

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.

Applicants

**AFFIDAVIT OF ROBERT CLARK
(Sworn March 27, 2024)**

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Applicants

**AFFIDAVIT OF ROBERT CLARK
(Sworn March 27, 2024)**

I, Robert Clark, of the city of Burlington, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and a director of SIDRWC Inc. o/a SID Developments ("**SID Developments**") and SID Management Inc. ("**SID Management**"), which, together with 2707793 Ontario Inc. o/a SID Renos ("**SID Renos**"), provide acquisition, distribution, renovation and management services to Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc. and Joint Captain Real Estate Inc. (collectively, the "**Applicants**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit further to my affidavit sworn on March 24, 2024 (the "**March 24 Affidavit**") and in response to the affidavit of David Im sworn March 26, 2024 (the "**Im Affidavit**"). This affidavit should be read in conjunction with the March 24 Affidavit. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the March 24 Affidavit. A copy of the March 24 Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

3. All references to currency in this affidavit are in Canadian dollars unless noted otherwise. The Applicants, SID Developments, SID Management and SID Renos do not waive or intend to waive any applicable privilege by any statement herein.

I. SCOPE OF REPLY

4. The Applicants were served with the Im Affidavit on March 26, 2024, and were not provided with prior notice that the Im Affidavit would be filed nor an opportunity to review or comment on the Im Affidavit or its exhibits. As a result, this affidavit is not intended to address every issue raised by the Im Affidavit or its exhibits (nor could it). To the extent that I do not respond to certain assertions made in the Im Affidavit or its exhibits, that does not mean that I agree with or accept them (quite the opposite is true), nor does it mean that they are relevant to the Applicants' motion for the proposed Second ARIO (again, quite the opposite is true).

II. THE APPLICANTS' REPLY TO THE IM AFFIDAVIT

A. The Responding Motion Record and the Im Affidavit

5. On March 26, 2024, the Lender Representative Counsel served what it styled as a "Responding Motion Record", on behalf of the Secured Lenders, purportedly in response to the Applicants' motion for the proposed Second ARIO (the "**Responding Record**"). The Responding

Record is comprised solely of the Im Affidavit, and its exhibits. The affiant, David Im, is neither a Secured Lender nor one of the Lender Representatives (as defined in the ARIO) selected by the Lender Representative Counsel under the ARIO. Mr. Im is an articling student with Chaitons LLP, the Lender Representative Counsel for the Secured Lenders.

6. Principally, the Im Affidavit appends what it characterizes as "sample email communications" received by the Lender Representative Counsel and "media articles and social media posts regarding the Applicants, directors, officers and representatives". The Applicants had not previously received such sample email communications and note that the identities of the drafters, the dates on which they were sent, any prior or responding correspondence and other details have been redacted or omitted. The Applicants likewise did not provide comments on or have any input into the "media articles" appended to the Im Affidavit.

7. The "sample email communications" and "media articles" are replete with bald assertions against, and inaccurate, incomplete or misleading information regarding, the Applicants, the Additional Stay Parties, and myself. The latter appear to have been curated by the Lender Representatives or the Lender Representative Counsel and omit, among other things, the sole press release issued by the Applicants since the commencement of these CCAA proceedings attached hereto as **Exhibit "B"**. The former – which are not claimed to be a representative sample – raise concerns and complaints regarding, among other things:

- (a) the applicable Secured Lender's investment;
- (b) the applicable Secured Lender's challenging financial circumstances;

- (c) Windrose's conduct or participation in sourcing all or substantially all of the First Mortgage Loans; and
- (d) the lack of communication to Secured Lenders regarding these CCAA proceedings.

8. Despite its title, the Responding Motion Record neither seeks relief on, nor responds to, the Applicants' motion for the proposed Second ARIO. Rather, it appears to have been filed for the purposes of besmirching the Applicants, the Additional Stay Parties and myself, and airing the concerns and complaints of a limited number of potentially non representative and unidentified Secured Lenders, from whom the Applicants did not directly solicit an investment.¹ Having redacted or omitted all identifying and other contextual information, the Applicants have limited means of substantively responding to the Im Affidavit. As discussed below, the Applicants are nonetheless committed to addressing certain of the Secured Lenders' concerns.

9. The Applicants and I sympathize with the authors of the "sample email communications" and their respective financial circumstances, as well as any other Lenders experiencing difficulty in connection with these CCAA proceedings. And, while all or substantially all of the First Mortgage Loans were solicited by, and sourced from, Windrose (and not the Applicants, the Additional Stay Parties or myself), the Applicants have been and continue to be committed to achieving a value-maximizing result in these CCAA proceedings for the benefit of the Applicants and their stakeholders, including the Lenders.

¹ The Applicants note, as indicated within the First Clark Affidavit, that all or substantially all of the First Mortgage Loans were sourced by Windrose and not the Applicants, the Additional Stay Parties or Robert Clark. Subject to a few limited exceptions, all of the Applicants' current Second Mortgage Loans were provided by Lift Capital Incorporated ("Lift"), and syndicated among other investors by Lift thereafter.

B. Secured Lenders' Complaints of Delays

10. Certain of the "sample email communications" appended to the Im Affidavit directly or indirectly question the merits of these CCAA proceedings and their progress (or the alleged lack thereof). These complaints ignore the significant delays and procedural quandaries caused by the Secured Lenders and the Lender Representatives to date. Namely:

- (a) the approximately two-week delay caused by the Objecting Lender's opposition to the Proposed ARIO;
- (b) the Lender Representative's opposition to the appointment of the Financial Advisor, which appointment was contemplated under the Proposed ARIO and, as indicated within the March 24 Affidavit, is urgently required;
- (c) the numerous requests made of the Applicants and the Additional Stay Parties by the Secured Lenders and the Lender Representatives, through the Monitor; and
- (d) the Lender Representatives' insistence upon the Investigation, numerous consultation rights and the Monitor's prior consent to the making of *any* payments or incurrence of *any* liability, including in respect of *any* draw under the DIP Facility, and renovation-related expenses and *any* other ordinary course expenses.

11. The Applicants' progress with respect to the completion of their as yet unrenovated Properties, including the constraints impeding such progress, are set out in the March 24 Affidavit. As described therein, the Applicants did not receive the majority of the \$250,000 advanced in respect of the limited initial Scope of Work approved by the Monitor, in consultation with the Lender Representatives, until March 8, 2024. Promptly following the Monitor's receipt of such

funds, the Applicants obtained quotes and engaged contractors to complete the Renovated Properties. Six of the Renovated Properties are now tenanted, and the remainder are in the process of being tenanted.

12. The renovation of eight additional units is scheduled to be completed by March 28, 2024. Moreover, as of the date of this affidavit, and following the Monitor's indication of support for the Applicants' making commitments with respect to their next Scope of Work, the Applicants are now actively renovating 24 Properties – an approximately 100% increase in a mere few days. If permitted to continue their planned renovations unimpeded, the Applicants anticipate completing approximately ten units/week.

