

**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

**MOTION RECORD
(Returnable April 12, 2024)**

April 8, 2024

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

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TAB 1

**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

**NOTICE OF MOTION
(Returnable April 12, 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**") will make a motion before the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on April 12, 2024 at 10:00 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- In writing under subrule 37.12.1(1).
- In writing as an opposed motion under subrule 37.12.1(4).
- In person.
- By telephone conference.
- By video conference.

At 330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR:

1. An order (the "**SISP Approval Order**") substantially in the form of the draft order attached at Tab 3 of the Applicants' Motion Record pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) extending the Stay of Proceedings (as defined below) to and including June 24, 2024;
- (c) approving a sale, refinancing and investment solicitation process in the form attached as Schedule "A" to the SISP Approval Order (the "**SISP**");
- (d) authorizing the Applicants to engage Howards Capital Corp. ("**HCC**") and CBRE Limited ("**CBRE**") as advisors (together, the "**SISP Advisors**" and each, a "**SISP Advisor**") pursuant to engagement agreements to be executed between the Applicants and HCC (the "**HCC Engagement Agreement**"), and CBRE and the Applicants (the "**CBRE Engagement Agreement**"), respectively;
- (e) authorizing and directing the Applicants, the SISP Advisors, and the Monitor (as defined below) to implement the SISP pursuant to the terms thereof, and to perform their respective obligations thereunder;
- (f) approving (i) the Pre-Filing Report of the Monitor dated January 23, 2024 (the "**Pre-Filing Report**"), the First Report of the Monitor dated January 29, 2024 (the "**First Report**"), the Supplement to the First Report of the Monitor dated

February 13, 2024 (the "**Supplemental Report**"), the Second Report of the Monitor dated March 26, 2024 (the "**Second Report**"), the Third Report of the Monitor to be filed (the "**Third Report**") and the activities of the Monitor referred to therein, and (ii) the fees of the Monitor and its counsel referred to in the Third Report; and

(g) sealing the unredacted copy of the CBRE Engagement Agreement, to be filed.

2. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. The Applicants are Canadian privately-held corporations that, together with certain affiliate corporations that are not Applicants in these CCAA proceedings 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 "**Company**") specializing in the acquisition, renovation and leasing of distressed residential real estate in undervalued markets throughout Ontario (the "**Business**").

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

5. 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.

6. 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 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 the Court (collectively, the "**Insolvency Proceedings**"); and
- (e) granted the Administration Charge (as defined in the Initial Order) 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**").

7. Balancing the objections of certain of the Applicants' secured Lenders with the Applicants' critical need for an extension and expansion of the limited relief obtained under the Initial Order, the Court adjourned the Applicants' comeback motion on January 31, 2024, in part, and granted an amended Initial Order, among other things:

- (a) extending the Stay of Proceedings to and including February 16, 2024;
- (b) approving 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**"); and

- (c) granting a charge over the Applicants' Property up to the maximum amount of \$4,000,000 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**").

8. Following consultation among the Applicants, the Monitor and the Lender Representative Counsel, the Applicants 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 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;
- (c) narrowed the scope of the Lender Representative Counsel's mandate to the Applicants' secured Lenders (collectively, the "**Secured Lenders**"); and
- (d) granted the Monitor certain enhanced powers and oversight, including:
 - (i) requiring the prior written consent of the Monitor for 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.

9. Most recently, the Applicants sought and, on March 28, 2024, obtained a second ARIO (the "**Second ARIO**"), which, among other things:

- (e) extended the Stay of Proceedings to and including April 30, 2024; and
- (f) appointed Goldman Sloan Nash & Harber LLP 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**"), in the Insolvency Proceedings.

The SISP Advisors' Retention

10. In contemplation of a potential SISP and to address the Applicants' need for the assistance of an independent financial and/or sale advisor, the Applicants, with the assistance of the Monitor, solicited proposals from various prospective advisors. The Applicants and the Monitor received proposals from four advisors, including HCC and CBRE, and the Applicants

separately received a proposal from an additional advisor (collectively, the "**Prospective Advisors**").

11. Following consultation among the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver (as defined below), and having regard to their respective views and the Prospective Advisors' qualifications and experience, the Monitor proposed that HCC and CBRE be jointly retained as the SISP Advisors. After careful review and consideration of each of the Prospective Advisors and their respective proposals, the Applicants similarly concluded that it was in the best interests of the Applicants and their stakeholders to retain both HCC and CBRE.

12. The terms of the SISP Advisors' engagements will be set out in the HCC Engagement Agreement and the CBRE Engagement Agreement (together, the "**Engagement Agreements**"). As reflected in the SISP, HCC's engagement is proposed to be solely in respect of any refinancing of, or other strategic investment in, the Applicants' Property, while CBRE's engagement is proposed to be solely in respect of any sale transactions involving the Applicants' Property. Copies of the Engagement Agreements will be filed in advance of the within motion.

13. The Applicants' engagement of both of the SISP Advisors is in the best interests of the Applicants and their stakeholders and will enhance the prospect of one or more value-maximizing refinancing, sale and/or other strategic investments or transactions (each, a "**Transaction**") materializing in the SISP.

14. In the circumstances, the SISP Advisors' retention and anticipated remuneration are appropriate given their respective experience, the breadth of the services to be provided and the

benefit expected to accrue to the Applicants and their stakeholders from the SISP Advisors' respective involvement in the SISP.

The SISP

15. The SISP was developed by the Monitor in consultation with the Applicants, the SISP Advisors, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver.

16. The SISP prescribes the manner in which the Monitor, with the assistance of the SISP Advisors, and in consultation with the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Court-appointed receiver of Lion's Share (in such capacity, the "**Lion's Share Receiver**"), shall solicit interest in one or more refinancing, sale and/or other strategic Transactions involving the business, assets and/or equity of the Applicants or any part thereof from interested parties (the "**Opportunity**").

17. The SISP contemplates a two-stage process. The first phase ("**Phase 1**") requires the submission of non-binding letters of intent ("**LOIs**" and each, an "**LOI**") by Potential Bidders (as defined in the SISP) while the second phase ("**Phase 2**") requires the submission of binding offers.

18. In Phase 1 of the SISP, the Monitor, supported by and with the assistance of the SISP Advisors, will solicit non-binding LOIs in respect of the Opportunity. A Potential Bidder that wishes to make a bid in the SISP must deliver a written copy of its non-binding LOI to the Monitor by no later than 5:00 p.m. (Toronto time) on June 10, 2024. Such LOI must comply with the criteria prescribed in the SISP to constitute a Qualified LOI (as defined in the SISP).

19. Subject to certain safeguards intended to protect the integrity of the SISP, the SISP Advisors, the Monitor, the Applicants, the Lion's Share Receiver, the Lender Representative Counsel and the Unsecured Lender Representative Counsel (collectively, the "**Reviewing Parties**") shall review the LOIs received. The Monitor, in consultation with the other Reviewing Parties, shall determine which of the LOIs, if any, constitute Qualified LOIs.

20. To maximize the flexibility of the SISP and reduce the unnecessary expenditure of time and resources, the SISP does not enumerate the parameters that will govern Phase 2. Rather, it provides an informed, cooperative, and consultative process pursuant to which such parameters, if necessary, will be determined by the Reviewing Parties.

21. Ultimately, the SISP will provide a flexible, efficient, fair and equitable process for canvassing the market for refinancing, sale and/or other strategic Transactions, and maximizing recovery for the Applicants' stakeholders. Moreover, the SISP's unique structure will afford the Applicants and their stakeholders the optionality to pursue one or more refinancing, sale and/or other strategic Transactions or, if appropriate, other restructuring options.

Extending the Stay of Proceedings

22. The Stay of Proceedings under the Second ARIO will expire on April 30, 2024. Pursuant to the proposed SISP Approval Order, the Applicants are seeking to extend the Stay of Proceedings to and including June 24, 2024 (the "**Stay Period**").

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

- (a) continue the Business' ordinary course operations;

- (b) respond to numerous information requests made by the Lenders, both directly and through the Monitor;
- (c) cooperate in, and respond to, extensive inquiries made by the Monitor and its counsel pursuant to the Investigation, which remains ongoing; and
- (d) with the assistance of the Monitor, arrange and conduct two 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, were invited.

24. The proposed extension of the Stay of Proceedings will, among other things, 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;
- (b) avoid uncoordinated and distressed sales or forced liquidations of the Properties, which would be value destructive and contrary to the best interests of the Applicants' stakeholders;
- (c) continue to complete value accretive renovations; and
- (d) allow the Monitor, with the assistance of the SISP Advisors, to implement and conduct the SISP.

25. 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.

26. No creditor is expected to suffer material prejudice as a result of the proposed extension of the Stay of Proceedings.

Extending the Stay of Proceedings in Respect of the Additional Stay Parties

27. Pursuant to the proposed SISP Approval Order, 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.

28. In extending the temporary stay of proceedings in favour of the Additional Stay Parties and the Additional Stay Parties' Property, nothing in the proposed SISP Approval Order purports to release, compromise or permanently enjoin the Related Claims. Further, pursuant to the Second ARIO, 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 continue to be tolled during the Stay Period.

29. The Additional Stay Parties' participation in responding to any Related Claims would severely strain the Applicants' limited resources and those of their directors, imperiling the Applicants' restructuring efforts and the success of these CCAA proceedings. The failure of these CCAA proceedings, and the concomitant distressed sale of the Properties, would be detrimental to the Applicants' stakeholders, including the Lenders and the Applicants' tenants.

30. The potential prejudice to certain of the Lenders that may result from 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.

The Monitor's Reports, Activities and Fees

31. The proposed SISP Approval Order approves the Pre-Filing Report, the First Report, the Supplemental Report, the Second Report, the Third Report, and the activities of the Monitor described therein as well as the fees and disbursements of the Monitor and its counsel referred to in the Third Report.

32. Records detailing the fees and disbursements of the Monitor and its counsel will be included in the Third Report.

Sealing

33. To protect the integrity of the SISP and ensure that one or more value-maximizing Transactions materialize therein, the Applicants are seeking a temporary sealing order in respect of the unredacted copy of the CBRE Engagement Agreement, which contains commercially sensitive information.

34. The proposed sealing order is intended to prevent the disclosure of the variable component of CBRE's sales fees. Such disclosure may undermine the Monitor's ability, with the assistance of the SISP Advisors, to consummate one or more value-maximizing Transactions in respect of a portion of the Applicants' Property to the detriment of the Applicants' stakeholders.

35. In the circumstances, the benefits of sealing the unredacted copy of the CBRE Engagement Agreement will outweigh any prejudice that may result from such relief.

Other Grounds

36. The provisions of the CCAA and the inherent and equitable jurisdiction of the Court.

37. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended and section 106 and subsection 137(2) of the *Courts of Justice Act*, R.S.O. 190, c. C. 43, as amended.

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

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

39. The Third Report of the Monitor and the appendices thereto, to be filed.

40. The Affidavit of Robert Clark sworn April 8, 2024 and the exhibits thereto.

41. The Affidavit of Joshua Foster to be sworn and the exhibits thereto.

42. Such further and other material as counsel may advise and this Honourable Court may permit.

April 8, 2024

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Lawyers for the Applicants

TO: THE SERVICE LIST

**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

NOTICE OF MOTION
(Returnable April 12, 2024)

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Lawyers for the Applicants

TAB 2

**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 April 8, 2024)**

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**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 April 8, 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 an order (the "**SISP Approval Order**") 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 June 24, 2024;
- (b) approving a sale, refinancing and investment solicitation process in the form attached as Schedule "A" to the SISP Approval Order (the "**SISP**");
- (c) authorizing the Applicants to engage Howards Capital Corp. ("**HCC**") and CBRE Limited ("**CBRE**") as advisors (together, the "**SISP Advisors**" and each, a "**SISP Advisor**") pursuant to engagement agreements to be executed between the Applicants and HCC (the "**HCC Engagement Agreement**"), and CBRE and the Applicants (the "**CBRE Engagement Agreement**"), respectively;
- (d) authorizing and directing the Applicants, the SISP Advisors, and the Monitor (as defined below) to implement the SISP pursuant to the terms thereof, and to perform their respective obligations thereunder; and
- (e) sealing the unredacted copy of the CBRE Engagement Agreement, to be filed.

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**"), January 28, 2024 (the "**Second Clark Affidavit**") and March 24, 2024 (collectively with the First Clark Affidavit and the Second Clark Affidavit, the "**Clark Affidavits**"). All capitalized terms used and not otherwise

defined herein have the meaning ascribed to them in the Clark Affidavits, as applicable. Copies of the Clark Affidavits (without exhibits) are attached hereto as **Exhibits "A" – "C"**.

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 430 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 The Lion's Share Group Inc. ("**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 Lenders in these proceedings, any proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before the Court (collectively, 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 "D"** and **"E"**, respectively. 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

12. 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.

13. Balancing the objections of certain of the Applicants' secured Lenders to the Proposed ARIO 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 on January 31, 2024, in part, and granted an amended Initial Order, among other things:

- (a) extending the Stay of Proceedings to and including February 16, 2024;
- (b) approving 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**"); and
- (c) granting a charge over the Applicants' Property up to the maximum amount of \$4,000,000 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**").

14. Having negotiated resolutions between the Lender Representative Counsel and the Applicants, in consultation with the Monitor, the Applicants 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 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;
- (c) narrowed the scope of the Lender Representative Counsel's mandate to the Applicants' secured lenders (collectively, the "**Secured Lenders**"); and

- (d) granted the Monitor certain enhanced powers and oversight requested by the Applicants' Secured Lenders, including:
 - (i) requiring the prior written consent of the Monitor for all payments to be made, and liabilities to be incurred, by the Applicants; 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.

15. Copies of the ARIO and the accompanying endorsement of the Honourable Madam Justice Kimmel dated February 15, 2024, are attached hereto as **Exhibits "F" and "G"**, respectively. Additional detail concerning the ARIO and the resolutions reached among the Applicants and the Lender Representative Counsel is provided in the Supplement to the First Report of the Monitor dated February 13, 2024 (the "**Supplemental Report**"). A copy of the Supplemental Report (without appendices) is attached hereto as **Exhibit "H"**.

16. Most recently, the Applicants sought and, on March 28, 2024, obtained a second ARIO (the "**Second ARIO**"), which, among other things:

- (a) extended the Stay of Proceedings to and including April 30, 2024; and
- (b) appointed Goldman Sloan Nash & Harber LLP as representative counsel (in such capacity, the "**Unsecured Lender Representative Counsel**") for all of the unsecured lenders of the Applicants other than (i) 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**"), in the Insolvency Proceedings.

17. Copies of the Second ARIO and the accompanying endorsement of the Honourable Madam Justice Kimmel dated March 28, 2024, are attached hereto as **Exhibits "I"** and **"J"**, respectively.

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

- (a) continue the Business' ordinary course operations, subject to the limitations imposed under the Second ARIO;
- (b) arrange an introductory meeting with the Unsecured Lender Representative Counsel;
- (c) arrange an introductory meeting with the Fuller Landau Group Inc., in its capacity as the Court-appointed receiver of Lion's Share (in such capacity, the "**Lion's Share Receiver**"), counsel to the Lion's Share Receiver, representative counsel to an ad hoc group of the Lion's Share's lenders, and certain of the Lion's Share lenders;

- (d) with the assistance of the Monitor, arrange and conduct two 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, were invited.¹ Each of such meetings lasted more than three hours, with the Secured Lenders and the Unsecured Lenders asking many questions;
- (e) respond to numerous information requests made by the Lenders, both directly and through the Monitor;
- (f) cooperate in, and respond to, inquiries made by the Monitor and its counsel pursuant to the Investigation, which remains ongoing;
- (g) complete the renovation of approximately 8 additional units (which brings the total of completed renovations to 28 units);²
- (h) expand their ongoing renovations to approximately 29 active sites;
- (i) engage extensively with the Monitor and other stakeholders with respect to the development of the SISP and the SISP Advisors' retention; and
- (j) with the assistance of the Applicants' counsel, Bennett Jones LLP ("**Bennett Jones**"), prepare materials in support of the within motion.

¹ The meetings were intended to facilitate dialogue, moderated by the Monitor, among the Applicants and the Secured Lenders and the Unsecured Lenders. Accordingly, the Lender Representative Counsel, the Unsecured Lender Representative Counsel, counsel for the Applicants, and counsel for the Monitor did not speak or respond to inquiries.

² The Applicants note that the funds utilized in the Applicants' renovations to date were not received by the Applicants until February 26, 2024 (in the approximate amount of \$135,958, of which \$65,000 was allocated to post-filing renovation expenses), March 11, 2024 (in the approximate amount of \$245,035, of which \$185,000 was allocated to post-filing renovation expenses), and March 26, 2024 (in the approximate amount of \$310,039, of which \$250,000 was allocated to post-filing renovation expenses). The balance of each such amount was utilized to pay arrears owing to critical trades, with the prior consent of the Monitor.

19. Pursuant to the proposed SISP Approval Order, the Applicants now seek additional relief to preserve the *status quo* and facilitate the expedient implementation of the SISP with a view to identifying one or more value-maximizing refinancing, investment or sale opportunities.

III. THE SISP ADVISORS' RETENTION

20. Following extensive discussions among the Applicants, the Monitor, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver, the Applicants resolved to engage both HCC and CBRE as the SISP Advisors to facilitate and enhance the SISP, subject to finalizing and approving the terms of their engagement.

21. The terms of the SISP Advisors' engagements will be set out in the HCC Engagement Agreement and the CBRE Engagement Agreement (together, the "**Engagement Agreements**"). As reflected in the SISP, HCC's engagement is proposed to be solely in respect of any refinancing of, or other strategic investment in, the Applicants' Property (each, a "**Strategic Transaction**"), while CBRE's engagement is proposed to be solely in respect of any sale transactions involving the Applicants' Property (each, a "**Sale Transaction**"). Copies of the Engagement Agreements will be filed by way of a further affidavit submitted by or on behalf of the Applicants in advance of the within motion.

22. I believe that the Applicants' engagement of both of the SISP Advisors is in the best interests of the Applicants and their stakeholders and will enhance the prospect of one or more value-maximizing refinancing, sale and/or other strategic investments or transactions (each, a "**Transaction**") materializing in the SISP. The proposed SISP Advisors have extensive financial advisory and real estate experience, and significant experience in the financing and sale of real property. In the circumstances, the Applicants believe that the SISP Advisors' retention and

anticipated remuneration are appropriate given the SISP Advisors' respective experience, the breadth of the services to be provided and the benefit expected to accrue to the Applicants and their stakeholders from the SISP Advisors' respective involvement in the SISP.

23. The process pursuant to which the SISP Advisors were selected, their unique qualifications and the anticipated material terms of their respective engagements are described below.

B. The Selection of the SISP Advisors

24. In contemplation of a potential SISP and to address the Applicants' need for the assistance of an independent financial and/or sale advisor, the Applicants, with the assistance of the Monitor, solicited proposals from various prospective advisors. The Applicants and the Monitor received proposals from four advisors, including HCC and CBRE, and the Applicants separately received a proposal from an additional advisor (collectively, the "**Prospective Advisors**").

25. Following receipt and consideration of their respective proposals, the Applicants arranged a meeting – and in some cases, multiple meetings – with each of the Prospective Advisors. I am advised by Sean Zweig ("**Mr. Zweig**") of Bennett Jones, and believe that, the Monitor also arranged separate meetings with each of HCC and CBRE, the then preferred candidates, to which the Applicants' counsel, the Lender Representative Counsel and the Unsecured Lender Representative Counsel were invited. Copies of HCC's written proposal (the "**HCC Proposal**") and CBRE's redacted written proposal (the "**CBRE Proposal**"), are attached hereto as **Exhibits "K"** and "**L**", respectively.

