE NOTICE
OF INTENTION TO MAKE A PROPOSAL AND NOT IN ITS PERSONAL CAPACITY

Per: Bobby Kofman
Date: November 15, 2023

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the cash flow of Bad Boy Furniture Warehouse Limited (the "Company") for the period ending January 26, 2023 (the "Period").

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Hypothetical and Most Probable

2. Represents projected retail sales.
3. Represents projected collections of builder business accounts receivable.
4. Represents insurance proceeds and the sale of furniture, fixtures and equipment.
5. Rent is paid twice monthly in advance on the first and fifteenth of the month, pro-rated from the filing date.
6. Reflects payment of operating costs, utilities, trucking and delivery, advertising and insurance, among other things.
7. Reflects estimated professional costs of the Proposal Trustee, its counsel, the Company's counsel, counsel of Laurentian Bank of Canada and the liquidator's fees.

**Report on Cash Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA**

The management of Bad Boy Furniture Warehouse Limited (the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of the Company for the period ending January 26, 2024.

The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 7.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 7. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 15th day of November, 2023.

**BAD BOY FURNITURE WAREHOUSE
LIMITED**



Per: Blayne Lastman

Appendix “I”

**Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)**

The attached statement of projected cash-flow of Bad Boy Furniture Warehouse Limited (the "Company"), as of the 14th day of November, 2023, consisting of a weekly cash flow statement for the period November 11, 2023 to January 26, 2024, has been prepared by the management of the insolvent person for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2 to 7.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

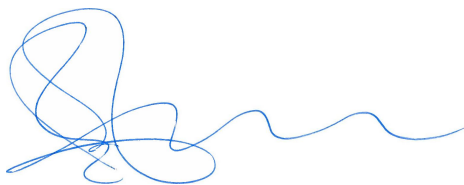
- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated this 15th day of November, 2023.

**KSV RESTRUCTURING INC.
PROPOSAL TRUSTEE**

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Per: Robert Kofman