13. As indicated in the March 24 Affidavit, the completion of the Applicants' as yet unrenovated Properties in a timely manner is integral to the Applicants' refinancing efforts and the success of these CCAA proceedings. The results of any SISP ultimately implemented in these CCAA proceedings will be informed and ultimately improved by the Applicants' ability to complete their as yet unrenovated Properties, market the Properties for an appropriate period and retain a suitable financial advisor.

14. The Applicants remain committed to achieving a value-maximizing restructuring or refinancing solution for the benefit of the Applicants and all of their stakeholders, including their numerous tenants and the Lenders. If permitted to retain a financial advisor and implement a SISP in a manner and timeline agreeable to the Applicants, in consultation with the Monitor, the Lender Representative Counsel and the Unsecured Lender Representative Counsel, the Applicants are confident that a refinancing solution equal to or in excess of the approximately \$70 million and \$89 million term sheets received by the Applicants pre-filing will materialize. Such financing, as

indicated in the First Clark Affidavit, is expected to underpin a consensual plan of compromise or arrangement in these CCAA proceedings.

C. The Applicants' Invitation to Provide Frequent Updates to the Lenders

15. As is apparent from the Im Affidavit, certain of the Secured Lenders are concerned about the lack of information available to them regarding these CCAA proceedings and their progress. Since the appointment of Lender Representative Counsel, the Applicants have not, understandably, actively engaged with the Secured Lenders directly, nor has such engagement been solicited by the Lender Representative Counsel. The Applicants have likewise not been apprised of:

- (a) the identities of the Lender Representatives;
- (b) what, if any, further townhall meetings have been organized for the benefit of the Secured Lenders since the date of the Supplemental Report; or
- (c) what, if any, correspondence or updates have been provided to the Secured Lenders, as a group, by the Lender Representatives or the Lender Representative Counsel.

16. To assist in ameliorating any informational gap, real or perceived, the Applicants intend to host separate virtual meetings for the Secured Lenders and the Unsecured Lenders, to which the Monitor and the Lender Representative Counsel and the Unsecured Lender Representative Counsel, respectively, will be invited. The Applicants expect that such virtual meetings, if helpful to the Secured Lenders or Unsecured Lenders, could be commenced shortly following the granting of the proposed Second ARIO.

III. CONCLUSION

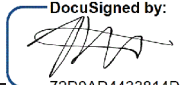
17. I believe that the relief sought on the within motion and described in the March 24 Affidavit is in the best interests of the Applicants and their stakeholders, including the Lenders and the Applicants' tenants. Moreover, as noted in the March 24 Affidavit, I continue to believe that these CCAA proceedings, if permitted to advance absent further encumbrances, and the relief sought herein, presents the best means of addressing the challenges facing the Business and effecting the refinancing and/or restructuring transactions necessary to maximize value for the Applicants' stakeholders.

18. I swear this affidavit in support of the Applicants' motion for the proposed Second ARIO and for no other or improper purpose.

SWORN REMOTELY by Robert Clark stated as being located in the City of Miami, in the State of Florida, before me at the City of Toronto, in the Province of Ontario, on March 27th, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Joshua Foster
JOSHUA FOSTER
Commissioner for Taking Affidavits
(or as may be)

DocuSigned by:

72D0AD4433814D9...
ROBERT CLARK

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 27TH DAY OF MARCH, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

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Applicants

**AFFIDAVIT OF ROBERT CLARK
(Sworn March 24, 2024)**

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**AFFIDAVIT OF ROBERT CLARK
(Sworn March 24, 2024)**

I, Robert Clark, of the city of Burlington, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and a director of SIDRWC Inc. o/a SID Developments ("**SID Developments**") and SID Management Inc. ("**SID Management**"), which, together with 2707793 Ontario Inc. o/a SID Renos ("**SID Renos**"), provide acquisition, distribution, renovation and management services to Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc. and Joint Captain Real Estate Inc. (collectively, the "**Applicants**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit in support of a motion by the Applicants for a second amended and restated initial order (the "**Second ARIO**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) extending the Stay of Proceedings (as defined below) to and including April 30, 2024;
- (b) appointing Goldman Sloan Nash & Harber LLP ("**GSNH**") as representative counsel (if appointed in such capacity, the "**Unsecured Lender Representative Counsel**") for all of the unsecured lenders of the Applicants other than (i) The Lion's Share Group Inc. ("**Lion's Share**") and (ii) any other unsecured lenders directly or indirectly controlled by, or under common control or otherwise affiliated with, Lion's Share or its principal, Claire Drage (collectively, the "**Unsecured Lenders**" and each, an "**Unsecured Lender**"), including, without limitation, all of the Unsecured Lenders that have RRSPs or other registered accounts administered by Olympia Trust Company, in these proceedings, any proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or in any other proceeding respecting the insolvency of the Applicants that may be brought before this Court (collectively, the "**Insolvency Proceedings**"); and
- (c) authorizing the Applicants to pay the professional fees and disbursements of the Unsecured Lender Representative Counsel and expanding the scope of the Administration Charge (as defined below) to secure such professional fees and disbursements.

3. This affidavit should be read in conjunction with the affidavits that I previously swore in these proceedings on January 23, 2024 (the "**First Clark Affidavit**") and January 28, 2024 (the "**Second Clark Affidavit**"). All capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the First Clark Affidavit or the Second Clark Affidavit, as applicable. Copies of the First Clark Affidavit (without exhibits) and Second Clark Affidavit (without exhibits) are attached hereto as **Exhibits "A"** and **"B"**, respectively.

4. All references to currency in this affidavit are in Canadian dollars unless noted otherwise. The Applicants, SID Developments, SID Management and SID Renos do not waive or intend to waive any applicable privilege by any statement herein.

I. BACKGROUND TO THESE CCAA PROCEEDINGS

5. The Applicants are Canadian privately-held corporations that, together with certain affiliate corporations that are not Applicants in these CCAA proceedings and SID Developments, SID Renos and SID Management, are part of a group of companies (collectively, the "**Company**") specializing in the acquisition, renovation and leasing of distressed residential real estate in undervalued markets throughout Ontario (the "**Business**"). Since inception, the Company has acquired, renovated, leased and/or sold over 800 underutilized and strategically located properties in Ontario, that provide in aggregate over 1200 rental units.

6. The Applicants are the principal owners of the Company's rental units and the residential properties on which they are situated. Collectively, the Applicants currently own 405 residential properties (collectively, the "**Properties**") containing 631 rental units, of which approximately 433 are tenanted, as well as a single non-operating 200-acre golf course, 40 acres of which are zoned for development.