26. Following consultation among the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver, and having regard to

their respective views and the Prospective Advisors' qualifications and experience, the Monitor proposed that HCC and CBRE be jointly retained as the SISP Advisors. After careful review and consideration of each of the Prospective Advisors and their respective proposals, the Applicants similarly concluded that it was in the best interests of the Applicants and their stakeholders to retain both HCC and CBRE. The Applicants' decision in this regard was informed by, among other things:

- (a) the Prospective Advisors' respective experience (or lack thereof) in identifying restructuring, refinancing and/or sale opportunities in respect of a residential real estate portfolio approaching the size and composition of that of the Applicants' portfolio (the "**Portfolio**") and located within secondary or tertiary markets;
- (b) the Prospective Advisors' respective fee structures;
- (c) the Prospective Advisors' respective preliminary views on the structure and timeline for any sale and investment solicitation process, and views on likely participants in such a process; and
- (d) the views expressed by the Lender Representative Counsel, the Lender Representatives, the Unsecured Lender Representative Counsel, the Unsecured Lender Representatives (as defined in the Second ARIIO) and the Lion's Share Receiver with respect to the SISP and the Prospective Advisors' potential retention.

27. Having regard to the foregoing criteria, the Applicants believe that the retention of both HCC and CBRE is appropriate in the circumstances and will further the purposes of the uniquely structured SISP.

C. HCC's Engagement

28. The Company previously engaged HCC as a financial advisor pursuant to a letter agreement dated August 5, 2023 (as amended and restated on September 27, 2023, the "**Letter Agreement**"). A copy of the Letter Agreement is attached hereto as **Exhibit "M"**.

29. HCC was selected by the Company, in part, based on its extensive financial advisory, turnaround and management experience, and the significant experience of its principal, Howard Steinberg ("**Mr. Steinberg**"). Mr. Steinberg is a previous Managing Director of Royal Bank of Canada ("**RBC**"), where he focused on restructuring and monetizing RBC's private equity investments, including its \$60 million investment in Tricon Capital Group Inc. Mr. Steinberg is also the previous President of Rose Corporation, where he assisted in restructuring more than 50 real estate investments across North America.

30. In addition, through Palm Beach Financial Solutions and Revest Asset Management, entities founded and co-founded by Mr. Steinberg, respectively, Mr. Steinberg has the unique experience of having led and co-led the acquisition, renovation, financing and sale of approximately 614 residential properties in the State of Florida between 2012 and 2021. During that period, Mr. Steinberg also developed internal property management and construction teams as well as a brokerage business to manage all aspects of Palm Beach Financial Solutions' and Revest Asset Management's portfolios.

31. The principal purposes of HCC's prior engagement as a financial advisor to the Company were, among others, to:

- (a) review and assess the Company's financial situation and go-forward prospects;

- (b) review the Company's short-term and medium-term liquidity situation, including a review of the most recent cash flow forecast, underlying financing model and current business plan;
- (c) review and perform a detailed assessment of the Company's assets; and
- (d) assist the Company in marketing a sale transaction, refinancing and/or restructuring to potential purchasers, financiers or investors.

32. Following HCC's initial retention and with its assistance, the Company initiated discussions with approximately 35 potential purchasers, financiers or investors, to assist in obtaining a comprehensive refinancing solution for the Applicants' funded indebtedness. In that time, HCC became intimately familiar with the Properties and the Business.

33. Pursuant to the Letter Agreement, HCC and the counterparties thereto, including certain of the Applicants, agreed to seek HCC's appointment as financial advisor or chief restructuring officer on terms substantially similar to those in the Letter Agreement in the event that all or substantially all of such counterparties commenced debtor-in-possession insolvency proceedings. Accordingly, the Applicants and HCC negotiated and entered into a Financial Advisor Engagement Agreement dated January 24, 2024 (the "**Financial Advisor Agreement**"), the effectiveness of which was subject to the granting of the Proposed ARIO. A copy of the Financial Advisor Agreement is attached hereto as **Exhibit "N"**.

34. Having resolved to retain HCC as an advisor for the purposes of facilitating the SISP, the Applicants engaged in discussions with HCC regarding the material terms of its engagement. Except as otherwise discussed herein, such terms are expected to reflect the terms of the HCC

Proposal, be similar to those of the Financial Advisor Agreement and be memorialized in the HCC Engagement Agreement.

35. Pursuant to the HCC Engagement Agreement, the Applicants expect that HCC will, and will cause its principal, Mr. Steinberg, and any consultants agents and/or advisors retained by HCC (collectively, the "**Consultants**"), to provide certain financial advisory services in connection with the SISP (collectively, the "**Services**"). The Services are anticipated to include, among others:

- (a) assisting the Monitor in implementing and conducting the SISP solely in respect of any Strategic Transaction(s) regarding the Applicants' Property, in accordance with the terms of the SISP;
- (b) consulting with the Monitor, the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver in respect of the SISP and in accordance with its terms;
- (c) assisting with potential bidders' due diligence review processes, including the preparation and vetting of due diligence review materials, and responding to due diligence requests from potential bidders;
- (d) advising with respect to the analysis and/or negotiation of any and all Strategic Transactions;
- (e) with the prior consent of the Monitor, engaging with one or more local agents to assist in marketing and negotiating one or more Strategic Transactions; and

- (f) assisting with the preparation of filings, applications or similar materials that may be necessary or desirable in connection with the SISP.

36. Pursuant to the HCC Engagement Agreement and in consideration for providing the Services, HCC is expected to be entitled to a fixed fee in an amount equal to \$30,000 per month, plus applicable taxes (the "**Monthly Fee**"). The Monthly Fee is expected to be (i) payable from the date on which the proposed SISP Approval Order is granted (the "**Effective Date**") until the termination of HCC's engagement and (ii) pro-rated for the number of days for which HCC is a SISP Advisor in respect of the first and last months of its retention.

37. In addition to the Monthly Fee, the HCC Engagement Agreement is expected to entitle HCC to the following:

- (a) reimbursement of monthly expenses incurred by it, which expenses will require the prior approval of the Applicants and the Monitor in the event they exceed a certain dollar threshold (collectively, the "**Expenses**"), provided that such Expenses shall not include any legal fees or disbursements;
- (b) reimbursement of all reasonable fees and out-of-pocket expenses of the SISP Advisor associated with any Consultants retained by it with the prior consent of the Applicants and the Monitor (collectively, the "**Consultant Expenses**"), provided that such Consultant Expenses shall not include any legal fees or disbursements;
and

- (c) a completion fee (the "**Completion Fee**") equal to 1% of the indebtedness involved in any Strategic Transaction(s), subject to certain exceptions, up to a maximum of \$1,500,000.

38. The Completion Fee, less any required withholdings, is expected to be paid upon the closing of any applicable Strategic Transaction(s). Any portion of the Monthly Fee previously paid is anticipated to be credited against the Completion Fee. The Applicants' obligation to pay the Completion Fee in accordance with the terms of the HCC Engagement Agreement is expected to survive for a prescribed period following its termination. However, HCC is not expected to be entitled to the Completion Fee if it terminates the HCC Engagement Agreement for any reason whatsoever.

D. CBRE's Engagement

39. The Applicants were introduced to CBRE by the Monitor, who solicited and received, on the Applicants' behalf, an initial proposal from CBRE on March 13, 2024, and the CBRE Proposal on April 4, 2024. CBRE is a commercial real estate services firm and a global leader in commercial real estate services and investments. It is frequently engaged in the context of formal insolvency proceedings to assist in or lead the sale or refinancing of Canadian real estate and real estate portfolios.

40. Since determining to retain each of the SISP Advisors, the Applicants have engaged in discussions with CBRE regarding the material terms of its engagement. Except as otherwise discussed herein, such terms are expected to reflect the terms of the CBRE Proposal and be memorialized in the CBRE Engagement Agreement to be filed.

41. Pursuant to the CBRE Engagement Agreement, the Applicants expect that CBRE will, and will cause its listing team to, provide certain real estate advisory services in connection with the SISP (collectively, the "**CBRE Services**"). The CBRE Services are anticipated to include, among others:

- (a) assisting the Monitor in implementing and conducting the SISP solely in respect of any Sale Transaction(s) involving the Applicants' Property, in accordance with the terms of the SISP;
- (b) consulting with the Monitor, the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver in respect of the SISP and in accordance with its terms;
- (c) developing an appropriate marketing and disposition strategy for the Portfolio and the Properties;
- (d) preparing marketing materials for use in promoting the Portfolio and the Properties;
- (e) executing a marketing program for the Portfolio;
- (f) performing financial analysis and valuation work on the Portfolio and the Properties; and
- (g) advising of its various steps in achieving any Sale Transaction(s) involving the Portfolio or the Properties.

42. Pursuant to the CBRE Engagement Agreement and in consideration for providing the CBRE Services, CBRE is expected to be entitled to a work fee in the amount of \$100,000, plus

applicable taxes (the "**Work Fee**"). In addition to the Work Fee, the CBRE Engagement Agreement is expected to entitle CBRE to the following fees (collectively, the "**Sales Fees**"):

- (a) 5% (or the equivalent standard MLS fee per market) of the gross sale price of one of the Properties;
- (b) 0.75% of the gross sale price for the sale of the entirety of the Portfolio; and
- (c) a variable percentage of the gross sale price for the sale of a portion of the Portfolio, which ranges between 4% to 0.75% and decreases as the gross sale proceeds increase.

43. The Sales Fees are expected to be paid upon the closing of the applicable Sale Transaction(s). Any portion of the Work Fee previously paid is anticipated to be credited against the Sales Fees. The Applicants' obligation to pay the Sales Fees in accordance with the terms of the CBRE Engagement Agreement is expected to survive for a prescribed period following its termination. However, CBRE is not expected to be entitled to the Sales Fees if it terminates the CBRE Engagement Agreement for any reason whatsoever.

44. To protect the integrity of the SISP and ensure that one or more value-maximizing Transactions materialize therein, the Applicants are seeking a temporary sealing order in respect of the unredacted copy of the CBRE Engagement Agreement, which contains commercially sensitive information. In particular, the proposed sealing order is intended to prevent the disclosure of the variable component of the Sales Fees. Such disclosure may undermine the Monitor's ability, with the assistance of the SISP Advisors, to consummate one or more value-maximizing Sale Transactions in respect of a portion of the Portfolio to the detriment of the Applicants' stakeholders.

45. Importantly, the proposed sealing order is subject to further order of the Court. The Applicants are not aware of any creditor or other stakeholder that will be materially prejudiced by the proposed sealing order.

IV. THE SISP

A. Overview

46. The SISP was developed by the Monitor in consultation with the Applicants, the SISP Advisors, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver. The SISP prescribes the manner in which the Monitor, with the assistance of the SISP Advisors, and in consultation with the Applicants, shall solicit interest in one or more refinancing, sale and/or other strategic Transactions involving the business, assets and/or equity of the Applicants or any part thereof from interested parties (the "**Opportunity**").

47. The Applicants believe that the SISP will provide a flexible, efficient, fair and equitable process for canvassing the market for potential buyers of, or investors in, some or all of the Applicants' Property, and maximizing recovery for the Applicants' stakeholders. Moreover, the Applicants are of the view that the SISP's unique structure will afford the Applicants and their stakeholders the optionality to pursue one or more refinancing, sale and/or other strategic Transactions or, if appropriate, other restructuring options, and navigate the complexities attending marketing an incomplete Portfolio. Accordingly, the Applicants believe that the SISP's approval and implementation is in the best interests of the Applicants and their stakeholders.

48. As discussed below, the SISP contemplates a two-stage process. The first phase ("**Phase 1**") requires the submission of non-binding letters of intent ("**LOIs**" and each, an "**LOI**") by

Potential Bidders (as defined below) while the second phase ("**Phase 2**") requires the submission of binding offers. The SISP has been deliberately prepared to only enumerate the process governing the submission of non-binding LOIs in Phase 1. As discussed below, the parameters for the submission and evaluation of binding offers in Phase 2 is proposed to be informed by the results of Phase 1 and determined and communicated to the applicable interested parties thereafter.

49. The salient features of Phase 1 and process for determining Phase 2 of the SISP are described below.

B. Phase 1

50. In Phase 1 of the SISP, the Monitor, supported by and with the assistance of the SISP Advisors, will solicit non-binding LOIs in respect of the Opportunity. The timeline governing the milestones in Phase 1 of the SISP is set out immediately below:

Phase 1 Timeline	
Date	Milestone
April 26, 2024	Preparation and delivery of a list of known potential interested persons (collectively, the " Known Potential Bidders ")
April 28, 2024	Confidential virtual data room to be established
April 29, 2024	The latest date by which the solicitation process to all Known Potential Bidders will be commenced
June 10, 2024 at 5:00 p.m. (Toronto time)	Deadline for submission of non-binding LOIs

51. In connection with the SISP's anticipated commencement on April 29, 2024, the Monitor, through the SISP Advisors, will:

- (a) disseminate marketing materials and a process letter to all of the Known Potential Bidders, and any other party that contacts the Monitor, the SISP Advisors, the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel or the Lion's Share Receiver or who the Monitor, the SISP Advisors, the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel or the Lion's Share Receiver become aware may have an interest in the Opportunity (collectively, the "**Other Interested Parties**");
- (b) solicit interest from all of the Known Potential Bidders and Other Interested Parties with a view to such parties entering into non-disclosure agreements ("**NDA**s") in form and substance satisfactory to the Applicants and the Monitor; and
- (c) provide the Known Potential Bidders and Other Interested Parties that execute NDAs (each, a "**Potential Bidder**") with: (i) a confidential information memorandum in respect of the Opportunity; and (ii) access to a confidential virtual data room containing diligence information in respect of the Opportunity and such other diligence opportunities as the Monitor or the SISP Advisors consider advisable or appropriate.

52. A Potential Bidder that wishes to make a bid in the SISP must deliver a written copy of its non-binding LOI to the Monitor by no later than 5:00 p.m. (Toronto time) on June 10, 2024 (the "**LOI Deadline**"). In addition to being submitted by no later than the LOI Deadline, each LOI must comply with the following criteria, among others (each such compliant LOI, a "**Qualified LOI**"):

- (a) provide the identity of the Potential Bidder, including its contact information, full disclosure of its direct and indirect principals and equity holders, and information

as to the Potential Bidder's wherewithal to complete a Transaction pursuant to the SISP; and

- (b) set forth the principal terms of the proposed Transaction, including, among other things:
 - (i) the structure, financing and nature of the Transaction;
 - (ii) whether all or an identified subset of the Applicants' Property will be subject to the Transaction;
 - (iii) the purchase price or other consideration offered in connection with the Transaction, including any material assumed liabilities;
 - (iv) a description of any conditions or approvals required and any additional due diligence required for the Potential Bidder to make a final binding bid;
 - (v) all conditions to closing that the Potential Bidder may wish to impose on the closing of the Transaction; and
 - (vi) in the case of a restructuring, refinancing or hybrid Transaction, (A) the aggregate amount of the equity and debt investment, including liabilities to be assumed by the Potential Bidder, (B) the underlying assumptions regarding the *proforma* capital structure, and (C) the consideration to be allocated to the Applicants' stakeholders.

53. The Monitor is required to provide copies of all the LOIs received to the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's

Share Receiver promptly following the LOI Deadline. To protect the integrity of the SISP, the Lender Representative Counsel's, the Unsecured Lender Representative Counsel's and the Applicants' entitlement to receive copies of the LOIs is conditioned upon the Lender Representatives, the Unsecured Lender Representatives and the Applicants' directors and officers, respectively, having previously:

- (a) executed an NDA or otherwise being subject to confidentiality obligations acceptable to the Applicants and the Monitor; and
- (b) provided written confirmation that they have not submitted and will not submit directly or indirectly, acting individually or in concert, an LOI or any other bid in the SISP.

54. Subject to the aforementioned protections, the Monitor, the SISP Advisors, the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver (collectively, the "**Reviewing Parties**") shall review the LOIs received. The Monitor, in consultation with the SISP Advisors, the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver, shall determine which of the LOIs, if any, constitute Qualified LOIs.

55. If no Qualified LOIs are received or the Monitor determines that no Qualified LOIs are likely to result in a binding offer for the benefit of the Applicants and their stakeholders, the Monitor, with the prior consent of the Applicants or by order of the Court, may terminate the SISP.

C. Phase 2

56. To maximize the flexibility of the SISP and reduce the unnecessary expenditure of time and resources, the SISP does not enumerate the parameters that will govern Phase 2. Rather, it provides an informed, cooperative, and consultative process pursuant to which such parameters, if necessary, will be determined by the Reviewing Parties.

57. Following their consideration of the Qualified LOIs received in the SISP, the Reviewing Parties are to discuss the immediate next steps to be taken in respect of such Qualified LOIs. Such steps may include, among other things:

- (a) pursuing refinancing, sale or hybrid components of any Qualified LOI or collection of Qualified LOIs, including a recombination or reconstitution of subsets of the Applicants' Property;
- (b) coordinating the aggregation of certain or all of the Qualified Bids;
- (c) remarketing certain or all of the Applicants' Property;
- (d) engaging one or more local real estate agents or brokerages to assist in marketing and selling certain or all of the Applicants' Property;
- (e) the parameters that will govern the submission of binding offers in Phase 2 of the SISP; and
- (f) any auction procedures to be implemented in connection with Phase 2 of the SISP.

58. Provided that the Reviewing Parties agree upon the parameters to govern Phase 2 of the SISP, such parameters will be communicated to the Potential Bidders that submitted Qualified

Bids by the SISP Advisors in binding process letters. If the Reviewing Parties are unable to agree upon whether the SISP should proceed to Phase 2 or the parameters to govern Phase 2, the Monitor will be required to bring a motion for advice and directions within 14 days following the LOI Deadline unless the Monitor and the Applicants consent otherwise after consultation with the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver.

V. EXTENDING THE STAY OF PROCEEDINGS

59. The Stay of Proceedings under the Second ARIO will expire on April 30, 2024. Pursuant to the proposed SISP Approval Order, the Applicants are seeking to extend the Stay of Proceedings to and including June 24 2024 (the "**Stay Period**"). The proposed extension of the Stay of Proceedings in respect of the Applicants, the Applicants' Property and the Business as well as the Additional Stay Parties and the Additional Stay Parties' property is discussed below.

A. The Stay of Proceedings in Respect of the Applicants, the Property and the Business

60. As described in the Clark Affidavits, 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 Lion's Share Receiver as well as 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) allow the Monitor, with the assistance of the SISP Advisors and in consultation with the Applicants, to implement and conduct the SISP; and
- (g) develop and seek approval of a process for the determination and resolution of claims against the Applicants and their present and former directors and officers, in consultation with the Monitor, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver.

61. 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 Third 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.

62. 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.

63. 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

64. As noted in the Clark Affidavits, 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 and Second ARIO.

65. Pursuant to the proposed SISP Approval Order, 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. Extending the temporary stay of proceedings in favour of the Additional Stay Parties and the Additional Stay Parties' Property is necessary to maintain stability, preserve the Applicants' and the Additional Stay Parties' limited time and resources and facilitate the administration of these CCAA proceedings.

66. In extending the temporary stay of proceedings in favour of the Additional Stay Parties and the Additional Stay Parties' Property, nothing in the proposed SISP Approval Order purports to release, compromise or permanently enjoin the Related Claims. Further, pursuant to the Second ARIO, 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 continue to be tolled during the Stay Period.

67. 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, 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) through the SISP, if approved, the Applicants intend to identify and consummate one or more refinancing or restructuring transactions 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 SISP Approval Order 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 for a period of time equal to the Stay Period.

68. 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.

VI. CONCLUSION

69. 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 SISP Approval Order, the Applicants will be able to continue the Business' ordinary course operations and, with the assistance of the Monitor and the SISP Advisors, pursue their refinancing and restructuring objectives for the benefit of their stakeholders within the SISP.

70. 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.

71. I swear this affidavit in support of the Applicants' motion for the proposed SISP Approval Order 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 April 8th, 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

TAB A

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

**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 January 23, 2024)**

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**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 January 23, 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. 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. RELIEF REQUESTED

3. I swear this affidavit in support of an application by the Applicants for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) declaring that each of the Applicants is a debtor company to which the CCAA applies;
- (b) appointing KSV Restructuring Inc. ("**KSV**" or the "**Proposed Monitor**") as an officer of this Court to monitor the assets, business, and affairs of the Applicants (if appointed in such capacity, the "**Monitor**");
- (c) staying, for an initial period of not more than ten days (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 (each 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**");
- (d) staying, for the Initial Stay Period, all proceedings against or in respect of Aruba Butt ("**Ms. Butt**"), Dylan Suitor ("**Mr. Suitor**") and/or Ryan Molony ("**Mr. Molony**") and 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;

- (e) appointing Chaitons LLP (if appointed in such capacity, the "**Lender Representative Counsel**") as representative counsel for all of the secured and unsecured lenders of the Applicants (collectively, the "**Lenders**" and each, a "**Lender**"), including, without limitation, all of the 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 (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before this Court (collectively, the "**Insolvency Proceedings**"); and
- (f) granting the Administration Charge (as defined below) up to a maximum amount of \$750,000 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**").

4. If the proposed Initial Order is granted, the Applicants intend to bring a motion on January 31, 2024 (or such other date as the Court may advise) (the "**Comeback Hearing**") to seek an amended and restated Initial Order, among other things:

- (a) extending the Initial Stay Period;
- (b) expanding the Applicants' restructuring authority and the Monitor's ability to assist with the Applicants' restructuring efforts beyond the limited required relief included in the Initial Order;
- (c) approving the retention of Howards Capital Corp. ("**HCC**") as financial advisor to the Applicants (the "**Financial Advisor**") pursuant to a Financial Advisor Engagement Agreement to be executed (the "**Financial Advisor Engagement Letter**"), and granting a charge over the Applicants' Property to secure certain amounts that may become payable under the Financial Advisor Engagement Letter (the "**Financial Advisor Charge**");
- (d) increasing the maximum amount of the Administration Charge to \$1,500,000;
- (e) approving the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Facility**") to finance their working capital requirements and other general corporate purposes, post-filing expenses and costs; and
- (f) granting a charge over the Applicants' Property to secure all amounts advanced under the DIP Facility (the "**DIP Lender's Charge**").

II. OVERVIEW

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**" and each, a "**Property**") containing 631 rental units, of which 424 are tenanted (collectively, the "**Rental Units**"), as well as a single non-operating golf course.¹

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 Applicants' acquisition and renovation of the Properties and the costs related thereto were financed through (i) first and second mortgage loans provided predominantly by numerous individual real estate investors, and (ii) unsecured promissory notes issued in favour of The Lion's Share Group Inc. (the "**Lion's Share**") and various individual real estate investors.

¹ As of the date of this affidavit, the Applicants understand that two of the Properties have been listed for, and are subject to, as yet unclosed sales initiated at the behest of certain of the Applicants' Lenders improperly and/or improvidently exercising power of sale remedies.

8. Despite generating significant annual revenues from rental income and the sale of certain properties, the Applicants have struggled to generate sufficient free cash flow to support their ongoing payment obligations under their secured and unsecured indebtedness. To reduce the Applicants' significant interest expense and improve their free cash flow, the Company began exploring refinancing and sale opportunities in 2022.

9. In May 2022, the Company closed a sale of 223 properties (the "**Core Sale**") to Core Development Group ("**Core**"), subject to the payment by Core of a holdback in the amount of \$3.5 million (the "**Core Holdback**").

10. The Company renewed its efforts to obtain refinancing beginning in August 2022. Since that time the Company has persisted in its attempts to find a financial solution capable of reducing the Applicants' interest expense burden and right-sizing their capital structure. While financing is readily available for businesses akin to the Company's Business in the United States, it is unfortunately not in Canada. Additionally, the Company's financing efforts have been hampered by the Bank of Canada's repeated interest rate increases commencing in March 2022 and falling home prices. Such factors undermined the viability of a refinancing solution through a mortgage-backed security product with a major Canadian financial institution.

11. Despite the difficult headwinds of interest rate increases and falling home prices, the Company collaborated with Scotiabank and Finneo, which specializes in sourcing and structuring commercial real estate debt, with a view to establishing a financial product comparable to those readily available for residential real estate investors in the United States. With the assistance of Finneo, over 60 financial institutions were approached throughout 2023 to solicit interest in providing the Company with such a product. Ultimately, none had a product available bespoke to

residential housing and/or the administrative capacity to address the Applicants' substantial portfolio of residential Properties.

12. The Applicants' inability to obtain a comprehensive refinancing solution has resulted in the incurrence of substantial losses over the previous 18 months, which losses were exacerbated by disputes arising in connection with the Core Holdback. What is more, it has deprived the Applicants of the liquidity required to complete their yet unrenovated Rental Units (representing approximately \$350,000/month in lost rental revenues), satisfy their payment obligations under their secured and unsecured indebtedness and make payments in the ordinary course of business.

13. Notwithstanding the Applicants' concerted efforts to raise additional short-term financing and/or sell certain of the Properties, the Applicants are currently facing a severe liquidity crisis, have less than \$100,000 of cash on hand, are in default of substantially all of their First Mortgage Loans, Second Mortgage Loans and Promissory Notes (each as defined below), and are generally unable to meet their obligations as they become due.

14. At this time, the Applicants do not have the wherewithal to repay their secured and unsecured indebtedness and cannot embark on an immediate liquidation of the Properties without jeopardizing the interests of their stakeholders. Given prevailing interest rates and the concentration of the Properties within small secondary and tertiary markets in Ontario, any such liquidation would be value destructive, result in the sale of the Properties at depressed prices and likely take more than two years to complete.

15. 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 are of the view that these CCAA proceedings and the relief requested in the

proposed Initial Order are in the best interests of the Applicants and their stakeholders, including their hundreds of Lenders and approximately 1,000 tenants.

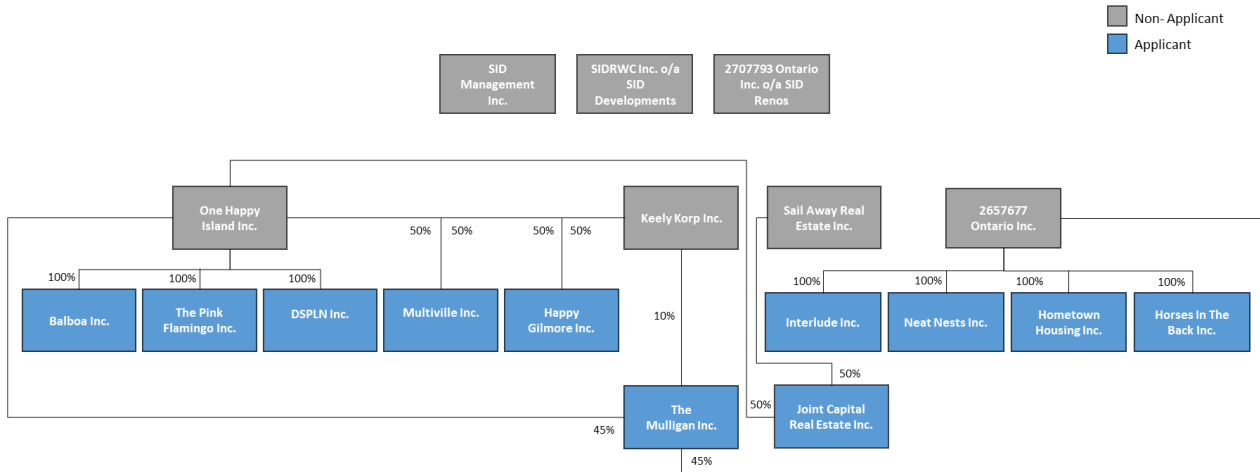
16. Given the Applicants' liquidity crisis, these CCAA proceedings present the only practical means of preserving and maximizing the value of the Business and the Properties for the benefit of the Applicants' stakeholders while the Applicants pursue a comprehensive refinancing and/or restructuring transaction capable of underpinning a consensual plan of compromise or arrangement.

III. CORPORATE HISTORY AND STRUCTURE

17. The Applicants in these CCAA proceedings are comprised of several corporate groups, which operate collectively as an integrated company. In particular, the Applicants consist of three wholly-owned subsidiaries of One Happy Island Inc. ("**Happy Island**"), two jointly-owned subsidiaries of Happy Island and Keely Korp Inc. ("**Keely Korp**"), four wholly-owned subsidiaries of 2657677 Ontario Inc. ("**265 Inc.**"), one jointly-owned subsidiary of Happy Island and Sail Away Real Estate Inc. ("**Sail Away**"), and one subsidiary of Happy Island, Keely Korp and 265 Inc. (collectively with Sail Away, the "**Non-Applicant Parent Cos.**").

18. The Non-Applicant Parent Cos. are holding companies. The shares of the Non-Applicant Parent Cos., other than Sail Away, are held directly or indirectly by the Additional Stay Parties and certain related parties. The Non-Applicant Parent Cos. are not Applicants in these CCAA proceedings, and no relief is sought with respect to them under the proposed Initial Order.

19. A simplified organizational chart depicting the Applicants' corporate structure is set out immediately below:



20. The Applicants' corporate structure and intercorporate relationships are discussed in detail below. Corporate profile reports for each of the Applicants are collectively attached hereto as **Exhibit "A"**.

A. The Non-Applicant Parent Cos.

21. Each of the Non-Applicant Parent Cos. is a privately held company incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended (the "**OBCA**"), the principal assets of which are its ownership interests in its subsidiaries, including, among others, the Applicants.

22. As noted above, the Non-Applicant Parent Cos. are not Applicants in these CCAA proceedings, and no relief is sought with respect to them under the proposed Initial Order.

B. The Pink Flamingo Inc., DSPLN Inc. and Balboa Inc.

23. The Pink Flamingo Inc., DSPLN Inc. and Balboa Inc. are Applicants in these CCAA proceedings and as depicted above, are wholly-owned subsidiaries of Happy Island, which is itself solely-owned by Ms. Butt.

24. The Pink Flamingo Inc., DSPLN Inc. and Balboa Inc., were incorporated pursuant to the OBCA on June 5, 2020, February 25, 2021, and December 13, 2021, respectively. The registered head office of each of The Pink Flamingo Inc., DSPLN Inc. and Balboa Inc. is located at 394 Appleby Line, Burlington, Ontario, Canada, L7L 2X8.

25. The Pink Flamingo Inc.'s, DSPLN Inc.'s and Balboa Inc.'s respective assets comprise predominantly of their owned residential Properties, many of which are tenanted.

26. Ms. Butt is the indirect owner as well as the sole director and officer of each of The Pink Flamingo Inc., DSPLN Inc. and Balboa Inc.

C. Multiville Inc. and Happy Gilmore Inc.

27. Multiville Inc. and Happy Gilmore Inc. are Applicants in these CCAA proceedings and as depicted above, are jointly-owned subsidiaries of Happy Island and Keely Korp. As noted above, Ms. Butt is the sole shareholder of Happy Island. Mr. Molony is a shareholder of Keely Korp.

28. Multiville Inc. and Happy Gilmore Inc. were incorporated pursuant to the OBCA on October 27, 2020 and May 12, 2021, respectively. The registered head office of each of Multiville Inc. and Happy Gilmore Inc. is located at 394 Appleby Line, Burlington, Ontario, Canada, L7L 2X8.

29. Multiville Inc.'s and Happy Gilmore Inc.'s respective assets comprise predominantly of their owned residential Properties, many of which are tenanted.

30. Ms. Butt and Mr. Molony are the only directors and officers of Multiville Inc. and Happy Gilmore Inc. and are indirect shareholders thereof through Happy Island and Keely Korp., respectively.

D. Hometown Housing Inc., Neat Nests Inc., Horses In the Back Inc. and Interlude Inc.

31. Hometown Housing Inc., Neat Nests Inc., Horses In the Back Inc. and Interlude Inc. are Applicants in these CCAA proceedings and as depicted above, are wholly-owned subsidiaries of 265 Inc., which is indirectly owned by Mr. Suitor through another holding company.

32. Hometown Housing Inc., Neat Nests Inc., Horses In The Back Inc. and Interlude Inc. were incorporated pursuant to the OBCA on March 1, 2019, March 1, 2019, July 24, 2020 and November 13, 2020, respectively. The registered head office of each of Hometown Housing Inc., Neat Nests Inc., Horses in the Back Inc. and Interlude Inc. is located at 1 King Street West, 10th Floor, Hamilton, Ontario, Canada, L8P 1A4.

33. Hometown Housing Inc.'s, Neat Nests Inc.'s, Horses In The Back Inc.'s and Interlude Inc.'s respective assets comprise predominantly of their owned residential Properties, many of which are tenanted.

34. Mr. Suitor is the only director and officer of each of Hometown Housing Inc., Neat Nests Inc., Horses In The Back Inc. and Interlude Inc., and is indirectly the sole owner of each.

E. Joint Captain Real Estate Inc.

35. Joint Captain Real Estate Inc. is an Applicant in these CCAA proceedings and as depicted above, is a jointly-owned subsidiary of Happy Island and Sail Away.

36. Joint Captain Real Estate Inc. was incorporated pursuant to the OBCA on February 23, 2021. The registered head office of Joint Captain Real Estate Inc. is located at 394 Appleby Line, Burlington, Ontario, Canada, L7L 2X8.

37. Joint Captain Real Estate Inc.'s assets comprise predominantly of its owned residential Properties, many of which are tenanted.

38. Ms. Butt is the sole director of Joint Captain Real Estate Inc. Its officers include Bronwyn Bullen ("**Ms. Bullen**") and Samuel Drage ("**Mr. Drage**"), each of whom are shareholders of Sail Away, and Ms. Butt.

F. The Mulligan Inc.

39. The Mulligan Inc. is an Applicant in these CCAA proceedings and as depicted above, is a subsidiary of Happy Island, Keely Korp and 265 Inc.

40. The Mulligan Inc. was incorporated pursuant to the OBCA on February 1, 2021. The registered head office of The Mulligan Inc. is located at 394 Appleby Line, Burlington, Ontario, Canada, L7L 2X8.

41. The Mulligan Inc.'s assets comprise predominantly of a single owned Property, a currently non-operating golf course.

42. Ms. Butt, and Messrs. Molony and Sutor are the directors of The Mulligan Inc. and are its indirect shareholders through Happy Island, Keely Korp. and 265 Inc.

IV. BUSINESS OF THE APPLICANTS

A. The Business

43. The Company is among the largest holders of residential real estate in Ontario. It focuses on the acquisition, renovation and leasing of distressed residential properties in undervalued and underutilized markets throughout the province where the cost to purchase is less expensive than the cost to build per square foot.

44. The Company's focus on secondary and tertiary markets in Ontario leverages their lower average costs of living and high income to costs ratio, where housing options are more affordably priced than in the Toronto, Niagara and Hamilton regions. The Company renovates those residential properties it acquires by performing minor to major restorations with a view to reviving such properties and providing sustainable and affordable single or multi-family housing. 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.

45. To date, the Applicants have raised and invested approximately \$100 million to acquire and renovate the Properties. The Applicants' efforts in this regard have assisted in creating jobs, revitalizing communities, and increasing the quality and supply of affordable housing in Ontario's undervalued markets.

B. The Management and Renovation of the Properties

46. SID Management, a full-service residential property management company of which I am the sole officer and director, manages the Properties, including the Applicants' tenants, pursuant

to standard form property management agreements with each of the Applicants (collectively, the "**Management Agreements**"). The services provided by SID Management include, among others:

- (a) collecting and distributing monthly rent from the Applicants' tenants, for which SID Management is entitled to a fee equal to 7.5% of the aggregate amount of rent collected, plus harmonized sales taxes (the "**Property Management Fees**");
- (b) leasing the Applicants' vacant Rental Units to new tenants, for which SID Management is entitled to a fee equal to 50% of the first month's rent, plus harmonized sales taxes (the "**Tenancy Management Fees**");
- (c) addressing all disputes as between the Applicants and their tenants and any necessary evictions or other proceedings before the Landlord and Tenant Board, for which SID Management is entitled to a fee comprised of \$200 per filing, plus harmonized sales taxes, \$500, plus harmonized sales taxes for paralegal services and a sheriff fee, plus 10% per lockout (collectively, the "**LTB Services Fees**");
and
- (d) performing and, where necessary, coordinating the performance of all maintenance required by the Applicants or requested by the Applicants' tenants, for which SID Management charges a fixed hourly rate of \$40 and a fee equal to 7.5% of work for which a sub-contractor is required, in each case, plus harmonized sales taxes.

47. Copies of the Management Agreements are collectively attached hereto as **Exhibit "B"**.

48. SID Renos, a concept-to-completion construction management company of which Ms. Butt is the sole director, manages the renovation construction of the Applicants' residential properties.

Such construction ranges from cosmetic improvements to the full-scale development of single-family homes into multi-family residences.

49. In its capacity as the Applicants' exclusive construction manager, SID Renos is responsible for contacting, approving, and overseeing all of the third-party contractors, trades and service providers required to complete the Applicants' unrenovated Properties. All such third-party contractors, trades and service providers invoice the Applicants directly. SID Renos is entitled to a monthly fee of \$1,000 per Property, which fee is prorated for the number of days SID Renos is on site (the "**Construction Management Fees**"). The Construction Management Fees charged by SID Renos are significantly lower than the fees charged by general contractors for comparable services.

50. To assist in ameliorating the Applicants' severe liquidity issues, SID Management and SID Renos temporarily ceased charging the LTB Services Fees and the Construction Management Fees as of June 2022.

C. Leased and Owned Real Property

51. As referenced above, the Applicants are the owners of the Properties. The Properties are comprised of 405 residential properties located in Timmins, Sault Ste. Marie, Sudbury, Kirkland Lake, Capreol, Temiskaming Shores and Val Caron, Ontario, as well as one non-operating golf course. 283 of the Properties have single-family Rental Units while 122 of the Properties have multi-family Rental Units, which currently produce an aggregate amount of approximately \$500,000 in gross monthly rent, with the potential to produce approximately \$570,000 in gross monthly rent. Approximately five of the Applicants' Properties are currently listed for sale by the Applicants.

52. An overview containing the municipal addresses and owners of the Properties is attached hereto as **Exhibit "C"**. The division of the Properties' ownership among the Applicants is set out in the table below:

Applicant	Number of Owned Properties
Balboa Inc.	35
DSPLN Inc.	102
Happy Gilmore Inc.	81
Interlude Inc.	107
Multiville Inc.	25
The Pink Flamingo Inc.	18
Hometown Housing Inc.	3
The Mulligan Inc.	1
Horses In The Back Inc.	1
Neat Nests Inc.	1
Joint Captain Real Estate Inc.	32
Total	406

53. As discussed below, substantially all of the Properties are subject to first mortgages and general assignments of rent and many Properties are subject to second mortgages and general assignments of rent in favour of the applicable Lenders.

54. The Applicants do not lease any real property and utilize office space owned by affiliates of Happy Island and 265 Inc. at no cost to the Applicants.

D. Employees

55. Other than The Mulligan Inc., which employs one full-time individual, the Applicants do not have any employees or payroll obligations. Most of the day-to-day property management and renovation services for the Applicants are instead provided by SID Developments, SID Management and SID Renos and their respective employees.

56. The Mulligan Inc. pays its sole employee bi-weekly. As of the date of this affidavit, The Mulligan Inc. has approximately \$55,000 in unpaid source deductions. The Mulligan Inc.'s sole employee is non-unionized and there is no group benefit, pension, retirement or deferred compensation plans maintained by The Mulligan Inc. for their benefit.

E. Contractors, Trades and Service Providers

57. The Applicants rely on numerous third-party contractors, trades and service providers to complete their unrenovated Properties, perform certain maintenance and operate the Business in the ordinary course. The Applicants are not current with respect to their obligations to certain of their third-party contractors, trades and service providers. As of January 19, 2024, the Applicants' aggregate invoiced accounts payable was approximately \$600,000, all of which is past due.

58. To date, the Applicants have expended approximately \$6.2 million on value accretive renovations to improve their monthly cash flow and the resale value of the Properties. The Applicants' lack of liquidity has negatively impacted the Business. Indeed, the Applicants have been unable to, among other things, undertake a further approximately \$4.1 million in renovations required to complete their unrenovated Rental Units. The failure to complete such renovations represents approximately \$350,000/month in lost rental revenues.

F. Banking and Credit Cards

59. The Applicants maintain 11 bank accounts (collectively, the "**Company Accounts**"), each of which is a Canadian dollar bank account. The Company Accounts are utilized to process all of the Applicants' payments, including, among others:

- (a) the Construction Management Fees and the LTB Services Fees;

- (b) payments to third-party contractors, trades and service providers; and
- (c) payments and fees due to the Lenders under the First Mortgage Loans, the Second Mortgage Loans and the Promissory Notes.