7. The Properties are located in secondary and tertiary markets in Ontario with lower average costs of living, including Timmins, Sault Ste. Marie, Sudbury, Kirkland Lake, Capreol, Temiskaming Shores and Val Caron. The acquisition and renovation of the Properties and the costs related thereto were financed through (i) first mortgage loans (collectively, the "**First Mortgage Loans**") and second mortgage loans (collectively, the "**Second Mortgage Loans**") provided predominantly by numerous individual real estate investors, and (ii) unsecured promissory notes (collectively, the "**Promissory Notes**") issued in favour of Lion's Share and various individual real estate investors.

8. Notwithstanding the Applicants' concerted efforts to obtain a comprehensive refinancing solution, raise additional short-term financing and/or sell certain of the Properties, the Applicants recently faced a severe liquidity crisis driven, in part, by the Applicants' significant interest obligations and unrenovated Properties. Indeed, as of the date of the First Clark Affidavit and as described therein, the Applicants had less than \$100,000 of cash on hand, were in default of substantially all of the First Mortgage Loans, Second Mortgage Loans and Promissory Notes, and were generally unable to meet their obligations as they became due.

9. Following careful review and consideration of their financial circumstances and available alternatives, and the devastating effects of a bankruptcy, liquidation or uncoordinated enforcement efforts, the Applicants determined that the commencement of these CCAA proceedings was in the best interests of the Applicants and their stakeholders, including their over 300 secured and unsecured lenders (collectively, the "**Lenders**" and each, a "**Lender**") and approximately 1,000 tenants. Accordingly, the Applicants sought and, on January 23, 2024, obtained an initial order (the "**Initial Order**") under the CCAA.

10. Among other things, the Initial Order:

- (a) appointed KSV Restructuring Inc. as the Monitor of the Applicants in these CCAA proceedings (in such capacity, the "**Monitor**");
- (b) stayed, until February 2, 2024 (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' directors and officers, or affecting the Business or the Applicants' Property (as defined below), except with the prior written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (c) stayed, for the Initial Stay Period, all proceedings against or in respect of Aruba Butt ("**Ms. Butt**"), Dylan Suitor ("**Mr. Suitor**") and/or Ryan Molony (collectively with Ms. Butt and Mr. Suitor, the "**Additional Stay Parties**"), or against or in respect of any of the Additional Stay Parties' current or future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, and including all proceeds thereof (collectively, the "**Additional Stay Parties' Property**") with respect to any guarantee, contribution or indemnity obligation, liability or claim in respect of or that relates to any agreement involving any of the Applicants or the obligations, liabilities and claims of and against any of the Applicants (collectively, the "**Related Claims**"), except with the prior written consent of the Applicants and the Monitor, or with leave of the Court;
- (d) appointed Chaitons LLP as representative counsel (in such capacity, the "**Lender Representative Counsel**") for all of the Applicants' Lenders, including, without

limitation, all of the Lenders that have RRSPs or other registered accounts administered by Olympia Trust Company, in the Insolvency Proceedings; and

- (e) granted the Administration Charge over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Applicants' Property**").

11. Copies of the Initial Order and the accompanying endorsement of the Honourable Madam Justice Kimmel dated January 23, 2024, are attached hereto as **Exhibits "C"** and **"D"**, respectively.

12. Additional information regarding the Applicants' financial circumstances, liquidity crisis and need for relief under the CCAA are set out in the First Clark Affidavit and the Second Clark Affidavit. Such details are not repeated herein. Additional materials filed in these CCAA proceedings are available on the Monitor's website at: <https://www.ksvadvisory.com/experience/case/sid>.

II. DEVELOPMENTS IN THESE CCAA PROCEEDINGS TO DATE

13. The relief sought under the Initial Order was limited to that which was reasonably necessary to ensure the continued operation of the Business, preserve the *status quo* during the Initial Stay Period, and prevent an immediate and value destructive liquidation of the Properties. Accordingly, on January 28, 2024, the Applicants filed a motion (the "**Comeback Motion**") for an amended and restated Initial Order (the "**Proposed ARIO**") to extend and expand the limited relief granted under the Initial Order.

14. Pursuant to the Proposed ARIO, the Applicants sought, among other things:

- (a) an extension of the Stay of Proceedings to and including March 28, 2024;
- (b) authorization to pay, with the consent of the Monitor, certain amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order;
- (c) approval of the retention of Howards Capital Corp. ("**HCC**") as financial advisor to the Applicants (the "**Financial Advisor**") pursuant to a Financial Advisor Engagement Agreement dated January 24, 2024 (the "**Financial Advisor Engagement Agreement**"), between the Applicants and HCC, and the granting of a charge on the Applicants' Property in favour of the Financial Advisor to secure the payment of the Completion Fee (as defined in the Financial Advisor Engagement Agreement) and the Applicants indemnification obligations under the Financial Advisor Engagement Agreement up to the maximum amount of \$1,500,000 (the "**Financial Advisor Charge**");
- (d) approval of the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Facility**") pursuant to a DIP Agreement dated January 26, 2024 (the "**DIP Agreement**"), between the Applicants and Harbour Mortgage Corp. or its permitted assignee (the "**DIP Lender**");
- (e) the granting of a charge over the Applicants' Property in favour of the DIP Lender to secure all amounts advanced by the DIP Lender under the DIP Facility, together with all obligations, fees, expenses and other amounts payable by the Applicants under the DIP Agreement and the DIP Facility (the "**DIP Lender's Charge**"); and

- (f) an expansion of the scope of the Administration Charge to include certain fees of the Financial Advisor, and an increase to the maximum amount of the Administration Charge from \$750,000 to \$1,500,000.

15. Six of the Applicants' secured Lenders (collectively, the "**Objecting Lenders**") sought an adjournment of the Comeback Motion, primarily for the purpose of considering whether both the Applicants' secured and unsecured lenders ought to be collectively represented by the Lender Representative Counsel in the Insolvency Proceedings. Balancing the Objecting Lenders' adjournment request with the Applicants' critical need for an extension and expansion of the limited relief obtained under the Initial Order, the Court adjourned the Comeback Motion until February 15, 2024, in part, and granted an amended Initial Order (the "**Amended IO**"), among other things:

- (a) extending the Stay of Proceedings to and including February 16, 2024;
- (b) authorizing the Applicants to pay, with the consent of the Monitor, certain amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order;
- (c) increasing the maximum amount of the Administration Charge from \$750,000 to \$1,000,000;
- (d) approving the Applicants' ability to borrow under the DIP Facility provided pursuant to the DIP Agreement in an amount not to exceed \$4,000,000; and
- (e) granting the DIP Lender's Charge up to the maximum amount of \$4,000,000.

16. Copies of the Amended IO and the accompanying endorsement of the Honourable Madam Justice Kimmel dated January 31, 2024 (the "**January 31 Endorsement**") are attached hereto as **Exhibits "E"** and **"F"**, respectively.