60. Interlude Inc. has one credit card with a credit limit of \$50,300. As of December 28, 2023, approximately \$57,746.65 was owing by Interlude Inc. under such credit card.

V. FINANCIAL POSITION OF THE APPLICANTS

61. Copies of Balboa Inc.'s, DSPLN Inc.'s, Happy Gilmore Inc.'s, Interlude Inc.'s, Multiville Inc.'s, The Pink Flamingo Inc.'s, Hometown Housing Inc.'s, Neat Nests Inc.'s and Joint Captain Real Estate Inc.'s most recent financial statements, being unaudited financial statements for the year ended December 31, 2022, are collectively attached hereto as **Exhibit "D"** (collectively, the **"2022 Financial Statements"**). A copy of The Mulligan Inc.'s most recent financial statements, being unaudited financial statements for the year ended December 31, 2021, is attached hereto as **Exhibit "E"** (collectively with the 2022 Financial Statements, the **"Financial Statements"**). The Applicants have not prepared financial statements for the year ended December 31, 2023, nor, in the case of The Mulligan Inc., for the year ended December 31, 2022. Horses In The Back Inc. has not prepared financial statements for any period since it was incorporated on July 24, 2020.

62. Certain of the information contained within the Financial Statements is discussed below.

A. Assets

63. As of December 31, 2021 and December 31, 2022, as applicable, the Applicants (other than Horses In The Back Inc.) had total assets with an aggregate book value of approximately

\$127,858,943. As of such dates, the Applicants' assets consisted principally of the Properties, accounts receivable, holdbacks receivable and amounts due from related parties.

64. The aggregate book values of the Applicants' (other than Horses In The Back Inc.) respective assets as of December 31, 2021 and December 31, 2022, as applicable, are set out below:

Applicant	Aggregate Book Value
Balboa Inc.	\$9,093,013
DSPLN Inc.	\$27,037,932
Happy Gilmore Inc.	\$20,721,025
Interlude Inc.	\$40,405,166
Multiville Inc.	\$10,959,396
The Pink Flamingo Inc.	\$3,682,326
Hometown Housing Inc.	\$2,899,593
The Mulligan Inc.	\$760,870
Neat Nests Inc.	\$4,556,131
Joint Captain Real Estate Inc.	\$7,743,491
Total Assets	\$127,858,943

65. The Properties are the most significant of the Applicants' assets, having an estimated aggregate value of approximately \$173 million based on appraisals conducted in respect of approximately 30% of the Properties in 2023 (with the same methodology being used to extrapolate the estimated value of the remaining Properties for which no appraisals were obtained).

B. Liabilities

66. As of December 31, 2021 and December 31, 2022, as applicable, the Applicants (other than Horses In The Back Inc.) had total liabilities with a book value of approximately \$124,633,211. As of such dates, the Applicants' liabilities consisted principally of the First Mortgage Loans, the Second Mortgage Loans, the Promissory Notes and amounts due to related parties.

67. The aggregate book values of the Applicants' (other than Horses In The Back Inc.) respective liabilities as of December 31, 2021 and December 31, 2022, as applicable, are set out below:

Applicant	Aggregate Book Value
Balboa Inc.	\$9,214,039
DSPLN Inc.	\$27,241,593
Happy Gilmore Inc.	\$20,861,680
Interlude Inc.	\$39,198,752
Multiville Inc.	\$9,396,667
The Pink Flamingo Inc.	\$3,332,531
Hometown Housing Inc.	\$1,671,159
The Mulligan Inc.	\$739,825
Neat Nests Inc.	\$5,095,319
Joint Captain Real Estate Inc.	\$7,881,646
Total Liabilities	\$124,633,211

68. As of December 31, 2023, the funded indebtedness under the First Mortgage Loans, the Second Mortgage Loans and the Promissory Notes was the most significant of the Applicants' liabilities, being in the aggregate approximately \$144,350,000. As a result of their substantial funded indebtedness, each of the Applicants either individually or, together with their affiliates, have liabilities well in excess of \$5 million.

C. Secured Debt

69. The Applicants' primary secured debt obligations consist of amounts owing under the First Mortgage Loans and the Second Mortgage Loans. The First Mortgage Loans and the Second Mortgage Loans are discussed immediately below.²

² The total number of First Mortgage Loans, Second Mortgage Loans and Lenders and the amount of indebtedness under the First Mortgage Loans and Second Mortgage Loans presented in this section are based on the Applicants' books and records, which records may differ from those maintained by the Lenders or their brokers, representatives, trustees or agents. Due to the urgent nature of the relief sought and the volume of Properties involved, a review of title for each of the Properties has not been conducted as of the date of this affidavit to confirm the accuracy of the total number of First Mortgage Loans and the Second Mortgage Loans in respect of which mortgages/charges

1. The First Mortgage Loans

70. The Applicants financed the acquisition of substantially all of the Properties principally pursuant to mortgage term sheets and commitments secured by first-priority mortgages/charges against the Properties (as amended, renewed or refinanced from time to time, the "**First Mortgage Loans**"). As of the date hereof, substantially all of the Properties are encumbered by first-priority mortgages/charges in favour of various Lenders under the First Mortgage Loans (collectively, the "**First Mortgage Lenders**").

71. The approximate number of First Mortgage Loans³ to which each of the Applicants is a party and the approximate aggregate principal amounts owing thereunder, as reflected in the Applicants' books and records as of December 31, 2023, are summarized below:

Applicants	Approximate Number of First Mortgage Loans	Approximate Total Principal Amount
Balboa Inc.	35	\$7,291,686.00
DSPLN Inc.	100	\$20,799,438.50
Happy Gilmore Inc.	79	\$15,473,844.64
Interlude Inc.	99	\$23,572,290.00
Multiville Inc.	23	\$3,802,900.00
The Pink Flamingo Inc.	18	\$2,255,223.00
Hometown Housing Inc.	2	\$768,500.00
The Mulligan Inc.	1	\$660,000.00
Horses In The Back Inc.	1	\$328,000
Neat Nests Inc.	0	\$0.00
Joint Captain Real Estate Inc.	32	\$6,504,048.05
Total	390	\$81,455,930.19

have been registered on title to the Properties, the amount of the mortgages/charges securing the First Mortgage Loans and the Second Mortgage Loans or the identifies of all of the beneficiaries thereof.

³ Certain of the Second Mortgage Loans now benefit from a first priority mortgage/charge due to the discharge of a previously registered mortgage/charge. The terms of the Second Mortgage Loans are discussed below. Further, certain of the Second Mortgage Loans are secured by blanket mortgages that benefit from a first priority charge as against at least one Property and a second priority charge as against one or more other Properties.

72. Substantially all of the original First Mortgage Loans advanced to the Applicants were sourced by The Windrose Group Inc. ("**Windrose**"), a mortgage brokerage based in Hamilton, Ontario operating under The Mortgage Alliance Company of Canada. Windrose, through its principal broker, Claire Drage ("**Ms. Drage**"), identified potential real estate investors that wished to advance the First Mortgage Loans for each of the Properties at the Applicants' request. Windrose received a fee for each of the First Mortgage Loans entered into between an Applicant and one or more First Mortgage Lenders.

73. Having originated nearly exclusively from Windrose, the terms of each of the original First Mortgage Loans are substantially similar. Generally, and subject to certain exceptions, the original First Mortgage Loans contain the following material terms:

- (a) *Parties* – an Applicant, as borrower, one or more individuals or corporations as First Mortgage Lender(s), and the applicable Applicant's director(s), officer(s) and/or indirect shareholder(s), as guarantor(s);
- (b) *Payments* – interest only, payable monthly;
- (c) *Interest Rate* – fixed, ranging between 8% – 9%, increasing between 9% – 11% if the principal amount is not repaid at the end of the term;
- (d) *Term* – fixed term (opening after the expiration of an initial period), ranging between 3 – 12 months, subject to renewal if approved by the First Mortgage Lender(s);
- (e) *Repayment* – repayable upon the expiration of the term unless renewed with the approval of the First Mortgage Lender(s); and

- (f) *Fees* – estimated legal fees, a mortgage broker fee and discharge fee, each payable by the borrower(s), among other fees.

74. A representative sample of the First Mortgage Loans to which the Applicants are party are collectively attached hereto as **Exhibit "F"**. This representative sample is generally reflective of the approximately 390 First Mortgage Loans to which the Applicants are party. As of the date of this affidavit, the majority of the First Mortgage Loans are in default as a result of, among other things, the Applicants' failure to repay the principal amount thereunder upon maturity and/or monthly interest.

75. As general and continuing security for the payment and performance of the Applicants' indebtedness and obligations under the First Mortgage Loans, all or substantially all of the First Mortgage Lenders were each granted the following security:

- (a) a first mortgage/charge on the applicable Property; and
- (b) a general assignment of rents and leases in respect of the applicable Property.

76. A representative sample of sub-searches of title conducted between January 3 and 17, 2024, evincing the registration of first mortgages/charges and notices of general assignments of rents and leases on title to certain of the Properties in favour of the First Mortgage Lenders are collectively attached hereto as **Exhibit "G"** (collectively, the "**First Mortgage Sub-Searches**"). As illustrated within the First Mortgage Sub-Searches, certain of the first mortgages/charges are registered in favour of Olympia Trust Company, the administrator for those First Mortgage Lenders that provided the First Mortgage Loans through RRSPs or other registered accounts.

77. In addition to the aforementioned security, all or substantially all of the original First Mortgage Loans were executed by one or more of the Additional Stay Parties, which are indirect shareholders and directors and/or officers of the applicable Applicants, purportedly in their capacity as guarantors. Further, certain of the First Mortgage Lenders were provided with a general security agreement by the applicable Applicant(s) and/or guarantee by the director(s) of the applicable Applicant.

2. The Second Mortgage Loans

78. Several of the Properties are also encumbered by second mortgages/charges in connection with loan commitments or mortgage term sheets and commitments (as amended, renewed or refinanced from time to time, the "**Second Mortgage Loans**") provided by certain of the Lenders (collectively, the "**Second Mortgage Lenders**"). The approximate number of Second Mortgage Loans to which each of the Applicants is a party and the approximate aggregate principal amounts owing thereunder, as reflected in the Applicants' books and records as of December 31, 2023, are illustrated below:

Applicants	Approximate Number of Second Mortgage Loans ⁴	Approximate Total Principal Amount
Balboa Inc.	7	\$236,750.00
DSPLN Inc.	36	\$2,775,924.00
Happy Gilmore Inc.	34	\$1,799,623.00
Interlude Inc.	15	\$1,273,900.00
Multiville Inc.	15	\$1,109,250.00
The Pink Flamingo Inc.	13	\$1,364,250.00
Hometown Housing Inc.	1	\$83,000.00
The Mulligan Inc.	0	\$0.00
Horses In The Back Inc.	0	\$0.00
Neat Nests Inc.	0	\$0.00

⁴ As discussed below, as substantially all of the Second Mortgage Loans are blanket mortgage loans, the Applicants track amounts advanced under the Second Mortgage Loans on an Applicant-by-Applicant basis. As such, the approximate number of Second Mortgage Loans set out in this table are not reflective of the number of loan commitments or mortgage term sheets and commitments to which the Applicants are party.

Applicants	Approximate Number of Second Mortgage Loans⁴	Approximate Total Principal Amount
Joint Captain Real Estate Inc.	0	\$0.00
Total	121	\$8,642,697.00

79. Subject to certain limited exceptions discussed below, all of the Applicants' current Second Mortgage Loans were provided by Lift Capital Incorporated ("**Lift**" and those Second Mortgage Loans, the "**Lift Second Mortgage Loans**") and subsequently syndicated by Lift. Lift is a private lending and property management company that invests directly in residential and commercial properties in Ontario.

80. Unlike the First Mortgage Loans, all of the Lift Second Mortgage Loans are blanket mortgage loans involving multiple Properties under which one or more Applicant is a borrower. The terms of each of the Lift Second Mortgage Loans are substantially similar. Generally, and subject to certain exceptions, each contains the following material terms:

- (a) *Parties* – one or more Applicants, as borrower(s), Lift or its assignee, as Second Mortgage Lender, and the applicable Applicants' director(s), officer(s) and/or indirect shareholder(s), as guarantor(s);
- (b) *Payments* – interest only, payable monthly;
- (c) *Interest Rate* – fixed, ranging between 12% – 19%, increasing between 14% – 20% if the principal amount is not repaid at the end of the term;
- (d) *Term* – fixed term (open to prepayment upon prior notice), ranging between 3 – 12 months;

- (e) *Repayment* – repayable any time prior to or upon the expiration of the term upon prior notice;
- (f) *Fees* – commitment or lender fee, administration fee and wire fee, each payable by the borrower(s), among other fees;
- (g) *Maximum Prior Indebtedness* – advance conditioned upon, among other things, certain pre-existing First Mortgage Loans not exceeding prescribed amounts; and
- (h) *Syndication* – Lift is authorized to syndicate, participate, assign or otherwise share each of the Lift Second Mortgage Loans with one or more co-lenders.⁵

81. A representative sample of the Lift Second Mortgage Loans to which the Applicants are party are collectively attached hereto as **Exhibit "H"**.

82. A subset of the Second Mortgage Loans were provided directly by individual Second Mortgage Lenders (collectively, the "**Remaining Second Mortgage Loans**") known to the Company. Substantially all of the Remaining Second Mortgage Loans are blanket mortgages provided on terms comparable to the Lift Second Mortgage Loans. A representative sample of the Remaining Second Mortgage Loans are collectively attached hereto as **Exhibit "I"**.

83. As of the date of this affidavit, the majority of the Lift Second Mortgage Loans and the Remaining Second Mortgage Loans are in default as a result of, among other things, the Applicants' failure to repay the principal amount thereunder upon maturity and/or monthly interest.

⁵ Based on a preliminary review of sub-searches of title conducted on certain of the Properties it appears that Lift exercised its right of syndication, participation or assignment as the Second Mortgages registered by Lift have been registered in its name and the name of numerous individual investors/participants.

84. As general and continuing security for the payment and performance of the Applicants' indebtedness and obligations under the Second Mortgage Loans, all or substantially all of the Second Mortgage Lenders were granted the following security:

- (a) a second blanket mortgage/charge on the applicable Properties; and
- (b) a general assignment of rents and leases in respect of the applicable Properties.

85. A representative sample of sub-searches of title conducted between January 3 and 17, 2024, evincing the registration of second mortgage charges and notices of general assignments of rents and leases on title to certain of the Properties in favour of the Second Mortgage Lenders are collectively attached hereto as **Exhibit "J"** (collectively, the "**Second Mortgage Sub-Searches**"). As reflected within the Second Mortgage Sub-Searches, certain of the second mortgages/charges are registered in favour of Lift, together with a number of individuals and investors that have participated in the Lift Second Mortgage Loans.

86. In addition to the aforementioned security, all or substantially all of the Second Mortgage Loans were executed by one or more of the Additional Stay Parties, which are indirect shareholders and directors and/or officers of the applicable Applicants, purportedly in their capacity as guarantors. Further, certain of the Second Mortgage Lenders were provided with a general security agreement by the applicable Applicant(s) and/or guarantee by the director(s) of the applicable Applicant(s).

3. Other Secured Obligations

87. Copies of the results of searches conducted against Balboa Inc., DSPLN Inc., Interlude Inc., Hometown Housing Inc., The Pink Flamingo Inc., Happy Gilmore Inc. and Multiville Inc.

under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the "**PPSA**") effective December 20, 2023, are collectively attached hereto as hereto as **Exhibit "K"**. Copies of the results of searches conducted against The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. under the PPSA effective January 2, 2024, January 7, 2024, January 7, 2024 and January 15, 2024, respectively, are collectively attached hereto as **Exhibit "L"**.

88. The above-mentioned PPSA search results (collectively, the "**PPSA Search Results**") indicate that there are no registrations against The Mulligan Inc. as of January 2, 2024 or Horses In The Back Inc. and Neat Nests Inc. as of January 7, 2024. However, the PPSA search results disclose numerous registrations against Balboa Inc., DSPLN Inc., Interlude Inc., Hometown Housing Inc., The Pink Flamingo Inc., Happy Gilmore Inc. and Multiville Inc. as of December 20, 2023, and Joint Captain Real Estate Inc. as of January 15, 2024, including the following:

- (a) registrations in favour of Tyler Nickolaus Bartelen, Rachel Wilkins, Olympia Trust Company, 2384805 Ontario Inc., Joanne Upward and Tony Maurice Moore against Balboa Inc.;
- (b) registrations in favour of Minh Tam Hoang Nguyen, Glenroe Lending Inc., Bold Egg Investments Inc., Aris Stigter, Gerald Peter Lohuis, Michael Bekendam Enterprises Inc., Sundance Nuttall-Ecker and Denise Jensen-Gomes against DSPLN Inc.;
- (c) registrations in favour of Olympia Trust Company, Jasmine Crystal Neufeglise Srnicek, Sundance Nuttall-Ecker, Aris Stigter, Nicholas Henry Vergeer, David Abramsky and MK Horizons Inc. against Interlude Inc.;

- (d) registrations in favour of Minh Tam Hoang Nguyen, Olympia Trust Company and The Toronto Dominion Bank against Hometown Housing Inc.;
- (e) registrations in favour of Cameron David Topp, Mary Patricia Sharland and David Presta against The Pink Flamingo Inc.;
- (f) registrations in favour of Minh Tam Hoang Nguyen, Mary Patricia Sharland, David Presta, Glenroe Lending Inc., Olympia Trust Company, Tyler Nickolaus Bartelen, David Abramsky, 1216550 Ontario Inc., Christopher O'Brien, Denise O'Brien and Marc Feliciano against Happy Gilmore Inc.;
- (g) registrations in favour of Minh Tam Hoang Nguyen and Olympia Trust Company against Multiville Inc; and
- (h) a registration in favour of James Innes and Sarah Innes against Joint Captain Real Estate Inc.

89. With the exception of The Toronto Dominion Bank (which is owed approximately \$30,000 by Hometown Housing Inc. as a result of an overdraft), each of the foregoing PPSA registrants (collectively, the "**PPSA Registrants**") is an existing Lender (or the trustee thereof) to one or more of the Applicants. As described within the PPSA Search Results, the PPSA Registrants have generally been granted security in certain of the Applicants' personal property pursuant to a general security agreement and/or a general assignment of rents and leases.

D. Unsecured Debt

1. The Promissory Notes

90. The Applicants have collectively issued approximately 802 unsecured promissory notes (as amended or renewed from time to time, the "**Promissory Notes**").⁶ Approximately 602 of the Promissory Notes were issued to Lion's Share, of which Ms. Drage is the chief executive officer. The remaining Promissory Notes were issued in favour of various individual lenders sourced by Windrose.

91. The number of Promissory Notes issued by each of the Applicants and the aggregate principal amounts owing thereunder, as reflected in the Applicants' books and records as of December 31, 2023, are illustrated below:

Applicants	Number of Promissory Notes	Total Principal Outstanding
Balboa Inc.	37	\$1,606,007.80
DSPLN Inc.	144	\$7,970,043.28
Happy Gilmore Inc.	113	\$5,618,133.46
Interlude Inc.	364	\$29,024,961.55
Multiville Inc.	33	\$2,051,082.37
The Pink Flamingo Inc.	18	\$1,121,754.84
Hometown Housing Inc.	2	\$86,905.17
The Mulligan Inc.	1	\$5,555.25
Horses In The Back Inc.	4	\$230,730.90
Neat Nests Inc.	40	\$3,469,175.87
Joint Captain Real Estate Inc.	46	\$3,051,759.02
Total	802	\$54,236,109.51

⁶ The total number of Promissory Notes and Lenders and the amount of indebtedness under the Promissory Notes presented in this section are based on the Applicants' books and records, which records may differ from those maintained by the Lenders or their brokers, representatives, trustees or agents.

92. The terms of the Promissory Notes are substantially similar. Their material terms generally include, subject to certain exceptions, the following:

- (a) *Parties* – an Applicant, as borrower, one or more individuals or corporations as Lender(s), and the applicable Applicant's director(s), officer(s) and/or indirect shareholder(s), as guarantor(s);
- (b) *Payments* – interest only, payable monthly;
- (c) *Interest Rate* – fixed, ranging between 8% – 17%, increasing between 11% – 20% if the principal amount is not repaid at the end of the term;
- (d) *Term* – fixed term, ranging between 3 – 12 months, subject to extensions approved by the Lender(s);
- (e) *Repayment* – repayable upon the expiration of the term or the sale or refinance of an enumerated Property, unless renewed with the approval of the Lender(s); and
- (f) *Fees* – discharge statement fee and missed payment fees, among other fees.

93. A representative sample of the Promissory Notes issued by the Applicants are collectively attached hereto as **Exhibit "M"**. This representative sample is generally reflective of the approximately 802 Promissory Notes that the Applicants have collectively issued.

94. Notwithstanding the consensual renewal or extension of many of the Promissory Notes at the end of their original terms, the majority of the Promissory Notes are in default as of the date of this affidavit. Such defaults are a result of, among other things, the Applicants' failure to repay the principal amount thereunder upon maturity and/or monthly interest.

95. All of the Promissory Notes were executed by one or more of the Additional Stay Parties, which are indirect shareholders and directors and/or officers of the applicable Applicants, purportedly in their capacity as guarantors. Although unsecured obligations of the Applicants for which no security has been granted, the Promissory Notes generally indicate that they are "secured by the Lenders right to register this Note on title on all or any properties held by the Borrowers and Guarantors as security if not paid in full [...]".

2. Intercompany Indebtedness

96. In the ordinary course of business, the Applicants engage in intercompany transactions resulting in the creation of intercompany receivables and payables. As previously described, each of the Applicants also pay certain fees to their non-affiliates, SID Management and SID Renos, in the ordinary course of business, including the Property Management Fees, the Tenancy Management Fees, the Construction Management Fees and the LTB Services Fees. As at the date of this affidavit, approximately \$202,560.98 is owing to SID Renos in respect of the Construction Management Fees.

3. Trade Accounts Payable

97. As noted above, the Applicants rely on numerous third-party contractors, trades and service providers required to complete their unrenovated residential properties and operate the Business in the ordinary course. The Applicants are not current with respect to their obligations to certain of their third-party contractors, trades and service providers. As of December 31, 2023, the Applicants' invoiced trade accounts payable was approximately \$600,000.

4. Other Notable Unsecured Obligations

98. The Applicants are liable for certain utilities and income and municipal property taxes arising in connection with their revenue producing Rental Units and their ownership of the Properties, some of which is in arrears. Specifically:

- (a) *Municipal Taxes* – as of December 31, 2023, the Applicants collectively had approximately \$1,896,739.85 in municipal tax arrears, in respect of which certain municipalities have delivered Final Notices and/or Notices of Registration of Tax Arrears Certificates;
- (b) *Income Taxes* – as of July 6, 2023, Hometown Housing Inc. and Multiville Inc. had approximately \$350,427.68 and \$117,789.93 in corporate income tax arrears, respectively, which remains unpaid as at the date of this affidavit; and
- (c) *Utilities* – as of December 31, 2023, the Applicants collectively owed approximately \$532,883.20 in unpaid utilities.

5. Contingent Litigation Claims

99. The Applicants' inability to pay their interest obligations, and in certain instances the principal upon maturity, under the First Mortgage Loans, Second Mortgage Loans and Promissory Notes has prompted the issuance of over 50 demand letters, notices of default, notices of intention to enforce security and notices of sale under mortgage, among other demands and notices, by certain of the Lenders throughout 2023. Additionally, certain of the Lenders have filed Statements of Claim in the Ontario Superior Court of Justice in which the applicable Applicant borrowers are named as defendants (collectively, the "**Statements of Claim**").

100. Certain details concerning the Statements of Claim and the actions initiated thereby revealed by litigation searches as of January 5, 2024, are set out in the table below:

Court Location	Court File Number	Plaintiff(s)	Defendant(s)
Haileybury	CV-23-00000083-0000	Olympia Trust Company	Balboa Inc. and Ms. Butt
Cochrane	CV-23-00000223-0000	Olympia Trust Company	Balboa Inc. and Ms. Butt
Cochrane	CV-23-00000224-0000	Olympia Trust Company	Balboa Inc. and Ms. Butt
Parry Sound	CV-23-00000124-0000	Olympia Trust Company, Corey Goss and Sima Qadeer Goss	DSPLN Inc. and Ms. Butt
Parry Sound	CV-23-00000126-0000	Bold Egg Investments Inc.	DSPLN Inc., Ms. Butt and 2035881 Ontario Inc.
Cochrane	CV-23-00000192-0000	Denise Michelle Smith	DSPLN Inc. and Ms. Butt
Sault Ste. Marie	CV-23-00029315-0000	Olympia Trust Company	DSPLN Inc. and Ms. Butt
Sault Ste. Marie	CV-23-00029350-0000	Abraham Ram and Yasmin Mohammed Ram	DSPLN Inc. and Ms. Butt
Sault Ste. Marie	CV-23-00029382-0000	Denise Jensen-Gomes	DSPLN Inc., Ms. Butt, Lift, Juliana Maria Chirichiello, Paul Edward Denton, Marla Louise McGregor, Katie Banks, Kenneth Szekely and Daniela Moffatt
Sault Ste. Marie	CV-23-00029384-0000	Denise Jenson-Gomes	DSPLN Inc. and Ms. Butt
Sault Ste. Marie	CV-23-00029386-0000	MLB Holdings Limited	DSPLN Inc. and Ms. Butt
Hamilton	CV-23-00082649-0000	Olympia Trust Company	DSPLN Inc. and Ms. Butt
Cochrane	CV-23-00000237-0000	MLB Holdings Limited	Happy Gilmore Inc., Ms. Butt and Mr. Molony
Sudbury	CV-23-00011498-0000	Olympia Trust Company	Happy Gilmore Inc., Ms. Butt and Mr. Molony

Sault Ste. Marie	CV-23-00029398-0000	Olympia Trust Company	Happy Gilmore Inc.
Sault Ste. Marie	CV-23-00029398-0000	Olympia Trust Company	Happy Gilmore Inc.
Simcoe	CV-23-00000072-0000	Aris Stigter	Interlude Inc. and Mr. Suitor
Simcoe	CV-23-00000073-0000	Aris Stigter	Interlude Inc. and Mr. Suitor
Cochrane	CV-23-00000087-0000	Trevor Brunette	Interlude Inc., Mr. Suitor, Brandon Solomon and 1919832 Ontario Inc.
Parry Sound	CV-23-00000105-0000	Michel Eldebs and Milad Eldebs	Interlude Inc. and Mr. Suitor
Parry Sound	CV-23-00000111-0000	1896891 Ontario Inc., Sofia Pino and Mark Pino	Interlude Inc. and Mr. Suitor
Cochrane	CV-23-00000238-0000	MLB Holdings Limited	Interlude Inc. and Mr. Suitor
Sudbury	CV-23-00011339-0000	Daniela Miele and Jeffrey Luis Rego	Interlude Inc.
Sudbury	CV-23-00011593-0000	Olympia Trust Company	Interlude Inc.
Sudbury	CV-23-00029388-0000	MLB Holdings Limited	Interlude Inc. and Mr. Suitor
Parry Sound	CV-23-00000125-0000	Olympia Trust Company, Sima Qadeer Goss	Multiville Inc., Ms. Butt and Mr. Molony
Cochrane	CV-23-00000191-0000	Denise Michelle Smith	Multiville Inc., Ms. Butt and Mr. Molony
Sudbury	CV-23-00011489-0000	Zorian Sarkis	Multiville Inc.
Simcoe	CV-23-00000074-0000	Aris Stigter, Christopher O'Brien and Denise O'Brien	The Mulligan Inc., Mr. Suitor and Mr. Molony
Cochrane	CV-23-00000239-0000	MLB Holdings Limited	Joint Captain Real Estate Inc., Ms. Butt, Ms. Bullen and Mr. Drage
Sault Ste. Marie	CV-23-00029387-0000	MLB Holdings Limited	Joint Captain Real Estate Inc., Ms. Butt, Ms. Bullen and Mr. Drage
Simcoe	CV-23-00000075-0000	1216550 Ontario Ltd., Christopher O'Brien and Denise O'Brien	Neat Nests Inc. and Mr. Suitor

101. Generally, the Lenders in the above-noted actions seek, among other things, the principal amount, interest and certain fees due to such Lenders and/or possession of the applicable Properties. As of the date of this affidavit, such actions remain unresolved and the Applicants have not taken any material steps in connection therewith.⁷

VI. EVENTS PRECEDING THESE CCAA PROCEEDINGS

102. Despite generating significant annual revenues from rental income and the sale of certain properties, the Applicants have struggled to generate sufficient free cash flow to support their ongoing payment obligations under their secured and unsecured indebtedness. To reduce the Applicants' significant interest expense and improve their free cash flow, the Company began exploring refinancing and sale opportunities in early 2022. At that time, the Core Sale was ultimately pursued, which resulted in the divestiture of 223 residential properties.

103. With the objectives of reducing the Applicants' significant interest expense burden and right sizing their capital structure, the Company renewed its efforts to obtain refinancing in August 2022. At that time, the Bank of Canada's interest rate increases had eliminated the possibility of a mortgage-backed security-based refinancing solution with a major Canadian financial institution. The Company therefore engaged Finneo to approach over 60 financial institutions throughout 2023 to solicit interest in providing the Company with a comprehensive refinancing solution. However, none of the financial institutions approached had a financial product or acceptable alternative refinancing solution designed for residential (rather than commercial) real estate and/or the administrative capacity to address the Applicants' substantial portfolio of residential Properties.

⁷ DSPLN Inc. is also subject to certain fire code violations that have resulted in approximately \$140,000 in fines.

104. Having been unsuccessful in obtaining a comprehensive refinancing solution and facing continued and unsustainable losses driven by the Applicants' significant interest expense burden, the Company engaged HCC as a financial advisor in August 2023. The principal purposes of HCC's engagement as a financial advisor were, among others, to:

- (a) review and assess the Company's financial situation and go-forward prospects;
- (b) review the Company's short-term and medium-term liquidity situation, including a review of the most recent cash flow forecast, underlying financing model and current business plan;
- (c) review and perform a detailed assessment of the Company's assets; and
- (d) assist the Company in marketing a sale transaction, refinancing and/or restructuring to potential purchasers, financiers or investors.

105. With the assistance of HCC, the Company initiated discussions with approximately 35 potential purchasers, financiers or investors, to assist in obtaining a comprehensive refinancing solution for the Applicants' funded indebtedness. As of the date of this affidavit, the Company's discussions with one of Canada's largest independently owned mortgage services companies remain ongoing.

106. In light of the Applicants' current liquidity crisis, limited cash on hand, and numerous defaults under, and enforcement proceedings in respect of, the First Mortgage Loans, Second Mortgage Loans and Promissory Notes, the Applicants can no longer continue operating the Business or pursue a refinancing or restructuring solution absent creditor protection, additional funding and certain other critical relief.

VII. RELIEF SOUGHT PURSUANT TO THE INITIAL ORDER

107. As set out above, the Applicants are currently facing a severe liquidity crisis, are in default of substantially all of their obligations and are unable to satisfy their liabilities as they generally become due. Without immediate relief, including a stay of enforcement actions and following the Initial Stay Period, additional financing, the Applicants will be forced to liquidate the Properties at distressed prices to the detriment of their stakeholders, including the Lenders and their tenants, or cede to numerous, uncoordinated and value destructive enforcement proceedings.

108. After extensive review and careful consideration of the strategic options and alternatives available, the sole director or boards of directors of each of the Applicants, as applicable, with the assistance of their advisors, determined that it is in the best interests of the Applicants and their stakeholders to seek urgent relief under the CCAA. The Applicants believe that these CCAA proceedings present the only viable means of preserving and maximizing value for their stakeholders and providing the stability and liquidity necessary to complete value accretive renovations, pursue a comprehensive refinancing or restructuring transaction and implement a consensual plan of compromise or arrangement.

109. While the Applicants intend to pursue and implement a refinancing or restructuring transaction through a consensual plan of compromise or arrangement in these CCAA proceedings, the relief sought under the proposed Initial Order is limited to that which is reasonably necessary for the continued operation of the Business during the Initial Stay Period. Such relief is discussed below.

A. The Stay of Proceedings

110. The Applicants urgently require a 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. Accordingly, the proposed Initial Order provides the Stay of Proceedings for the Initial Stay Period of not more than ten days. The Applicants anticipate seeking an extension of the Stay of Proceedings beyond the Initial Stay Period at the Comeback Hearing.

111. The proposed Stay of Proceedings will preserve the *status quo* and afford the Applicants the breathing space and stability required to advance their restructuring and refinancing efforts, including seeking approval of the DIP Facility and the Financial Advisor's retention, developing a plan of compromise or arrangement and/or exploring other restructuring transaction alternatives. Moreover, it will permit the Applicants to stabilize and continue to operate the Business as a going concern with minimal disruption, complete value accretive renovations and prevent the Lenders from taking disjointed enforcement steps that could result in an immediate erosion of the Properties' values, and preferential treatment for the Applicants' most aggressive creditors. The continued operation of the Business and the avoidance of uncoordinated and distressed sales or forced liquidations of the Properties will preserve value for the Applicants' stakeholders and is in the best interests of, among others, the Lenders and the Applicants' tenants.

112. In the circumstances, the proposed Stay of Proceedings is in the best interests of the Applicants and their stakeholders. The Proposed Monitor has advised that it is supportive of the proposed Stay of Proceedings.

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

113. The proposed Initial Order temporarily stays all 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. The Related Claims are derivative of the primary liability of the Applicants under certain of the First Mortgage Loans, Second Mortgage Loans and Promissory Notes. In particular, they include 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.

114. 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 the Applicants' only directors. Accordingly, the Applicants are seeking to temporarily stay the Related Claims to prevent enforcement action from being commenced or continued against the Additional Stay Parties or the Additional Stay Parties' Property.

115. 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' and the Applicants' participation in tens or potentially hundreds of individual actions. As demonstrated by the Statements of Claim, 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.

116. The Additional Stay Parties' participation in responding to any Related Claims will severely strain the Applicants' limited resources and those of each of the directors, imperiling the Applicants' restructuring efforts and the success of these CCAA proceedings. 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.

117. Importantly, the proposed Initial Order 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 directors' limited time and resources and facilitate the administration of these CCAA proceedings. I understand that a material amount of the Additional Stay Parties' net worth is invested in the Applicants, and that the remainder would not be nearly enough to satisfy the obligations that the Additional Stay Parties purportedly guaranteed. Given the Applicants' intention to consummate a comprehensive refinancing or restructuring transaction that will underpin a plan of compromise or arrangement, the quantum of the Related Claims may be reduced (and materially so) during these CCAA proceedings if such Related Claims cannot be addressed consensually.

118. In the circumstances, the potential prejudice to certain of the Lenders that may result from 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.

C. The Proposed Lender Representative Counsel

119. Pursuant to the proposed Initial Order, the Applicants are seeking to have Chaitons LLP appointed as the Lender Representative Counsel for all of the Lenders in any Insolvency Proceedings, including these CCAA proceedings, for any issues affecting the Lenders in such Insolvency Proceedings. I am advised by George Benchetrit of Chaitons LLP, and believe that, Chaitons LLP is prepared to act as the Lender Representative Counsel if so appointed and has previously acted as Court-appointed representative counsel to various stakeholder groups. Notably, Chaitons LLP's prior appointments include the following:

- (a) acting as representative counsel to approximately 1,600 investors in *The Superintendent of Financial Services v Textbook Student Suites (525 Princess Street) Trustee Corporation et al.*, in respect of such investors' interests in syndicated mortgage loans advanced in connection with 16 commercial real estate development projects;
- (b) acting as representative counsel to approximately 11,000 investors in *The Superintendent of Financial Services v Building & Development Mortgages Canada Inc.*, in respect of such investors' interests in the loans and other indebtedness administered by Building & Development Mortgages Canada Inc.;
and
- (c) acting as representative counsel to approximately 1,000 investors in *Law Society of Ontario v Derek Sorrenti and Sorrenti Law Professional Corporation*, in respect such investors' interests in the loans and other indebtedness administered by Derek Sorrenti and Sorrenti Law Professional Corporation.

120. Under the proposed Initial Order, the material terms of the Lender Representative Counsel's appointment include, among others, that:

- (a) upon the granting of the Initial Order, the Lender Representative Counsel will be appointed as representative for all of the Lenders in any Insolvency Proceedings, for any issues affecting the Lenders in such Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Lenders;
- (b) as soon as reasonably practicable following the date of the Initial Order, the Lender Representative Counsel is entitled but not required to identify no more than six (6) Lenders to be nominated as Court-appointed representatives (collectively, the "**Lender Representatives**"), which, if appointed, will represent the Lenders in the Insolvency Proceedings and advise, and where appropriate instruct, the Lender Representative Counsel, including, without limitation, for the purpose of settling or compromising claims of the Lenders in the Insolvency Proceedings;
- (c) any Lender that does not wish to be represented by the Lender Representative Counsel and the Lender Representatives, if any, in the Insolvency Proceedings may, within thirty (30) days of the date of the Initial Order, notify the Monitor and the Lender Representative Counsel in writing that such Lender is opting out of representation by the Lender Representative Counsel and the Lender Representatives, if any;
- (d) the Lenders will be bound by the actions of the Lender Representative Counsel and the Lender Representatives, if any, in the Insolvency Proceedings;

- (e) the fees and disbursements of Chaitons LLP, in its capacity as the Lender Representative Counsel, whether incurred prior to or after the date of the Initial Order will be paid by the Applicants; and
- (f) the Lender Representative Counsel and the 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 Initial Order save and except for any gross negligence or wilful misconduct on their part.

121. The Applicants' proposed appointment of Lender Representative Counsel is 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 and 802 Promissory Notes and over 300 different Lenders, many of which are individual investors that provided loans to the Applicants through or with Lift or Windrose.

122. While certain of the Lenders have retained counsel for the purposes of issuing demand letters, notices of default, notices of intention to enforce security and notices of sale under mortgage, the Applicants are not aware of any representative counsel currently acting for the benefit of a material portion or all of the Lenders. As the most significant creditor group, the Applicants believe that the Lenders ought to be entitled to meaningful representation in these CCAA proceedings in the form of the proposed Lender Representative Counsel.

123. In addition to providing the Lenders with meaningful representation, the 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 hundreds of Lenders can be addressed, their views can be articulated and their interests can be protected and advanced.

124. To ensure that the Lender Representative Counsel, if and once appointed, has the information necessary to perform its mandate, the proposed Initial Order requires the Applicants, Windrose and Lift to provide, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the following to the Lender Representative Counsel:

- (a) the names, last known address, last known email addresses (if any) and entitlements of all of the Lenders (excluding any Opt-Out Lender that has delivered an Opt-Out Notice (each as defined in the Initial Order) prior to the delivery of the Information), in each case, to the extent in the possession or control of the Applicants, Windrose and/or Lift, respectively, to be used solely for the purposes of the Insolvency Proceedings; and
- (b) upon request of the Lender Representative Counsel, such documents and data as may be reasonably relevant to the issues affecting the Lenders in the Insolvency Proceedings, to the extent in the possession or control of the Applicants, Windrose and/or Lift, respectively.

125. 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 potentially hundreds of counsel retained by the 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.

126. In light of the foregoing, the Applicants believe that the proposed Lender Representative Counsel's appointment is in the best interests of the Applicants, the Lenders and the Applicants' remaining stakeholders. The Proposed Monitor has advised that it is supportive of the appointment of the proposed Lender Representative Counsel.

127. At this time, the Applicants are not aware of any conflict existing as between the interests of the 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. The Administration Charge

128. Pursuant to the proposed Initial Order, the Applicants are seeking a Court-ordered 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 Administration Charge will secure payment of the respective fees and disbursements of the Lender Representative Counsel, the Monitor, counsel to the Monitor and counsel to the Applicants in these CCAA proceedings incurred in connection with services rendered to the Applicants.