17. Pursuant to the January 31 Endorsement, the Court directed as follows:

- (a) in coordination with the Objecting Lenders, the Monitor was to arrange a meeting of the Applicants' secured Lenders (collectively, the "**Secured Lenders**" and each, a "**Secured Lender**") by no later than February 5, 2024 (the "**Secured Lender Meeting**"), which was to be based on an agenda to be prepared by certain of the Objecting Lenders and their respective counsel (together, the "**Objecting Counsel**");
- (b) any Secured Lender that wished to move to seek to appoint their own representative counsel was to serve a motion record for such relief by no later than February 9, 2024;
- (c) any Secured Lender that wished to oppose the Comeback Motion, as adjourned, and the Proposed ARIO, was to file a responding motion record and responding factum by no later than February 9, 2024; and
- (d) the Monitor was to deliver a report to Court (the "**Supplemental Report**") providing the details of the use of the DIP Facility between January 31 and February 15, 2024.

18. In accordance with the January 31 Endorsement, the Monitor arranged for the Secured Lender Meeting to be conducted virtually on February 5, 2024, and filed the Supplemental Report

on February 13, 2024. A copy of the Supplemental Report (without appendices) is attached hereto as **Exhibit "G"**.

19. As described in the Supplemental Report, the Secured Lender Meeting was attended by representatives of the Monitor and its counsel, the Lender Representative Counsel, the Objecting Counsel and approximately 160 Secured Lenders and/or their respective representatives. Neither the Applicants nor their counsel attended the Secured Lender Meeting, as expected.

20. Following the Secured Lender Meeting, the Lender Representative Counsel and the Applicants (with the assistance of counsel), in consultation with the Monitor, negotiated several amendments to the Proposed ARIO with a view to addressing the Secured Lenders' concerns. These concerns included that the Lender Representative Counsel's mandate to represent all of the Applicants' secured and unsecured Lenders in the Insolvency Proceedings could give rise to a conflict of interest. At the request of the Lender Representatives, the Applicants also agreed to adjourn the relief previously sought in respect of the Financial Advisor, the Financial Advisor Engagement Agreement and the Financial Advisor Charge.

21. Given the resolutions negotiated between the Lender Representative Counsel and the Applicants, in consultation with the Monitor, no responding materials were filed by or on behalf of any Secured Lender in the manner contemplated by the January 31 Endorsement. The Applicants thus sought and, on February 15, 2024, obtained an amended and restated Initial Order (the "**ARIO**") on an unopposed basis, which, among other things:

- (a) extended the Stay of Proceedings to and including March 28, 2024;

- (b) increased the maximum amount of the Administration Charge from \$1,000,000 to \$1,500,000;
- (c) increased the Applicants' maximum borrowings under the DIP Facility from \$4,000,000 to \$12,000,000, and granted a corresponding increase to the DIP Lender's Charge; and
- (d) granted the Monitor certain enhanced powers and oversight, including:
 - (i) subjecting all payments to be made, and liabilities to be incurred, by the Applicants to the prior written consent of the Monitor; and
 - (ii) directing and empowering the Monitor to (A) conduct an investigation into the use of funds borrowed by the Applicants, pre-filing transactions conducted by the Applicants and/or their principals and affiliates, and such other matters as may be requested by the Lender Representatives (as defined in the ARIO) and agreed by the Monitor, in each case, to the extent such investigation relates to the Applicants' Property, the Business or such other matters as may be relevant to these CCAA proceedings as determined by the Monitor (the "**Investigation**"), and (B) report to the Lender Representatives and the Court on the findings of the Investigation as the Monitor deems necessary and appropriate.

22. Copies of the ARIO and the accompanying endorsement of the Honourable Madam Justice Kimmel dated February 15, 2024, are attached hereto as **Exhibits "H"** and **"I"**, respectively.

23. Since the granting of the ARIO, the Applicants have, with the assistance of the Monitor, acted in good faith and with due diligence to, among other things:

- (a) stabilize and continue the Business' ordinary course operations, subject to the limitations imposed under the ARIO;
- (b) respond to numerous information requests made by the Lender Representatives and the Lenders, through the Monitor;
- (c) liaise with the Monitor and the DIP Lender to make draws under the DIP Facility in accordance with budgets proposed by the Applicants and approved by the Monitor in advance;
- (d) cooperate in, and respond to, extensive inquiries made by the Monitor and its counsel pursuant to, the Investigation;
- (e) prepare, provide and execute or begin to execute (as applicable) upon several scopes of work (each, a "**Scope of Work**") to renovate approximately 85 units by May 27, 2024;
- (f) review and consider a non-binding letter of intent submitted by the Lender Representatives (the "**LOI**"), which contemplated, among other things:
 - (i) the Applicants' divestiture of all of the Properties to a purchaser to be owned by certain of the Secured Lenders and the Applicants' unsecured Lenders (excluding the Applicants' largest unsecured Lender), for a purchase price intended to reflect (A) the principal amount advanced under the First

Mortgage Loans and the Second Mortgage Loans, and (B) 5% of the principal advanced under the Promissory Notes; and

- (ii) the replacement of SID Management as the Applicants' exclusive property manager and SID Renos by the Monitor;
- (g) with the assistance of their counsel, Bennett Jones LLP ("**Bennett Jones**"), consult with the Monitor and the Lender Representative Counsel regarding the retention of the proposed Unsecured Representative Counsel to represent the interests of the Unsecured Lenders in the Insolvency Proceedings;
- (h) attempt to reconcile the principal amount outstanding under the Promissory Notes, as reflected in Lion's Share records, with the Applicants' records (including in respect of the funds received by the Applicants directly), which, on a preliminary basis, indicates that Lion's Share's records are materially overstated and that the Applicants' unsecured funded indebtedness is far lower than originally believed to be the case;
- (i) continue discussions with potential purchasers, financiers, investors and mortgage service companies regarding a comprehensive refinancing solution for the Applicants' funded indebtedness;
- (j) engage with the Monitor with respect to the retention of the Financial Advisor and assist in its solicitation of proposals from alternative advisors to assuage concerns raised by the Lender Representatives with respect to the Financial Advisor;

- (k) coordinate with the DIP Lender to effect the registration of the DIP Lender's Charge on title to certain of the Properties; and
- (l) with the assistance of Bennett Jones, prepare materials in support of the within motion.

24. The Applicants' efforts in respect of the Investigation and advancing value accretive renovations since the granting of the ARIO are each discussed in greater detail below.

A. The Applicants' Cooperation in the Investigation to Date

25. At the request of the Lender Representatives and to allay certain of their concerns, the ARIO authorized and directed the Monitor to conduct the Investigation. The Applicants understand that the Investigation remains ongoing as of the date of this affidavit. In furtherance of the Investigation, the Monitor has provided several information requests to both the Applicants and each of the Additional Stay Parties.