129. The Applicants, in consultation with the Proposed Monitor, determined the quantum of the Administration Charge required during the Initial Stay Period. Its quantum is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge by the end of the Initial Stay Period, the modest retainers held by certain of such beneficiaries, and such beneficiaries' significant arrears as at the date of this affidavit. The Applicants expect to seek an increase to the Administration Charge at the Comeback Hearing.

130. The expertise, knowledge, and continued participation of the beneficiaries of the proposed Administration Charge during these CCAA proceedings is essential to the Applicants' successful restructuring. The beneficiaries of the proposed Administration Charge have made, and will continue to make, distinct and significant contributions to the Applicants' restructuring efforts.

131. Given the circumstances, the anticipated complexity of these CCAA proceedings and the services rendered and to be provided by the beneficiaries thereof, I believe that the proposed Administration Charge is fair and reasonable. I understand that the Proposed Monitor is of the view that the Administration Charge is appropriate in the circumstances.

E. The Proposed Monitor

132. The proposed Initial Order contemplates that KSV will act as the Monitor in these CCAA proceedings. I am advised by KSV that it is a "trustee" within the meaning of subsection 2(1) of the BIA, and that it is not otherwise precluded from acting as the Monitor under subsection 11.7(2) of the CCAA.

133. KSV has consented to act as the Monitor in these CCAA proceedings pursuant to the terms of the proposed Initial Order, if granted. A copy of KSV's consent to act as the Monitor is attached hereto as **Exhibit "N"**.

F. Cash Flow Forecast

134. With the assistance of the Proposed Monitor, the Applicants have conducted a cash flow analysis to determine the amount required to finance their ordinary course business operations, assuming the Initial Order is granted, over the Initial Stay Period (the "**Cash Flow Forecast**").

135. The Cash Flow Forecast demonstrates that the Applicants will, subject to obtaining the Initial Order and relief sought at the Comeback Hearing, have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the Initial Stay Period.

136. I understand that the Cash Flow Forecast, which is accompanied by the representations prescribed under the CCAA, will be attached to the pre-filing report of the Proposed Monitor. If appointed, the Applicants anticipate that the Monitor will report to the Court on any variances between the Cash Flow Forecast and the Applicants' actual results during these CCAA proceedings.

G. Priority of the Administration Charge

137. The proposed Initial Order provides that:

- (a) the Administration Charge will rank in priority to all security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person notwithstanding the order of perfection or attachment, provided that the Administration Charge will rank behind Encumbrances in favour of any person that is not served with notice of the within application; and
- (b) the Applicants and the beneficiaries of the Administration Charge will be entitled to seek priority of the Administration Charge ahead of all Encumbrances on a subsequent motion, including at the Comeback Hearing, on notice to those persons likely to be affected thereby.

138. At the Comeback Hearing, the Applicants intend to seek an increase to the quantum of the Administration Charge and the granting of the Financial Advisor Charge and the DIP Lender's Charge (collectively with the Administration Charge, the "**Charges**"). Additionally, the Applicants intend to seek priority of all of the Charges ahead of all Encumbrances at the Comeback Hearing.

139. Each of the Charges to be granted pursuant to the proposed ARIO is intended to be secured against all of the Applicants' Property. To the extent necessary, an allocation of the Charges as among the Applicants' Property may be addressed at a later time in these CCAA proceedings, including in connection with any plan of compromise or arrangement or distribution for which Court approval is sought.

VIII. CONCLUSION

140. The proposed Initial Order is in the best interests of the Applicants and their stakeholders. Absent the relief requested under the proposed Initial Order, including the Stay of Proceedings, the Applicants will be forced to cease operating the Business and commence an immediate and value-destructive liquidation of the Properties or cede to fractured enforcement efforts, to the detriment of their stakeholders.

141. The relief sought under the proposed Initial Order is tailored to that which is reasonably necessary to ensure the continued operation of the Business and preserve the *status quo* during the Initial Stay Period. In the circumstances, the Applicants believe that these CCAA proceedings are the best means of addressing the challenges facing the Business and effecting the restructuring transactions necessary to maximize value for their stakeholders.

SWORN REMOTELY by Robert Clark stated as being located in the City of Burlington, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 23rd, 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:

Robert Clark

B74FAB77325A47D...

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 January 23, 2024)**

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Lawyers for the Applicants

TAB B

THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

**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 January 28, 2024)**

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**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 January 28, 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 an amended and restated initial order (the "**ARIO**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) extending the Initial Stay Period (as defined below) to and including March 28, 2024;
- (b) authorizing but not requiring the Applicants to pay, with the consent of the Monitor (as defined below), certain amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order (as defined below);
- (c) approving 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 granting the Financial Advisor Charge (as defined below) to secure the Completion Fee (as defined below) and the Applicants' indemnification obligations under the Financial Advisor Engagement Agreement;
- (d) approving 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. (the "**DIP Lender**");
- (e) granting the DIP Lender's Charge (as defined below) to secure all of the Applicants' obligations under the DIP Agreement and the DIP Facility; and

- (f) expanding the scope of the Administration Charge (as defined below) to include certain fees of the Financial Advisor, which are not secured by the Financial Advisor Charge, and increasing the maximum amount of the Administration Charge from \$750,000 to \$1,500,000.

3. This affidavit should be read in conjunction with the affidavit that I previously swore in these proceedings on January 23, 2024 (the "**First Clark Affidavit**") in support of the Applicants' application for an initial order under the CCAA (the "**Initial Order**"). All capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the First Clark Affidavit. A copy of the First Clark Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

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 AND STATUS OF 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 424 are tenanted, as well as a single non-operating 200-acre golf course, 40 acres of which are zoned for development.¹

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 The Lion's Share Group Inc. 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. 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.

¹ The Applicants understand that two of the Properties have been listed for, and are subject to, as yet unclosed sales initiated at the behest of certain of the Applicants' Lenders (as defined below) improperly and/or improvidently exercising power of sale remedies. Those sales are now subject to the Stay of Proceedings (as defined below) in the Initial Order.

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 Lenders and approximately 1,000 tenants. Accordingly, the Applicants sought and, on January 23, 2024, obtained the Initial Order under the CCAA. Copies of the Initial Order and the accompanying endorsement of the Honourable Madam Justice Kimmel dated January 23, 2024 are attached hereto as **Exhibits "B"** and **"C"**, respectively.

10. Among other things, the Initial Order:

- (a) declared that each of the Applicants is a debtor company to which the CCAA applies;
- (b) appointed KSV Restructuring Inc. ("**KSV**") as the Monitor of the Applicants in these CCAA proceedings (in such capacity, the "**Monitor**");
- (c) 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**");
- (d) 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;

- (e) appointed Chaitons LLP as representative counsel (in such capacity, the "**Lender Representative Counsel**") for all of the secured and unsecured lenders of the Applicants (collectively, the "**Lenders**" and each, a "**Lender**"), including, without limitation, all of the 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 (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before the Court; and
- (f) 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. Additional information regarding the Applicants' financial circumstances, liquidity crisis and need for relief under the CCAA are set out in the First 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>.

12. Since the granting of the Initial Order, 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 Initial Order;
- (b) implement a communication plan to advise their key stakeholders of these CCAA proceedings and the granting of the Initial Order;
- (c) negotiate and execute the Financial Advisor Engagement Agreement and the DIP Agreement, the approval of each of which is sought on the within motion;
- (d) liaise with:
 - (i) The Windrose Group Inc., the mortgage brokerage through which substantially all of the First Mortgage Loans, and certain of the Promissory Notes, were sourced;
 - (ii) Lift Capital Incorporated, the original Lender under substantially all of the Second Mortgage Loans, which were subsequently syndicated; and
 - (iii) The Lion's Share Group Inc., the largest Lender under the Promissory Notes;
- (e) contact existing Lenders known to, and sourced by, the Applicants;

- (f) coordinate the delivery of the Lender Information (as defined in the Initial Order) to the Lender Representative Counsel in advance of the townhall to be hosted by the Lender Representative Counsel for the Lenders on January 29, 2024;
- (g) continue ongoing discussions with potential purchasers, financiers, investors and mortgage service companies regarding a comprehensive refinancing solution for the Applicants' funded indebtedness; and
- (h) prepare materials in support of the within motion.

13. The Applicants now seek additional relief intended to advance these CCAA proceedings, enable the continued operation of the Business and the completion of value accretive renovations, and facilitate the Applicants' refinancing and restructuring objectives.

14. Provided that the proposed ARIO is granted, the Applicants, in consultation with the Monitor and the Lender Representative Counsel, intend to develop and seek Court approval of a process for the solicitation, determination and resolution of claims against the Applicants and their present and former directors and officers (a "**Claims Process**"). Such a Claims Process will allow the Applicants to identify the universe of claims that will need to be addressed as part of their restructuring and inform the Applicants' consideration and development of a plan of compromise and arrangement.

II. THE PROPOSED ARIO

15. 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.

The Applicants now seek to extend and expand the limited relief granted under the Initial Order pursuant to the proposed ARIO. Such relief will enhance the prospect of a successful restructuring and is in the best interests of the Applicants and their stakeholders.

16. Certain of the relief sought under the proposed ARIO is discussed below.

A. Extending the Stay of Proceedings Beyond the Initial Stay Period

17. The Stay of Proceedings under the Initial Order will expire at the end of the Initial Stay Period, being February 2, 2024. Pursuant to the proposed ARIO, the Applicants are seeking to extend the Initial Stay Period to and including March 28, 2024 (the "**Stay Period**").

18. As described in the First 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) continue to liaise with the Lender Representative Counsel, on behalf of the Lenders, regarding the Lenders' interests and the Applicants' objectives in these CCAA proceedings;
- (e) 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; and
- (g) develop and seek approval of a Claims Process, in consultation with the Monitor and the Lender Representative Counsel.

19. In connection with their application for the Initial Order, the Applicants, with the assistance of the then proposed Monitor, prepared a cash flow analysis to determine the amount required to finance their ordinary course business operations, assuming the Initial Order was granted, over the Initial Stay Period. With the assistance of the Monitor, the Applicants have 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 First 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, provided that the proposed ARIO is granted and the DIP Agreement is approved.

20. 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.

21. 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

22. As noted in the First 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 the Applicants' only directors. Accordingly, the Applicants sought to temporarily stay all 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.

23. Pursuant to the proposed 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, the proposed 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. What is more, the proposed

ARIO tolls 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.

24. 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' limited resources and those of their directors, jeopardizing the Applicants' restructuring efforts and the success of these CCAA proceedings;
- (c) 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;

- (d) 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;
- (e) 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
- (f) the Related Claims are not proposed to be released, compromised or permanently enjoined under the ARIO and, following consultation with the Lender Representative Counsel, 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 ARIO for a period of time equal to the Stay Period.

25. 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. Essential Payments During These CCAA Proceedings

26. If granted, the proposed ARIO will authorize (but not require) the Applicants to pay, with the consent of the Monitor, amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order. Under the terms of the proposed ARIO, the provision of the Monitor's consent is to be informed by, among other factors, whether:

- (a) the supplier or service provider is critical to the Business and ongoing operations of the Applicants and the payment is required to ensure ongoing supply;
- (b) making such payment will preserve, protect or enhance the value of the Applicants' Property or the Business;
- (c) making such payment is required to address environmental or regulatory concerns; and
- (d) the supplier or service provider is required to continue to provide goods or services to the Applicants after the date of the Initial Order.

27. The aforementioned authorization will allow the Applicants to maintain their existing relationships with numerous contractors, service providers and trades that provide critical maintenance, renovation and construction services for the benefit of the Applicants' tenants and the Business, many of which (including SID Renos) are owed significant arrears. Without authorization to make pre-filing payments, the Applicants' contractors, service providers and trades may cease providing services that are essential to the Business and the Applicants' intended renovations. As such, this authorization will preserve continuity in, and facilitate the continued operation of, the Business during the Stay Period and enable the completion of value accretive renovations at the Applicants' unfinished Properties.

28. The Monitor has advised that it is supportive of the Applicants' request for authorization to make the aforementioned payments, subject to the Monitor's prior consent, under the proposed ARIO.

D. The Financial Advisor's Engagement and the Financial Advisor Charge

29. The Company, having been unsuccessful in obtaining a comprehensive refinancing solution, and facing continued and unsustainable losses driven by the Applicants' significant interest expense burden, previously engaged HCC as a financial advisor pursuant to a letter agreement dated August 5, 2023 (as amended and restated on September 27, 2023, the "**Letter Agreement**"). A copy of the Letter Agreement is attached hereto as **Exhibit "D"**.

30. HCC was selected by the Company, in part, based on its extensive financial advisory, turnaround and management experience, and the significant experience of its principal, Howard Steinberg ("**Mr. Steinberg**"). Through Palm Beach Financial Solutions and Revest Asset Management, entities founded and co-founded by Mr. Steinberg, respectively, Mr. Steinberg has the unique experience of having led and co-led the acquisition, renovation, financing and sale of approximately 614 residential properties in the State of Florida between 2012 and 2021. During that period, Mr. Steinberg also developed internal property management and construction teams as well as a brokerage business to manage all aspects of Palm Beach Financial Solutions' and Revest Asset Management's portfolios.

31. The principal purposes of HCC's engagement as a financial advisor to the Company were, among others, to:

- (a) review and assess the Company's financial situation and go-forward prospects;
- (b) review the Company's short-term and medium-term liquidity situation, including a review of the most recent cash flow forecast, underlying financing model and current business plan;

- (c) review and perform a detailed assessment of the Company's assets; and
- (d) assist the Company in marketing a sale transaction, refinancing and/or restructuring to potential purchasers, financiers or investors.

32. Following HCC's initial retention and with its assistance, the Company initiated discussions with approximately 35 potential purchasers, financiers or investors, to assist in obtaining a comprehensive refinancing solution for the Applicants' funded indebtedness. Certain of these discussions remain ongoing as at the date of this affidavit.

33. Pursuant to the Letter Agreement, HCC and the counterparties thereto, including certain of the Applicants, agreed to seek HCC's appointment as financial advisor or chief restructuring officer on terms substantially similar to those in the Letter Agreement in the event that all or substantially all of such counterparties commenced debtor-in-possession insolvency proceedings. Given the commencement of these CCAA proceedings, the Applicants and HCC have negotiated and entered into the Financial Advisor Engagement Agreement, the effectiveness of which is subject to the granting of the proposed ARIO. A copy of the Financial Advisor Engagement Agreement is attached hereto as **Exhibit "E"**.

34. Pursuant to the Financial Advisor Engagement Agreement, the Financial Advisor will, and will cause HCC's principal, Mr. Steinberg, and any consultants agents and/or advisors retained by HCC (collectively, the "**Consultants**"), to provide certain financial advisory services to the Applicants in connection with these CCAA proceedings (collectively, the "**Services**"). The Services include, among others:

- (a) acting as financial advisor to the Applicants under the terms of the Financial Advisor Engagement Agreement;
- (b) assisting in the development of financial data and presentations to the Applicants, and their creditors, potential purchasers, potential investors, and other stakeholders on a go forward basis;
- (c) assisting in the development of the Applicants' long-term business plan and related financial projections;
- (d) reviewing and assessing the Applicants' current financial situation, business and go-forward prospects;
- (e) analyzing the Applicants' financial liquidity and alternatives to improve such liquidity;
- (f) providing strategic advice with regard to restructuring or refinancing the Applicants obligations and funded indebtedness;
- (g) assessing the estimated security position of secured creditors of the Applicants, based on available financial information and evaluating alternative capital structures;
- (h) overseeing the management of the assets and operations of the Applicants with a view to improving operations and profitability;

- (i) developing for consideration by the Applicants and the Monitor strategic alternatives for the Applicants, and implementing such strategic alternatives to the extent approved by the Monitor, the Applicants, and, as applicable, the Court; and
- (j) dealing, negotiating and communicating with creditors, potential purchasers, potential investors, and other stakeholders regarding the Applicants, the Applicants' obligations and funded indebtedness and these CCAA proceedings, as well as the Monitor.

35. Pursuant to the Financial Advisor Engagement Agreement and in consideration for providing the Services to the Applicants, the Financial Advisor is entitled to a fixed fee in an amount equal to \$75,000 per month (the "**Monthly Fee**"). The Monthly Fee is payable from the date on which the proposed ARIO approving the Financial Advisor's retention and the Financial Advisor Engagement Agreement is granted (the "**Effective Date**") until the termination of the Financial Advisor's engagement and is pro-rated for the number of days for which HCC is the Financial Advisor in respect of the first and last months of its retention.

36. In addition to the Monthly Fee, the Financial Advisor Engagement Agreement entitles the Financial Advisor to the following:

- (a) reimbursement of monthly expenses incurred by it, which expenses require the prior approval of the Applicants and the Monitor in the event they exceed \$20,000 in the aggregate for any month (collectively, the "**Expenses**");

- (b) reimbursement of all reasonable fees and out-of-pocket expenses of the Financial Advisor associated with any Consultants retained by it with the prior consent of the Applicants and the Monitor (collectively, the "**Consultant Expenses**"); and
- (c) a completion fee (the "**Completion Fee**") of:
 - (i) in the event of a voluntary sale approved by the Applicants of (a) all or substantially all of the shares of the Applicants (whether directly, or indirectly as a result of the sale of all or substantially all of the shares of one or more parent companies of the companies that make up the Applicants, or pursuant to a reverse vesting order), or (b) all or substantially all of the business or assets of the Applicants, regardless of the number of purchasers or number of transactions constituting such sale, regardless of whether such sale is a going-concern sale or a liquidation sale or multiple liquidation sales, and regardless of whether or not the purchaser or purchasers are existing creditors or insiders of the Applicants (a "**Sale Transaction**"), an amount equal to 1% of the Net Sale Proceeds (as defined in the Financial Advisor Engagement Agreement) of the Sale Transaction up to a maximum of \$1,500,000;
 - (ii) in the event of a refinancing of all, or substantially all, of the Applicants' indebtedness (a "**Refinancing**") in a transaction that does not include the sale of a material portion of the Applicants' shares, business or assets, an amount equal to 1% of the Net Refinanced Indebtedness (as defined in the

Financial Advisor Engagement Agreement) up to a maximum of \$1,500,000;

- (iii) in the event of a restructuring of all, or substantially all, of the Applicants' indebtedness, which may include, without limitation, a debt-to-equity conversion in connection with a material number of creditors, a plan of compromise or arrangement in these CCAA proceedings, a proposal under the proposal provisions of the BIA or a renegotiation of existing debt terms in connection with a material number of creditors (each, being a "**Restructuring**"), an amount equal to 1% of the amount of the original indebtedness that is restructured and/or compromised as part of the Restructuring up to a maximum of \$1,500,000; or
- (iv) in the event of a combination of any of a (x) Sale Transaction, (y) Refinancing, or (z) Restructuring: an amount equal to (A) 1% of the Net Sale Proceeds from the Sale Transaction; (B) 1% of the Net Refinanced Indebtedness; and (C) 1% of the original indebtedness that is restructured or compromised as part of the Restructuring up to a maximum of \$1,500,000.

37. The Completion Fee, less any required withholdings, is to be paid upon the closing of a Sale Transaction, Refinancing and/or Restructuring, as applicable. The Applicants' obligation to pay the Completion Fee in accordance with the terms of the Financial Advisor Engagement Agreement survives for a period of nine months following its termination by the Applicants.

However, the Financial Advisor will not be entitled to the Completion Fee in the event that it terminates the Financial Advisor Engagement Agreement for any reason whatsoever.

38. Pursuant to the Financial Advisor Engagement Agreement, the Applicants agreed to seek an order of the Court, among other things:

- (a) approving the Financial Advisor Engagement Agreement;
- (b) providing that neither HCC nor Mr. Steinberg will incur any liability or obligation as a result of the provision of the Services except as may result from their gross negligence or wilful misconduct;
- (c) providing the benefit of a stay of proceedings in favour of HCC and Mr. Steinberg in these CCAA proceedings;
- (d) extending the benefit of the Administration Charge to the Financial Advisor, up to the maximum amount of \$150,000, as security for the Applicants' obligation to pay the Monthly Fee, Expenses and Consultant Expenses; and
- (e) granting a charge on the Applicants' Property in favour of the Financial Advisor to secure the payment of the Completion Fee and the indemnification obligations of the Applicants under the Financial Advisor Engagement Agreement up to the maximum amount of \$1,500,000 (the "**Financial Advisor Charge**"), which Financial Advisor Charge is to be subordinate to each of the Administration Charge and the DIP Lender's Charge (collectively with the Financial Advisor Charge, the "**Charges**").

39. I believe that the Applicants' engagement of the Financial Advisor is in the best interests of the Applicants and their stakeholders and will enhance the prospect of a value maximizing Sale Transaction, Refinancing or Restructuring materializing in these CCAA proceedings. The proposed Financial Advisor has extensive financial advisory and management experience, having been previously appointed as a chief restructuring officer in several complex CCAA proceedings, and its principal, Mr. Steinberg, has significant experience in the financing and sale of residential properties. Moreover, by virtue of its prior retention by the Company, the proposed Financial Advisor is familiar with, and well-positioned to provide the Services to the Applicants throughout these CCAA proceedings.

40. The Applicants do not possess the Financial Advisor's expertise in effectuating an in-Court refinancing or restructuring solution of the magnitude and complexity contemplated in these CCAA proceedings. That such expertise be brought to bear to address the challenges facing the Applicants and the Business is critical to the success of these CCAA proceedings. Further, it will enable the Applicants' management to appropriately balance their efforts between the Business' ordinary course operations and the Applicants' refinancing and restructuring objectives.

41. Ultimately, the Applicants believe that the Financial Advisor's retention and remuneration are appropriate given the Financial Advisor's experience, the breadth of the Services to be provided and the benefit expected to accrue to the Applicants and their stakeholders from the Financial Advisor's involvement in these CCAA proceedings. The Monitor has advised that it is supportive of the Financial Advisor's engagement, the approval of the Financial Advisor Engagement Agreement and the granting of the Financial Advisor Charge.

E. The DIP Facility and the DIP Lender's Charge

42. As illustrated in the Revised Cash Flow Forecast, the Applicants urgently require interim financing to fund their ongoing operations and value accretive renovations and to pursue their restructuring efforts. To this end, and with the assistance of the Applicants, KSV, in its capacities as the proposed Monitor and the Monitor, solicited interest in providing debtor-in-possession financing from multiple third-party lenders with expertise in real estate investment. The Monitor's and the Applicants' solicitation efforts culminated in the Applicants, as borrowers (in such capacity, the "**Borrowers**") and the DIP Lender, entering into the DIP Agreement on January 26, 2024. A copy of the DIP Agreement is attached hereto as **Exhibit "F"**.

43. Pursuant to the DIP Agreement and in accordance with its terms, the DIP Lender has agreed to provide the Applicants with the DIP Facility. The DIP Facility is a non-revolving, super-priority, credit facility in the aggregate amount of up to \$12,000,000, inclusive of principal and an interest reserve in the amount of \$1,000,000 (the "**Interest Reserve**"), but exclusive of unpaid fees. The DIP Facility is to be used for the purposes of funding the following costs and expenses to be incurred by the Applicants during these CCAA proceedings:

- (a) transaction costs, legal fees and expenses incurred by the DIP Lender in connection with the DIP Facility;
- (b) professional fees and expenses incurred by the Monitor, the Lender Representative Counsel, the Borrowers and the Financial Advisor (except for the Completion Fee);
- (c) funding the Interest Reserve;
- (d) property tax arrears and utilities;

- (e) renovations to be completed on the Properties;
- (f) payments to essential contractors, service providers and trades;
- (g) operating and property and renovation management costs, expenses and liabilities;
and
- (h) other costs approved in advance by the DIP Lender in writing.

44. The interest rate applicable to all advances under the DIP Facility is the greater of (i) the Royal Bank of Canada's prime rate, plus 4.80% or (ii) 12% per annum, in either case, compounded monthly on the last day of each month and payable from the Interest Reserve on the first day of each month. In consideration for making the DIP Facility available to the Borrowers, the DIP Lender is entitled to the following:

- (a) a non-refundable commitment fee of \$240,000, which will be paid from the first advance under the DIP Facility;
- (b) if the maturity date of the DIP Facility is extended at the discretion of the DIP Lender for a period not to exceed six months, an extension fee of \$120,000 payable on the Repayment Date (as defined below); and
- (c) reimbursement of all legal fees and disbursements incurred by the DIP Lender in connection with the DIP Facility.

45. The term of the DIP Facility is the earlier of (i) October 31, 2024, as such date may be extended by the Borrowers (with the consent of the Monitor) and the DIP Lender (the "**Repayment Date**"), (ii) the occurrence of an Event of Default (as defined in the DIP Agreement), and (iii) the

effective date of any plan of compromise and arrangement (such earliest date being, the "**DIP Facility Termination Date**"). All outstanding principal and accrued interest under the DIP Facility, and all fees and other unpaid amounts with respect thereto, will be due and payable on the DIP Facility Termination Date.

46. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Borrowers to the DIP Lender. Additionally, the DIP Facility is conditional upon the issuance of the proposed ARIO, approving the DIP Facility and granting 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 Borrowers under the DIP Agreement and the DIP Facility (the "**DIP Lender's Charge**"). Pursuant to the terms of the proposed ARIO, the DIP Lender's Charge will rank subordinate to the Administration Charge but in priority to the Financial Advisor Charge. The DIP Lender's Charge will not secure obligations incurred prior to these CCAA proceedings.

47. The Applicants believe that the DIP Facility and the approval of the corresponding DIP Lender's Charge are necessary and appropriate in the circumstances. Absent access to the DIP Facility, the Applicants will not have the liquidity necessary to fund their obligations or the costs of these CCAA proceedings and will be forced to liquidate the Properties at distressed prices to the detriment of their stakeholders, including the Lenders and their tenants, or cede to numerous uncoordinated and value destructive enforcement proceedings.

48. The Monitor has advised that it is supportive of the proposed DIP Facility and the granting of the DIP Lender's Charge.

F. Expanding and Increasing the Administration Charge

49. 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**"). Pursuant to the proposed ARIO, the Applicants are seeking (i) an increase to the Administration Charge up to the maximum amount of \$1,500,000, and (ii) in accordance with the Financial Advisor Engagement Agreement, to afford the Financial Advisor the benefit of the Administration Charge up to the maximum amount of \$150,000, as security for the Applicants' obligation to pay the Monthly Fee, Expenses and Consultant Expenses.

50. The increased quantum of the Administration Charge was determined by the Applicants, with the assistance of the Monitor. Its quantum is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge, including the Financial Advisor, during the Stay Period, the modest retainers held by certain of such beneficiaries, and such beneficiaries' significant arrears as of the date of this affidavit.

51. The expertise, knowledge, and continued participation of the beneficiaries of the Administration Charge during these CCAA proceedings is essential to the Applicants' successful restructuring. The beneficiaries of the Administration Charge have made, and will continue to make, distinct and significant contributions to the Applicants' restructuring efforts.

52. Given the circumstances, the complexity of these CCAA proceedings, the number of essential professionals involved, and the services rendered and to be provided by such professionals, the Applicants believe that the proposed Administration Charge is fair and

reasonable. I understand that the Monitor is of the view that the Administration Charge is appropriate in the circumstances.

G. Priority of the Charges

53. Pursuant to the Initial Order, the Administration Charge ranked in priority to all Encumbrances (as defined in the Initial Order), save for Encumbrances in favour of any persons that were not served with the Applicants' notice of application for the Initial Order. The Initial Order preserved the entitlement of the Applicants and the beneficiaries of the Administration Charge to seek priority of the Administration Charge ahead of such Encumbrances on a subsequent motion, including the within motion.

54. Under the proposed ARIO, the Applicants now seek to have the Administration Charge and each of the other Charges rank in priority to all Encumbrances. Each of the Charges to be granted pursuant to the proposed ARIO is intended to be secured against all of the Applicants' Property. To the extent necessary, an allocation of the Charges as among the Applicants' Property may be addressed at a later time in these CCAA proceedings, including in connection with any plan of compromise or arrangement or distribution for which Court approval is sought. Given the number of Properties by which the Charges will be secured, any such allocation is not anticipated to be materially prejudicial to any particular Lender.

55. I am advised by Sean Zweig of Bennett Jones LLP, counsel to the Applicants, and believe that, the persons benefiting from the Encumbrances have been or will be given notice of the within motion and the proposed form of ARIO, including through the Lender Representative Counsel.

III. CONCLUSION

56. 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 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.

57. 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 believe that it 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.

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

SWORN REMOTELY by Robert Clark stated as being located in the City of Burlington, in the Province of Ontario, before me at the City of Oakville, in the Province of Ontario, on January 28th, 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:
Robert Clark
B74FAB77325A47D...

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 January 28, 2024)**

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Lawyers for the Applicants

TAB C

THIS IS **EXHIBIT "C"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

**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 24, 2024)**

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**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 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:

72100AD443381409
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)**

BENNETT JONES LLP

3400 One First Canadian Place
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Email: grayt@bennettjones.com

Lawyers for the Applicants

TAB D

THIS IS **EXHIBIT "D"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) TUESDAY, THE 23RD
)
JUSTICE KIMMEL) DAY OF JANRUARY, 2024
)

**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. (collectively the "Applicants", and each an "Applicant")**

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Robert Clark sworn January 23, 2024 and the Exhibits thereto, and the Pre-Filing Report of KSV Restructuring Inc. ("**KSV**") as the proposed monitor dated January 23, 2024, and on being advised that the secured creditors who are likely to be affected by the charge created herein were given notice, and on hearing the submissions of counsel to the Applicants, counsel to KSV, the proposed Lender Representative Counsel (as defined below), and such other counsel that were present, and on reading the consent of KSV to act as the monitor (in such capacity, the "**Monitor**"),

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and the Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, employee and pension benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), vacation pay and employee expenses payable prior to, on, or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses; and

- (b) the fees and disbursements of any Assistants retained or employed by any of the Applicants in respect of these proceedings, at their standard rates and charges.

5. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied or to be supplied to any of the Applicants on or following the date of this Order.

6. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by any of the Applicants in connection with the sale of goods and services by any of the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of

municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Applicants.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

8. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate; and
- (b) pursue all avenues of refinancing, restructuring, selling or reorganizing its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY

9. **THIS COURT ORDERS** that until and including February 2, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of any of the Applicants or the Monitor, or their respective

employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

10. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Aruba Butt, Dylan Suitor and/or Ryan Molony (collectively, 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 this Court, and any and all Proceedings currently under way against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any of the Applicants or the Monitor, or their respective employees, advisors and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower any Applicant to carry on any business which such Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by

section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

12. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Applicants or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, accounting services, temporary labour and staffing services, warehouse and logistics services, security services, insurance, transportation services, maintenance services, construction services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Applicants or exercising any other remedy provided under the agreements or arrangements, and that each of the Applicants 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 applicable Applicant in accordance with the normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

14. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF LENDER REPRESENTATIVE COUNSEL

15. **THIS COURT ORDERS** that Chaitons LLP (the "**Lender Representative Counsel**") is hereby appointed as representative counsel for all of the secured and unsecured lenders of the Applicants (collectively, the "**Lenders**"), including, without limitation, all of the 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 (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before this Court (collectively, the "**Insolvency Proceedings**"), for any issues affecting the Lenders in the Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Lenders.

16. **THIS COURT ORDERS** that the Lender Representative Counsel shall be entitled but not required to commence the process of identifying no more than six (6) Lenders to be nominated as Court-appointed representatives (collectively, the "**Lender Representatives**") as soon as practicable following the date hereof. The Lender Representatives, if and once appointed, shall represent the Lenders other than any Opt-Out Lender (as defined below), if any, in the Insolvency Proceedings and advise, and where appropriate instruct, the Lender Representative Counsel, including, without limitation, for the purpose of settling or compromising claims of the Lenders in the Insolvency Proceedings. The Lender Representative Counsel may rely upon the advice, information and instructions received from the Lender Representatives, if any, in carrying out its mandate without further communications or instructions from the Lenders, except as may be recommended by the Lender Representative Counsel or ordered by this Court.

17. **THIS COURT ORDERS** that, with the exception of any Opt-Out Lender, (i) the Lender Representative Counsel and the Lender Representatives, if any, shall represent all of the Lenders in the Insolvency Proceedings, and (ii) the Lenders shall be bound by the actions of the Lender Representative Counsel and the Lender Representatives, if any, in the Insolvency Proceedings.

18. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the Applicants, The Windrose Group Inc. and Lift Capital Incorporated shall provide the following information to the Lender Representative Counsel (collectively, the "**Lender Information**"), in each case, without charge: (i) the names, last known address, last known email addresses (if any) and entitlements of all of the Lenders (excluding any Opt-Out Lender that has delivered an Opt-Out Notice (as defined below) prior to the delivery of the Information), in each case, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or Lift Capital Incorporated, to be used solely for the purposes of the Insolvency Proceedings; and (ii) upon request of the Lender Representative Counsel, such documents and data as may be reasonably relevant to the issues affecting the Lenders in the Insolvency Proceedings, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or Lift Capital Incorporated. In providing the Lender Information, these parties are not required to obtain the express consent of any Lender authorizing the disclosure of the Lender Information to the Lender Representative Counsel for the purposes of the Insolvency Proceedings, and further, in accordance with clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, each of these parties is authorized and permitted to disclose the Lender Information to the Lender Representative Counsel for the purposes of the Insolvency Proceedings, without the knowledge or consent of the Lenders.

19. **THIS COURT ORDERS** that notice of the appointment of Lender Representative Counsel shall be provided by: (i) the Lender Representative Counsel sending a letter to the Lenders at the addresses provided pursuant to paragraph 18 of this Order, advising of such appointment as soon as practicable following the date hereof; (ii) the inclusion of the details of such appointment in the CCAA Notice (as defined below); and (iii) the posting of notice of such appointment on the Monitor's Website (as defined below).

20. **THIS COURT ORDERS** that any Lender who does not wish to be represented by the Lender Representative Counsel and the Lender Representatives, if any, in the Insolvency Proceedings shall, within thirty (30) days of the date hereof, notify the Monitor and the Lender Representative Counsel in writing that such Lender is opting out of representation by the Lender Representative Counsel and the Lender Representatives, if any, by delivering to the Monitor and the Lender Representative Counsel an opt-out notice in the form attached as Schedule "A" hereto

(each, an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Lender Representative Counsel or the Lender Representatives, if any, and shall represent itself or themselves, as the case may be, or be represented by any counsel that such Lender may retain at its or their, as the case may be, sole expense (each such Lender that delivers an Opt-Out Notice in compliance with the terms of this paragraph, an "**Opt-Out Lender**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Applicants as soon as reasonably practicable.

21. **THIS COURT ORDERS** that all reasonable and documented fees and disbursements as may have been incurred by the Lender Representative Counsel prior to the date of this Order or which shall be incurred by the Lender Representative Counsel shall be paid by the Applicants on a bi-weekly basis, forthwith upon the rendering of accounts to the Applicants. Any disagreement regarding such fees and disbursements may be remitted to this Court for determination.

22. **THIS COURT ORDERS** that no action or proceeding may be commenced against the Lender Representative Counsel or the Lender Representatives, if any, in such capacities and/or in respect of the performance of their duties under this Order, without leave of this Court on seven (7) days' notice to the Lender Representative Counsel or the Lender Representatives, as applicable, the Applicants and the Monitor.

23. **THIS COURT ORDERS** that the Lender Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or government ministry, department or agency, and to take all such steps as are necessary or incidental thereto. The Lender Representative Counsel and the Lender Representatives, if any, shall have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on their part.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of any of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

APPOINTMENT OF MONITOR

25. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of the Applicants' cash flow statements;
- (d) monitor all payments, obligations and transfers as between the Applicants;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Business and financial affairs or to perform its duties arising under this Order;

- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act*, and regulations thereunder (collectively, "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is

confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees, advisors and other representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings 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 date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings on a bi-weekly basis or pursuant to such other arrangements agreed to between the Applicants and such parties and, in addition, the Monitor, and counsel to the Applicants are hereby authorized to maintain their respective retainers, if any, provided by the Applicants prior to the commencement of these proceedings, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel and the Lender Representative Counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraph 35 hereof.

VALIDITY AND PRIORITY OF THE CHARGE CREATED BY THIS ORDER

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

35. **THIS COURT ORDERS** that the Administration Charge (as constituted and defined herein) shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment; provided that the Administration Charge shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicants and the beneficiaries of the Administration Charge shall be entitled to seek priority of the Administration Charge ahead of such Encumbrances on a subsequent motion including, without limitation, at the Comeback Hearing (as defined below), on notice to those Persons likely to be affected thereby.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge, or further Order of this Court.

37. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained

in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by any of the Applicants of any Agreement to which any Applicant 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 Administration Charge; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only be a charge in the applicable Applicant's interest in such real property lease.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail (National Edition)*, a notice containing the information prescribed under the CCAA (the "**CCAA Notice**"); and (ii) within ten (10) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

40. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (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, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (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/sid> (the "**Monitor's Website**").

41. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Applicants, the Monitor, 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 true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown in the books and records of the Applicants and that any such service, distribution or notice shall be deemed to be received: (i) if sent by courier, on the next business day following the date of forwarding thereof; (ii) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (iii) if sent by ordinary mail, on the third business day after mailing.

42. **THIS COURT ORDERS** that the Applicants, the Monitor and each of their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message (including by e-mail) to the Applicants' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

COMEBACK HEARING

43. **THIS COURT ORDERS** that the comeback motion in these proceedings shall be heard on January 31, 2024 at 9:30 a.m. (Eastern Time) (the "**Comeback Hearing**").

GENERAL

44. **THIS COURT ORDERS** that any interested party (including the Applicants) may apply to this Court to amend or vary this Order at the Comeback Hearing on not less than two (2) business days' notice to the service list in these proceedings and any other Persons likely to be affected by the Order sought; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Administration Charge and priorities set forth in paragraph 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

45. **THIS COURT ORDERS** that, notwithstanding paragraph 44 of this Order, each of the Applicants, the Monitor or the Lender Representative Counsel may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder or in the interpretation of this Order.

46. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

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

48. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

49. **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.

 Digitally signed by
Jessica Kimmel
Date: 2024.01.23
17:50:43 -05'00'

SCHEDULE "A"
FORM OF OPT-OUT NOTICE

To: Chaitons LLP, in its capacity as Court-appointed Lender Representative Counsel
5000 Yonge Street, 10th Floor
North York, ON M2N 7E9
Attention: George Benchetrit
Email: george@chaitons.com

KSV Restructuring Inc., in its capacity as Court-appointed Monitor
220 Bay Street, 13th Floor
Toronto, ON M5J 2W4
Attention: Christian Vit
Email: cvit@ksvadvisory.com

with a copy to:

Bennett Jones LLP
Applicants' Counsel
3400 One First Canadian Place
Toronto, ON M5X 1A4
Attention: Joshua Foster
Email: fosterj@bennettjones.com

with a copy to:

Cassels Brock & Blackwell LLP
Monitor's Counsel
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON M5H 0B4
Attention: Ryan Jacobs and Joseph Bellissimo
Email:
rjacobsj@cassels.com/jbellissimo@cassels.com

I, in my individual capacity or in my capacity as an authorized representative of the undersigned, as applicable (in either capacity, the "**Opt-Out Lender**"), hereby provide written notice that the Opt-Out Lender does not wish to be represented by Chaitons LLP, representative counsel (the "**Lender Representative Counsel**") for all of the secured and unsecured lenders 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. (collectively, the "**Applicants**") in any proceeding respecting the insolvency of the Applicants (the "**Insolvency Proceedings**"). By opting out of this representation, the Opt-Out Lender hereby acknowledges and understands that if it wishes to take part in the Insolvency Proceedings, then it must do so as an independent party. Further, the Opt-Out Lender hereby acknowledges and understands that it is responsible for its own legal representation or for retaining its own legal counsel should it choose to do so, and that it would be personally liable for the costs of its own legal representation.

The Opt-Out Lender hereby acknowledges and understands that a copy of this Opt-Out Notice will be provided to the Applicants.