26. The Applicants and the Additional Stay Parties have expended significant time in responding to each of the Monitor's requests of the Applicants transparently, including by providing numerous supporting documents sought. In light of the time and other constraints, the Applicants expect to continue to provide information responsive to the Monitor's requests and understand that the Monitor has made and may make additional inquiries of the Applicants in the course of completing the Investigation. The Applicants intend to continue to fully cooperate with the Monitor in this regard with a view to resolving any outstanding inquiries and allowing the Applicants and the Additional Stay Parties, with the assistance of the Monitor, to focus their limited resources on the Applicants' restructuring efforts.

B. The Applicants' Efforts to Renovate Properties in Earnest

27. As described in the First Clark Affidavit, one of the Applicants' objectives in commencing these CCAA proceedings was to be able to complete value accretive renovations to untenanted Properties. With the prior approval of the Monitor, the Applicants have acted in good faith and with due diligence to complete twelve previously unrenovated Properties (the "**Renovated Properties**") – being the largest number of unrenovated Properties that the Monitor, in consultation with the Lender Representatives, was prepared to approve within the initial Scope of Work.

28. The funds advanced to date under the DIP Facility in connection with the Applicants' initial Scope of Work, being \$250,000, were directed to the Monitor's trust account on February 29, 2024, the majority of which was only disbursed to the Applicants on or about March 8, 2024. Promptly following the Monitor's receipt of such funds, the Applicants obtained quotes and engaged contractors to complete the Renovated Properties. Six of the Renovated Properties are now tenanted, and the remainder have received applications from prospective tenants. The Renovated Properties were completed under budget. The renovation of six additional Properties is expected to be complete within the week ending March 30, 2024.

29. The Applicants, with the assistance of SID Management and SID Renos, have the capacity to oversee, manage and complete the renovation of approximately 40 Properties at any given time. The number of Renovated Properties to date has been constrained by the consent and consultation rights afforded to the Monitor and the Lender Representatives under the ARIO and the substantial time expended in preparing the financial and other information sought when obtaining approval of the Applicants' advance requests under the DIP Facility.

30. The Applicants hope and expect that, based on the success of the initial Scope of Work approved by the Monitor, in consultation with the Lender Representatives, and the Applicants' comprehensive reporting in connection with such Scope of Work, the balance of the Applicants' renovations can proceed unimpeded. In this regard, the Applicants note that the inclusion of approximately \$816,500 in anticipated renovation expenses within the most recent advance request under the DIP Facility, following constructive discussions with the Monitor, and the Monitor's support for the Applicants making commitments with respect to their next Scope of Work, will allow the Applicants to materially advance their renovation efforts in the near-term for the benefit of all stakeholders.

31. The completion of the Applicants' as yet unrenovated Properties in a timely manner is integral to the Applicants' refinancing efforts and the success of these CCAA proceedings. The loss of potential monthly rental revenue (representing approximately \$350,000/month), the accrual of additional interest under the First Mortgage Loans and the Second Mortgage Loans (being in excess of approximately \$725,000/month), and the professional fees that will result from further delays in advancing the Applicants' value accretive renovations will be detrimental to the Applicants and their largest stakeholder group, the Lenders.

III. THE PROPOSED SECOND ARIO

32. Principally, the proposed Second ARIO is intended to preserve the *status quo*, enable the continued operation of the Business and the completion of additional value accretive renovations, and provide the Unsecured Lenders with the benefit of estate-funded legal representation. The proposed Second ARIO, if granted, will enhance the prospect of a successful restructuring and is in the best interests of the Applicants and their stakeholders.

33. Provided that the proposed Second ARIO is granted, the Applicants, in consultation with the Monitor, the Lender Representative Counsel and the Unsecured Lender Representative Counsel, intend to seek Court approval of:

- (a) the Applicants' retention of a financial advisor;
- (b) with the input of the financial advisor to be retained by the Applicants, and to the extent a value-maximizing refinancing solution is not otherwise first found, a process for the solicitation of interest in a reorganization or recapitalization of the Business through a refinancing, or sale of the Applicants' Property (a "SISP") to be conducted by the financial advisor under the oversight of the Monitor; and
- (c) a process for the determination and resolution of claims against the Applicants and their present and former directors and officers (a "**Claims Process**").

34. While the Applicants have previously deferred seeking Court-approval of the retention of the Financial Advisor to avoid objections from the Lender Representatives and to facilitate consultation among the Applicants, the Monitor and the Lender Representatives, a financial advisor's assistance is urgently required. The negative and misguided perception of the Applicants, the Business, the Additional Stay Parties and myself precipitated by the news media and others since the commencement of these CCAA proceedings, and the significant workload imposed on the Applicants and the Additional Stay Parties to date, has severely impaired the Applicants' refinancing efforts to the detriment of the Applicants and their stakeholders.

35. The retention of a financial advisor will immediately assist the Applicants in re-establishing investor confidence in the Business, preparing a SISP and identifying a

comprehensive solution. Given the substantial impact a financial advisor's retention is expected to have, the Applicants have diligently considered and consulted with numerous potential candidates in good faith since the granting of the ARIO.

A. Extending the Stay of Proceedings

36. The Stay of Proceedings under the ARIO will expire on March 28, 2024. Pursuant to the proposed Second ARIO, the Applicants are seeking to extend the Stay of Proceedings to and including April 30, 2024 (the "**Stay Period**").

37. As described in the First Clark Affidavit and the Second Clark Affidavit, the Applicants require the Stay of Proceedings to prevent numerous uncoordinated and value deteriorative enforcement actions by, among others, the Lenders and disruption to the Business while the Applicants' restructuring and refinancing efforts are pursued in earnest. If extended, the Stay of Proceedings will preserve the *status quo* and afford the Applicants the breathing space and stability required to, among other things:

- (a) operate the Business in the ordinary course without disruption;
- (b) avoid uncoordinated and distressed sales or forced liquidations of the Properties, which would be value deteriorative and contrary to the best interests of the Applicants' stakeholders;
- (c) preserve their existing tenant relationships and protect such tenants from forced entries and other improper and disruptive conduct previously taken by certain aggressive Lenders;

- (d) liaise with the Lender Representative Counsel and the Unsecured Lender Representative Counsel, on behalf of the Secured Lenders and the Unsecured Lenders, respectively, regarding such stakeholders' interests and the Applicants' objectives in these CCAA proceedings;
- (e) continue to complete value accretive renovations;
- (f) continue to pursue a comprehensive refinancing and/or restructuring transaction capable of underpinning a consensual plan of compromise or arrangement and advance ongoing discussions related thereto, free of interruption caused by enforcement actions against the Applicants and/or the Properties;
- (g) seek approval of the Applicants' retention of a financial advisor; and
- (h) develop and seek approval of a Claims Process and SISF, in consultation with the Monitor, the Lender Representative Counsel and the Unsecured Lender Representative Counsel.

38. In connection with the proposed extension of the Stay of Proceedings, the Applicants, with the assistance of the Monitor, prepared a revised cash flow analysis (the "**Revised Cash Flow Forecast**") to determine their funding requirements during the Stay Period. I understand that a copy of the Revised Cash Flow Forecast will be attached to the Second Report of the Monitor to be filed. As the Revised Cash Flow Forecast illustrates, the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the Stay Period.

39. In light of the foregoing, I believe that the proposed extension of the Stay of Proceedings is both necessary and in the best interests of the Applicants and their stakeholders. Further, I do not believe that any creditor or other stakeholder will be materially prejudiced by the proposed extension of the Stay of Proceedings.

40. The Monitor has advised that it is supportive of the proposed extension of the Stay of Proceedings through the Stay Period.

B. Extending the Stay of Proceedings to the Additional Stay Parties and the Additional Stay Parties' Property

41. As noted in the First Clark Affidavit and the Second Clark Affidavit, the obligations of the Applicants under all or substantially all of the First Mortgage Loans, the Second Mortgage Loans and the Promissory Notes are or are purportedly personally guaranteed by the Additional Stay Parties, who are indirect shareholders of the Applicants and directors of the Applicants. Accordingly, the Applicants sought and obtained a temporary stay of proceedings against or in respect of the Additional Stay Parties, or against or in respect of any of the Additional Stay Parties' Property with respect to the Related Claims under the Initial Order and thereafter, the ARIO.

42. Pursuant to the proposed Second ARIO, the Applicants are seeking to extend the temporary stay of the Related Claims to prevent enforcement action from being commenced or continued against the Additional Stay Parties or the Additional Stay Parties' Property during the Stay Period. As in the case of the Initial Order and the ARIO, the proposed Second ARIO does not purport to release, compromise or permanently enjoin the Related Claims. Rather, it imposes a temporary stay of proceedings to maintain stability, preserve the Applicants' and the Additional Stay Parties' limited time and resources and facilitate the administration of these CCAA proceedings. Further,

the proposed Second ARIO continues to toll any prescription, time or limitation period relating to any proceeding against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims.

43. The potential prejudice to certain of the Lenders that may result from the continuation of a temporary stay of proceedings in favour of the Additional Stay Parties or against or in respect of any of the Additional Stay Parties' Property with respect to the Related Claims, when measured against the substantial benefits of imposing such a stay, is minimal, given, among other things, that:

- (a) the commencement or continuation of the Related Claims, which are derivative of the Applicants' liabilities under the First Mortgage Loans, the Second Mortgage Loans and the Promissory Notes, will invariably necessitate both the Additional Stay Parties' – the majority of whose net worth is invested in the Applicants and the Properties – and the Applicants' participation in tens or potentially hundreds of individual actions;
- (b) the Additional Stay Parties' participation in responding to any Related Claims will severely strain the Applicants' already limited resources and those of their directors, jeopardizing the Applicants' restructuring efforts and the success of these CCAA proceedings;
- (c) as demonstrated by the Statements of Claim described in the First Clark Affidavit, 27 of which name one or more of the Additional Stay Parties as defendants, the risk of the simultaneous involvement of the Applicants and the Additional Stay Parties

in responding to any Related Claims (if permitted to be pursued) is not merely theoretical;

- (d) the time, resources and energy of the Additional Stay Parties has been and continues to be severely strained by (i) the Investigation, (ii) extensive information requests from the Monitor, the Monitor's counsel, the Lender Representatives and the Lenders, (iii) the Business' ordinary course operations, and (iv) ongoing demands and enforcement steps against, and requests made of, the Additional Stay Parties as a result of these CCAA proceedings but, in respect of obligations that do not constitute Related Claims;
- (e) the failure of these CCAA proceedings, and the concomitant distressed sale of the Properties, will be detrimental to the Applicants' stakeholders, including the Lenders and the Applicants' approximately 1,000 tenants;
- (f) the Additional Stay Parties have not received any salaries from the Applicants since the commencement of these CCAA proceedings, have never, unlike comparable businesses, directly or indirectly charged a fee in respect of assets under management, and do not have incomes capable of funding defences to potentially hundreds of claims in respect of purported guarantees, let alone satisfying them;
- (g) the Additional Stay Parties' net worth outside of the Applicants and the Properties is not expected to be sufficient to satisfy the significant obligations they have or have purportedly guaranteed;

- (h) the Applicants intend to consummate a comprehensive refinancing or restructuring transaction that will underpin a plan of compromise or arrangement in these CCAA proceedings, which is intended to reduce the quantum of the Related Claims (and materially so) if such Related Claims cannot be addressed consensually; and
- (i) the Related Claims are not proposed to be released, compromised or permanently enjoined under the Second ARIO and any prescription, time or limitation period relating to any proceeding against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims will be tolled under the proposed Second ARIO for a period of time equal to the Stay Period.

44. The Monitor has advised that, in the circumstances, it is supportive of the proposed stay of proceedings against or in respect of the Additional Stay Parties or any of the Additional Stay Parties' Property with respect to the Related Claims.

C. The Proposed Unsecured Lender Representative Counsel

45. As referenced above, the Applicants had sought to have Chaitons LLP appointed as the Lender Representative Counsel for all of the Lenders in any Insolvency Proceedings, including these CCAA proceedings, pursuant to the Initial Order. At that time, the Applicants' proposed appointment of the Lender Representative Counsel was informed by the numerosity of their most significant creditor group, the Lenders. Collectively, the Applicants have approximately 390 First Mortgage Loans, 121 Second Mortgage Loans, 802 Promissory Notes and over 300 different Lenders, many of which are individual investors that provided loans to the Applicants through or with Lift Capital Incorporated or The Windrose Group Inc. ("**Windrose**").

46. While the Applicants were not aware of any conflict of interest that would have rendered the appointment of the Lender Representative Counsel inappropriate as at the date of the Initial Order or the Comeback Motion, the Secured Lender Meeting made clear the Secured Lenders' desire to have independent representative counsel. Having regard to the Secured Lenders' concerns and the fact that Lion's Share holds approximately 602 of the Applicants' 802 Promissory Notes, the Lender Representative Counsel determined that its mandate should be limited to the Secured Lenders.

47. As set out in the Supplemental Report, the Monitor and Lender Representative Counsel advised the principal of Windrose and Lion's Share, Claire Drage, that the ARIO, if granted, would carve-out the Applicants' unsecured lenders from the Lender Representative Counsel's mandate. Further, the Monitor sent a notice on February 12, 2024 to all of the Lenders to apprise them of the Lender Representative Counsel's decision to narrow the scope of its mandate. Windrose, Lion's Share, and Claire Drage subsequently retained Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") in connection with these CCAA proceedings.

48. The revised scope of the Lender Representative Counsel's mandate was ultimately approved pursuant to the ARIO. After the granting of the ARIO, the Monitor arranged a virtual meeting of the Applicants' Unsecured Lenders to provide a forum for Unsecured Lenders to discuss the potential appointment of representative counsel (the "**Unsecured Meeting**").

49. I am advised by the Monitor, and believe that, the Monitor, the Monitor's counsel and many Unsecured Lenders and/or representatives of Unsecured Lenders attended the Unsecured Meeting. Neither the Applicants nor their counsel attended the Unsecured Meeting. I am also advised by the Monitor, and believe that, the attendees of the Unsecured Meeting overwhelmingly indicated a

desire to have the benefit of representative counsel in the Insolvency Proceedings. The Unsecured Lenders were thereafter introduced to GSNH by the Monitor.

50. In light of the outcome of the Unsecured Meeting and with the Monitor's and the Lender Representative Counsel's support, the Applicants are now seeking to have GSNH appointed as the Unsecured Lender Representative Counsel for all of the Unsecured Lenders in any Insolvency Proceedings, including these CCAA proceedings, for any issues affecting the Unsecured Lenders in such Insolvency Proceedings. Given that Claire Drage, Lion's Share and Windrose have already retained counsel, and that their interests may not align with the remainder of the Unsecured Lenders, Lion's Share and any other unsecured Lenders directly or indirectly controlled by, or under common control or otherwise affiliated with, Lion's Share or its principal, Claire Drage, are not included among the Unsecured Lenders.

51. I am advised by Mario Forte of GSNH, and believe that, GSNH is prepared to act as the Unsecured Lender Representative Counsel if so appointed and has previously acted as counsel to various participants and stakeholders in complex insolvency proceedings. Notably, GSNH's prior complex insolvency mandates include the following:

- (a) acting as counsel to the acquirer in respect of the acquisition of the business of Stelco Inc. in its proceedings under the CCAA;
- (b) acting as counsel to Caisse de dépôt et placement du Québec, the principal holder (in excess of \$12 billion) of asset backed commercial paper, in the restructuring of the non-bank asset backed commercial paper industry;

- (c) acting as counsel to the restructuring committee of the board of Canwest Publishing Inc. in the "Canwest" group's CCAA proceedings;
- (d) acting as counsel to senior management of Sears Canada Inc. in their bid to acquire the business of Sears in its CCAA proceedings; and
- (e) acting as counsel to the restructuring committee of the Senate of Laurentian University of Sudbury in its CCAA proceedings.

52. The material terms of the Unsecured Lender Representative Counsel's appointment mirror those of the Lender Representative Counsel that currently exist under the ARIO. They include, among others, that:

- (a) upon the granting of the Second ARIO, the Unsecured Lender Representative Counsel will be appointed as representative for all of the Unsecured Lenders in any Insolvency Proceedings, for any issues affecting the Unsecured Lenders in such Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Unsecured Lenders;
- (b) as soon as reasonably practicable following the date of the Second ARIO, the Unsecured Lender Representative Counsel is entitled, but not required, to identify no more than six (6) Unsecured Lenders to be nominated as Court-appointed representatives (collectively, the "**Unsecured Lender Representatives**"), which, if appointed, will represent the Unsecured Lenders in the Insolvency Proceedings and advise, and where appropriate instruct, the Unsecured Lender Representative

Counsel, including, without limitation, for the purpose of settling or compromising claims of the Unsecured Lenders in the Insolvency Proceedings;

- (c) any Unsecured Lender that does not wish to be represented by the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, in the Insolvency Proceedings may, within thirty (30) days of the date of the Second ARIO, notify the Monitor and the Unsecured Lender Representative Counsel in writing that such Unsecured Lender is opting out of representation by the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any;
- (d) the Unsecured Lenders will be bound by the actions of the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, in the Insolvency Proceedings;
- (e) the fees and disbursements of GSNH, in its capacity as the Unsecured Lender Representative Counsel, whether incurred prior to or after the date of the Second ARIO will be paid by the Applicants; and
- (f) the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, will have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of the Second ARIO save and except for any gross negligence or wilful misconduct on their part.

53. The Applicants are not aware of any representative counsel currently acting for the benefit of a material portion or all of the Unsecured Lenders. As a significant creditor group, the

Applicants believe that the Unsecured Lenders ought to be entitled to meaningful representation in these CCAA proceedings in the form of the proposed Unsecured Lender Representative Counsel. The Unsecured Lenders' subordinated interest relative to the Secured Lenders and the lack of incentive for the Secured Lenders to pursue a refinancing, sale or other restructuring transaction that maximizes value for the Unsecured Lenders (as evidenced by the LOI), reinforces the Applicants' belief in this regard.

54. In addition to providing the Unsecured Lenders with meaningful representation, the Unsecured Lender Representative Counsel's appointment will facilitate the efficient administration of these CCAA proceedings. Specifically, it will provide a single means through which the inquiries and concerns of numerous Unsecured Lenders holding approximately 200 Promissory Notes can be addressed, their views can be articulated and their interests can be protected and advanced.

55. To ensure that the Unsecured Lender Representative Counsel, if and once appointed, has the information necessary to perform its mandate, the proposed Second ARIO requires the Applicants, Windrose and Lion's Share to provide, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the following to the Unsecured Lender Representative Counsel (collectively, the "**Unsecured Lender Information**"):

- (a) the names, last known address, last known email addresses (if any) and entitlements of all of the Unsecured Lenders (excluding any Unsecured Opt-Out Lender that has delivered an Unsecured Opt-Out Notice (each as defined in the Second ARIO) prior to the delivery of the Unsecured Lender Information), in each case, to the extent in

the possession or control of the Applicants, Windrose and/or Lion's Share, respectively, to be used solely for the purposes of the Insolvency Proceedings; and

- (b) upon request of the Unsecured Lender Representative Counsel, such documents and data as may be reasonably relevant to the issues affecting the Unsecured Lenders in the Insolvency Proceedings, to the extent in the possession or control of the Applicants, Windrose and/or Lion's Share, respectively.

56. Without the Lender Representative Counsel's appointment, the Applicants, the Monitor and other stakeholders in these CCAA proceedings will be forced to liaise with and develop consensus among numerous counsel retained by the Unsecured Lenders at their expense. The resulting inefficiencies, fractured communications and additional professional costs to be incurred may jeopardize the Applicants' ability to achieve a consensual restructuring and undermine the purposes of these CCAA proceedings.

57. Having regard to the foregoing, the Applicants believe that the proposed Unsecured Lender Representative Counsel's appointment is in the best interests of the Applicants, the Unsecured Lenders and the Applicants' remaining stakeholders. The Monitor has advised that it is supportive of the appointment of the proposed Unsecured Lender Representative Counsel.

58. At this time, the Applicants are not aware of any conflict existing as between the interests of the Unsecured Lenders that would make such appointment inappropriate. To the extent such conflicts subsequently arise during these CCAA proceedings, they may be appropriately addressed at such time.

D. Professional Fees and Disbursements and Expanding the Administration Charge

59. The Initial Order granted a charge on the Applicants' Property in favour of the Lender Representative Counsel, the Monitor, and the Monitor's and the Applicants' respective counsel in these CCAA proceedings up to a maximum amount of \$750,000 (the "**Administration Charge**"). The quantum of the Administration Charge was subsequently increased to \$1,000,000 and thereafter, \$1,500,000, under the Amended IO and the ARIO, respectively.

60. As referenced above, the Applicants are seeking to pay the reasonable fees and disbursements of the Unsecured Lender Representative Counsel pursuant to the proposed Second ARIO. The Applicants are also seeking to afford the Unsecured Lender Representative Counsel the benefit of the Administration Charge, as security for such fees and disbursements. The Applicants are not seeking to increase the quantum of the Administration Charge.

61. As in the case of the existing beneficiaries of the Administration Charge, the Unsecured Lender Representative Counsel is expected to make distinct and significant contributions to the Applicants' restructuring efforts. Indeed, the expertise, knowledge and participation of the Unsecured Lender Representative Counsel is necessary to advance the interests of the Unsecured Lenders, improve the efficiency of these CCAA proceedings and reduce the professional costs incurred by the Applicants.

62. Given the circumstances, the complexity of these CCAA proceedings, and the services to be provided by the Unsecured Lender Representative Counsel, the Applicants believe that its proposed inclusion as a beneficiary of the Administration Charge is fair and reasonable.

63. I understand that the Monitor is of the view that the payment of the reasonable fees and disbursements of the Unsecured Lender Representative Counsel, and its inclusion as a beneficiary of the Administration Charge, are appropriate in the circumstances.

IV. CONCLUSION

64. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize the Business, apprise their stakeholders of these CCAA proceedings, and advance their refinancing and restructuring efforts. With the benefit of the relief proposed under the Second ARIO, the Applicants will be able to continue the Business' ordinary course operations and pursue their refinancing and restructuring objectives for the benefit of their stakeholders.

65. I believe that the relief sought on the within motion and described above is in the best interests of the Applicants and their stakeholders, including the Lenders and the Applicants' tenants. Moreover, I continue to believe that these CCAA proceedings and the relief sought herein presents the best means of addressing the challenges facing the Business and effecting the refinancing and/or restructuring transactions necessary to maximize value for the Applicants' stakeholders.

66. I swear this affidavit in support of the Applicants' motion for the proposed Second ARIO and for no other or improper purpose.

SWORN REMOTELY by Robert Clark stated as being located in the City of Miami, in the State of Florida, before me at the City of Oakville, in the Province of Ontario, on March 24th, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Joshua Foster
JOSHUA FOSTER
Commissioner for Taking Affidavits
(or as may be)

DocuSigned by:

72D0AD4433814D9
ROBERT CLARK

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED**

Court File No.: CV-24-00713245-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE
INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN
INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL
ESTATE INC.**

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ROBERT CLARK
(Sworn March 24, 2024)**

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Lawyers for the Applicants

THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 27TH DAY OF MARCH, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

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Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc. and Joint Captain Real Estate Inc. Commence Proceedings Under the CCAA

Wednesday, 07 February 2024 04:20 PM

Topic: [Company Update](#) Share this Article [in](#) [f](#) [x](#)**Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc. and Joint Captain Real Estate Inc. Commence Proceedings Under the CCAA**

TORONTO, ON / ACCESSWIRE / February 7, 2024 / Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc. and Joint Captain Real Estate Inc. (collectively, the "Applicants" or the "Company") announced today that they obtained an order (the "Initial Order") and an amended Initial Order (the "AIO") from the Ontario Superior Court of Justice (Commercial List) (the "Court") on January 23, 2024 and January 31, 2024, respectively, granting protection under Canada's principal restructuring statute, the *Companies' Creditors Arrangement Act* (the "CCAA"). The Company is not bankrupt and is not intending to liquidate its assets. The intention of the CCAA proceedings (the "CCAA Proceedings") is to complete a refinancing and/or restructuring of the Company's debt obligations.

Among other things, the Initial Order grants a stay of proceedings in favour of the Company, appoints KSV Restructuring Inc. as monitor (the "Monitor") in the CCAA Proceedings, and appoints Chaitons LLP as representative counsel to the Company's lenders in the CCAA Proceedings. The AIO approves a debtor-in-possession financing facility provided by Harbour Mortgage Corp. (the "DIP Facility") which are to be used to pay property taxes, utilities and the operating costs of the Applicants during the CCAA Proceedings, among other expenses, and extends the stay of proceedings granted by the Initial Order.

The Applicants' decision to commence the CCAA Proceedings was made in consultation with the Company's advisors and after careful consideration of the Company's financial circumstances and alternatives and the value destructive effects of a bankruptcy, liquidation or uncoordinated enforcement efforts by its many lenders.

In connection with the commencement of the CCAA Proceedings, the Applicants negotiated and entered into a Financial Advisor Agreement (the "FA Engagement Agreement") to retain KSV as financial advisor to the Company (the "Financial Advisor"). The Financial Advisor was previously retained by certain of the Applicants in August 2023 to provide various financial advisory services and has become familiar with the Company and its business. The Financial Advisor has extensive advisory, turnaround and management experience. The Monitor has worked with the Financial Advisor on multiple occasions in the context of formal insolvency proceedings. The Financial Advisor's principal, Howard Steinberg, is formerly a senior executive of several financial institutions and has been involved in numerous restructurings in that capacity. Mr. Steinberg has led or co-led the acquisition, renovation, financing and sale of approximately 614 residential properties in the State of Florida. The FA Engagement Agreement and the Financial Advisor's retention in the CCAA Proceedings remain subject to Court approval.

With the assistance of the Financial Advisor and the Monitor, and the benefit of the stay of proceedings and the DIP Facility, the Company intends to pursue a comprehensive refinancing and/or restructuring transaction capable of underpinning a plan of compromise or arrangement. The Applicants believe that the CCAA Proceedings and the implementation of a plan of compromise or arrangement therein present the best means of addressing the Company's debt obligations, maximizing value for the Company's stakeholders and enabling the Company to continue to operate and serve its valued tenants on a sustainable financial footing.

Additional Information

The Initial Order, the AIO and other information regarding the CCAA Proceedings are available on the Monitor's website at: <https://www.ksvadvisory.com/experience/case/SID>.

About the Company

The Applicants, together with certain affiliates and SIDRWC Inc. o/a SID Developments, 2707793 Ontario Inc. o/a SID Renos and SID Management Inc., are part of a group of companies (collectively, the "Corporate Group") specializing in the acquisition, renovation and leasing of distressed residential real estate in undervalued markets throughout Ontario. Since inception, the Corporate Group has acquired, renovated, leased and/or sold over 800 underutilized and strategically located properties in Ontario, that provide in aggregate over 1200 rental units. The Applicants are the principal owners of the Corporate Group's rental units and the residential properties on which they are situated.

CONTACT:

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SOURCE: Balboa Inc.

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED**

Court File No.: CV-24-00713245-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE
INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN
INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL
ESTATE INC.**

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ROBERT CLARK
(Sworn March 27, 2024)**

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