Witness

Signature of Opt-Out Lender or its
authorized representative

Name of individual or authorized
representative of the Opt-Out Lender:

Name of Opt-Out Lender
(if not a natural person):

Address:

Telephone:

**TO OPT OUT, THIS FORM MUST BE COMPLETED AND RECEIVED AT THE
ABOVE ADDRESS ON OR BEFORE FEBRUARY 22, 2024.**

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

INITIAL ORDER

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

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Thomas Gray (LSO# 82473H)

Tel: (416) 777-7924

Email: grayt@bennettjones.com

Lawyers for the Applicants

T A B L E

THIS IS **EXHIBIT "E"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00713254-00CL DATE: 23 January 2024

NO. ON LIST: 5
(12:00pm)

TITLE OF PROCEEDING: **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.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
ZWEIG, SEAN FOSTER, JOSHUA GRAY, THOMAS	BALBOA INC. et al, Debtors	zweigs@bennettjones.com fosterj@bennettjones.com grayt@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
GOLDSTEIN, NOAH SIERADZKI, DAVID	KSV Restructuring Inc Proposed monitor	ngoldstein@ksvadvisory.com dsieradzki@ksvadvisory.com

JACOBS, RYAN BELLISSIMO, JOSEPH KUKULOWICZ, SHAYNE		rjacobs@cassels.com jbellissimo@cassels.com skukulowicz@cassels.com
CHAITON, HARVEY BENCHETRIT, GEORGE	CHAITONS LLP Proposed Lender Representative Counsel	harvey@chaitons.com george@chaitons.com
BURR, CHRIS LOBERTO, DANIEL	Blake, Cassels & Graydon LLP Howards Capital Corp, proposed Financial Advisor	chris.burr@blakes.com daniel.loberto@blakes.com

ENDORSEMENT OF JUSTICE KIMMEL:

The Applicants' Business, Indebtedness and Liquidity Crisis

1. 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”), all Canadian privately held companies, seek relief pursuant to an order (the “Initial Order”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).
2. The Applicants are all subsidiaries of (i) One Happy Island Inc. (“Happy Island”), (ii) Keely Korp Inc. (“Keely Korp”), (iii) 2657677 Ontario Inc. (“265 Inc.”), or (iv) Sail Away Real Estate Inc. (“Sail Away”, and collectively, the “Non-Applicant Parent Cos.”), or some combination thereof. These companies are each, in turn, directly or indirectly controlled and managed by one or more of three individuals, Aruba Butt, Dylan Suitor, and Ryan Molony who are variously the indirect shareholders, directors and officers (the “Affiliated Individuals” also later referred to as the “Additional Stay Parties”).
3. The Applicants currently only have one employee who is employed full-time by The Mulligan Inc. The Mulligan Inc. has approximately \$55,000 in unpaid source deductions.
4. The Applicants specialize in the acquisition, renovation and leasing of distressed residential real estate in what they considered to be undervalued markets throughout Ontario (the “Business”). The Applicants currently own 405 residential properties (collectively, the “Properties” and each, a “Property”), containing 631 rental units, including 424 currently-tenanted rental units, and a single non-operating golf course.
5. The purchase, renovation and related costs of the Properties were financed through (i) first and second mortgage loans, and (ii) unsecured promissory notes. This debt is predominantly held by hundreds of individual real estate investors (the “Lenders”). The Applicants also have an estimated 1,000 tenants in their Properties. The applicants and their affiliates (collectively, the “Companies”) are one of the largest holders of residential real estate in Ontario.
6. As of December 31, 2023, there is approximately \$81,455,930 in principal outstanding under 390 First Mortgage Loans. As of December 31, 2023, there is approximately \$8,642,697 in principal outstanding under the Second Mortgage Loans. The majority of these First and Second Mortgage Loans are in default. Substantially all of the First and Second Mortgage Loans were executed by the Affiliated Individuals, purportedly in their capacity as guarantor¹.
7. The Applicants have collectively issued approximately 802 unsecured promissory notes (as amended from time to time, the “Promissory Notes”). Approximately 602 of the Promissory Notes were issued to

¹ The Applicants have indicated that there may be challenges to the validity and scope of guarantees provided by the Affiliated Individuals in respect of the First and Second Mortgage Loans and the Promissory Notes.

The Lion's Share Group Inc., an affiliate of the Hamilton-based mortgage brokerage, The Windrose Group Inc. ("Windrose"), which was the broker that sourced and placed the First Mortgage Loans. The remaining Promissory Notes were issued to First Mortgage Lenders directly. The majority of these Promissory Notes are currently in default. They were also signed by the Individual Affiliates purportedly as guarantors. As of December 31, 2023, the Applicants currently owe the principal amount of \$54,236,109.51 pursuant to the Promissory Notes.

8. Commencing in 2022, the Applicants undertook various refinancing and sale initiatives, with some modest success. However, they were unable to find a comprehensive solution to their mounting debt and lower than anticipated revenues and they have suffered substantial losses in the past eighteen months. They have been trying since August 2023, with the assistance of a professional financial advisor, Howards Capital Corp. ("HCC"), to obtain a comprehensive refinancing solution for their funded indebtedness.
9. They now face a severe liquidity crisis and are generally unable to meet their obligations as they become due under their funded debt (some of which is secured and some of which is not) and they also have significant tax and other unsecured obligations to trade creditors, affiliates, and utilities. The ability of the Applicants to earn revenue or profits from their Business has been negatively impacted by their lack of capital to fund renovations.
10. As of December 31, 2023, the funded indebtedness of the Applicants totaled approximately \$144,350,000. The estimated total book value of their collective assets, based on available financial statements for years ended 2021 and 2022 (as the case may be) was approximately \$127,858,943.
11. Between them, the Applicants currently have less than \$100,000 cash on hand.
12. In recent months, the Applicants have received over 50 demand letters, notices of default, notices of intention to enforce security and notices of sale under mortgage, among other demands and notices, and are named in approximately 32 statements of claim that have been filed in the Ontario Superior Court of Justice. In 27 of these instances, an Affiliated Individual is also named as a defendant. These actions remain unresolved and the Applicants and the Affiliated Individuals have not responded to or taken any material steps in connection therewith.
13. In light of their current liquidity crisis, limited cash on hand, and numerous defaults and related enforcement proceedings, the Applicants have concluded that they can no longer continue to operate the Business absent the relief sought under the Initial Order. The Proposed Monitor, KSV Restructuring Inc. ("KSV"), believes that the relief sought is reasonable and necessary in the circumstances and supports the Applicants' requested Initial Order.

The CCAA Application

14. The Applicants believe these CCAA proceedings present the only viable means to preserve and maximize the value of the Business for the benefit of the Applicants' stakeholders. The relief sought in the Initial Order will allow the Applicants the breathing space needed to pursue a comprehensive refinancing or restructuring and implement a consensual plan of arrangement, if one can be achieved.
15. The issues raised by the relief sought are whether:
 - a. The Applicants meet the criteria for CCAA protection, including the Initial Stay, and have proposed a qualified Monitor;
 - b. The proceedings should be stayed against the Affiliated Individuals (a.k.a., the Additional Stay Parties);
 - c. The Lender Representative Counsel should be appointed; and
 - d. The Administration Charge (as defined below) should be granted.

Analysis

a) *The CCAA Applies and the Initial Stay and Proposed Monitor are Appropriate*

16. Section 9(1) of the CCAA provides that an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its “head office or chief place of business.” The CCAA applies to a “debtor company” or “affiliated debtor companies” that is, among other things, “insolvent”, which has been interpreted to include companies that are reasonably expected to run out of liquidity in the time it may take to implement a restructuring. See *Re Just Energy Corp.*, 2021 ONSC 1793, at para. 49.
17. These criterion have been satisfied.
18. The Applicants were all incorporated pursuant to the OBCA, and their business and assets are exclusively in Ontario. As such, each of the Applicants are a “company” within the ambit of the CCAA. Given that each of the Applicants’ registered offices is located in Ontario, and the Business is carried out exclusively in Ontario, Ontario is the appropriate venue for these proceedings and this Court has jurisdiction to hear this application.
19. Pursuant to subsection 3(2) of the CCAA, “companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person”. The Applicants operate as an integrated Company, and various of the Applicants are “affiliated companies” through their shared ownership by the Non-Applicant Parent Cos. Their indebtedness far exceeds \$5 million.
20. In order for the CCAA to apply, the debtor company must also be insolvent under the definition of “insolvent person” set out in the *Bankruptcy and Insolvency Act*, R.S.C. c. B-3, as amended (the “BIA”).
21. Courts have also recognized the expanded definition of insolvency provided in *Re Stelco*, 2004 CanLII 24933 at paras 25-26, which provides that a company is also insolvent for purposes of the CCAA if there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured. Applied here, the Applicants are individually and as a whole insolvent. The Applicants are facing a significant liquidity crisis and cannot satisfy their liabilities as they come due.
22. Section 11.02(1) of the CCAA permits this court to grant an initial stay of up to 10 days on an application for an initial order, provided the applicant establishes that such a stay is appropriate and that the applicant has acted with due diligence and in good faith (s. 11.02(3)(a-b)). The primary purpose of the CCAA stay is to maintain the *status quo* for a period while the debtor company consults with its stakeholders with a view to continuing its operations for the benefit of its creditors.
23. A stay of proceedings will be appropriate where it maintains the status quo and provides applicants with breathing room while they seek to restore solvency and emerge from the CCAA on a going-concern basis. See *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60, at para. 14.
24. The Stay of Proceedings will preserve the status quo and afford the Applicants the breathing space and stability required to advance their restructuring efforts, including their intention to negotiate and seek approval of a debtor-in-possession facility, to seek approval to appoint HCC as financial advisor, and to develop a plan of compromise or arrangement and/or explore other restructuring transaction alternatives. Additionally, it will permit the Applicants to continue to operate the Business as a going concern with minimal disruption. The continued and uninterrupted operation of the Business and the avoidance of uncoordinated and distressed sales or forced liquidations of the Properties will preserve value for the Applicants’ stakeholders and is in the best interests of all stakeholders, including the Lenders and the Applicants’ tenants.
25. In the circumstances of this case, that the Stay of Proceedings is in the Applicants' best interests and the best interests of their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances.

26. KVS is a “trustee” within the meaning of subsection 2(1) of the BIA, it is established and qualified and has consented to act as monitor. KVS's involvement as the court-appointed monitor will lend stability and assurance to the Company's stakeholders. KVS is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.
27. In December, 2023, KSV Advisory Inc. (an affiliate of KSV) was engaged by the Applicants and has been working with the Applicants’ management team, financial advisor and legal counsel since that time to assist them to prepare for this filing. During its engagement, KSV has obtained an understanding of the Applicants’ Business. This knowledge will assist KSV to fulfil its duties as Monitor.

b) Extending the Stay to the Additional Stay Parties

28. The Additional Stay Parties purportedly provided guarantees in respect of substantially all of the First Mortgage Loans, Second Mortgage Loans, and Promissory Notes. The Applicants’ defaults have already resulted in at least 27 claims being filed against the Additional Stay Parties. If the Non-Applicant Stay is not granted, it is conceivable that hundreds of claims could be filed against the Additional Stay Parties in connection with the Applicants’ Business. The Applicants are concerned that this will occur within the initial 10 day period before the come-back hearing.
29. Section 11.04 of the CCAA provides that a stay pursuant to section 11.02 will not affect claims against third party guarantors of an applicant company, and section 11.03(2) provides that a stay pursuant to section 11.02 does not affect an action against a director on a guarantee given by the director relating to the company’s obligations or an action seeking injunctive relief against a director in relation to the company. So it is clear that, absent some specific order, the CCAA stay in favour of the Applicants under s. 11.02 would not protect the Additional Stay Parties who have provided guarantees.
30. Such a stay was denied in favour of a non-applicant director, ostensibly at least in part on jurisdictional grounds, in *Cannapiece Group Inc. v. Marzili*, 2022 ONSC 6379, but such stays have been granted in favour of non-applicants, including director guarantors, in other cases. See for example *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422, at paras 40-42; *BBB Canada Ltd.*, 2023 ONSC 1014 at paras 32-34 and *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 45, the latter being the most analogous case involving a stay in favour of a non-applicant director/guarantor.
31. In *Cannapiece*, the court was concerned about the breadth of the wording of the proposed non-applicant stay in favour of the director but was also able to make a procedural order that accomplished the same result in the one already existing proceeding against that director guarantor against whom there was an already crystallized claim.
32. I agree with the applicant that this case is more akin to the circumstances in *BBB* and *Nordstrom* and particularly *McEwan* where the third party stays were granted in complex situations in which non-parties could be facing significant distractions from their important restructuring work if they were having to respond to and fend off guarantee claims against them personally that overlap with the claims against the Applicants themselves. The Additional Party Stay here is limited to claims that relate to the Applicants or obligations of the Applicants. It only applies to Related Claims, being claims 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.
33. While “the issue [of non-party stay orders] is not free from doubt”, as Chief Justice Morawetz noted in both the *BBB* and *Nordstrom* decisions, he ultimately granted a stay in favour of certain non-applicant guarantors on an initial CCAA application, notwithstanding the language of section 11.04.
34. It is not in the best interests of the Applicants’ stakeholders or the administration of justice for the Additional Stay Parties to be forced to respond to uncoordinated actions in respect of their purported guarantees of the very indebtedness that the Applicants are attempting to restructure under the CCAA. The Non-Applicant Stay is consistent with the “single-proceeding model” that favours the resolution of

claims within a CCAA process and avoids the “inefficiencies and chaos” that could otherwise result from uncoordinated attempts at recovery. See *Century Services*, at para 59.

35. This is an order that is within the discretion of the court to make when it is considered just and convenient to do so, and I find it to be so in this case. This jurisdiction is derived from s. 11 of the CCAA and further embodied in section 106 of the *Court of Justice Act*, R.S.O. 1990, c. C.43
36. The plaintiffs and potential plaintiffs should only be minimally prejudiced by this temporary stay, which does not settle their actions or provide any release of claims against the Additional Stay Parties. If, however, there are objections to this continuing after the Initial Stay Period, those can be addressed at the come-back hearing.

c) *The Appointment of Lender Representative Counsel*

37. There are over 300 individual Lenders to the Applicants under approximately 390 First Mortgage Loans, 121 Second Mortgage Loans and 802 Promissory Notes. The Lenders are predominantly individual real estate investors. The Applicants seek the appointment of Chaitons LLP as Lender Representative Counsel. If appointed, Lender Representative Counsel may identify up to six Lenders to be nominated as Court-appointed representatives (the “Lender Representatives”) to advise and, where appropriate, instruct Lender Representative Counsel. Lenders who do not opt-out of Lender Representative Counsel’s representation pursuant to the Initial Order would be bound by the actions of the Lender Representative Counsel and the Lender Representatives, if any.
38. These Lenders are vulnerable stakeholders and creditors of the Applicants because there are so many of them and their individual claims may not each be material in the context of this CCAA, but are no doubt important to them given that they are mostly individuals (or private holding companies). The cost to them individually to retain counsel and obtain legal advice about these CCAA proceedings could be cost-prohibitive and the Applicants, the Monitor and the court will all be greatly assisted by the streamlining of positions that will be accomplished through the involvement of representative counsel.
39. Chaitons LLP, the proposed Lender Representative Counsel, is very experienced in this area and I have every confidence in their qualifications. These are among the relevant factors that I have considered in reaching the conclusion that the court should exercise its broad discretion under Section 11 of the CCAA and the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to appoint representative counsel for the Lenders in this case. See for example, *Canwest Publishing Inc.*, 2010 ONSC 1328 at para 21.
40. The only hesitation that I had was about whether the appointment of Lender Representative Counsel is needed and warranted at this Initial Order stage and whether it was fair to appoint the Representative Counsel that had been proposed by the Applicants without affording the Lenders to choose their own counsel. However, having heard and further considered the submissions of counsel for the Applicants, the proposed Lender Representative Counsel and the proposed Monitor, I am satisfied that an appointment is appropriate at this early stage, specifically to assist in the transmission of information and preliminary advice to the Lenders in advance of the come-back hearing which the proposed Lenders Representative Counsel will take on the responsibility for doing, including at a virtual town hall meeting (without the Applicants) that they plan to hold early next week.
41. The proposed Monitor is of the view that appointing representative counsel for the Lenders at the outset of these proceedings will also enable the Monitor to immediately put in place an efficient and effective communication plan, provide a single means through which the inquiries and concerns of hundreds of Lenders can be addressed and facilitate the efficient administration of these proceedings. In the proposed Monitor’s view, it is important that representative counsel for the Lenders be appointed at the outset of these proceedings rather than at the Comeback Motion due to the volume of inquiries expected to be received in the coming days should the Court grant the Initial Order.
42. Counsel have helpfully referred me to some other cases in which representative counsel were appointed at the time of the Initial Order in CCAA restructurings, for example: *Law Society of Ontario v Derek*

Sorrenti and Sorrenti Law Professional Corporation, Nordstrom Canada Retail, Inc., 2023 ONSC 1422 and Target Canada Co. (Re), 2015 ONSC 303.

43. I take further comfort in the fact that any Lenders that do not wish to be represented may opt-out in accordance with the Initial Order. They also have full come-back rights in respect of this appointment so it is not set in stone.
44. I am satisfied that this relief is necessary and appropriate in the circumstances.
45. Counsel have advised that the specific paragraphs of the Initial Order dealing with this are taken from precedents in other cases in which representative counsel have been granted, tailored to the circumstances of this case.

d) The Administration Charge

46. The Applicants are seeking a Court-ordered charge over the Applicants' Property in the amount of \$750,000 to secure the professional fees and disbursements of the Proposed Monitor, along with counsel to the Proposed Monitor and the Applicants, and the Lender Representative Counsel at their standard rates and charges, incurred prior and subsequent to the granting of the Initial Order (the "Administration Charge").
47. Section 11.52 of the CCAA vests this Court with jurisdiction to grant an administration charge on notice to the secured creditors likely to be affected thereby in favour of, among others, a Court-appointed monitor, its legal advisors and any legal experts engaged by the debtor company. This Court has recognized that it is essential to the success of any CCAA restructuring "to order a super-priority in respect of charges securing professional fees and disbursements". See *US Steel Canada Inc (Re)*, 2014 ONSC 6145, at paras. 20 and 22. See also *Laurentian University of Sudbury*, 2021 ONSC 659, at paras. 49-50 and *Re Lydian International Limited*, 2019 ONSC 7473, at para. 28.
48. The Administration Charge reflects an estimate of fees for professionals whose services will be essential to the Applicants' restructuring efforts. Some of the beneficiaries of the Administration Charge have already engaged in a significant amount of work in connection with this CCAA application, and are expected to continue to provide restructuring and insolvency advice, developing a restructuring plan, preparing the Cash Flow Statement, and negotiating the DIP Term Sheet. The professionals will continue to play a key role in advancing the CCAA proceedings. Certain beneficiaries of the Administration Charge have modest retainers and significant arrears and the Applicants have no other means of retaining the beneficiaries of the Administration Charge, and each beneficiary is performing distinct functions in these CCAA proceedings to assist the Applicants with continuing and operating the Business in the ordinary course.
49. At this time there is no DIP financing and the Applicants have no cash flow with which to pay these professionals, so they require the Administration Charge as security for future payment of their fees and disbursements that will continue to accrue over the next ten days during the Initial Stay Period.
50. The Proposed Monitor has reviewed the past and projected fees of these professionals over the Initial Stay Period and considers the Administration Charge of \$750,000 to be reasonable and proportionate. It is approved.

Order

51. For the foregoing reasons, I have signed the form of Initial Order submitted to the court today. Aside from the specific points discussed above, the draft order is for the most part consistent with the form of Commercial List model order, with some changes that have become standard and accepted in these types of orders and some changes made to reflect the specific nature of the Business and the Applicants (for example, the Initial Order does require the co-operation of the loan originators to ensure that the Lenders all receive the CCAA materials and that the Lender Representative Counsel can communicate with them).
52. The comeback hearing has been scheduled before me on January 31, 2024 at 9:30 a.m.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.

T A B F

THIS IS **EXHIBIT "F"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 15TH
)
JUSTICE KIMMEL) DAY OF FEBRUARY, 2024
)

**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. (collectively the "Applicants", and each an "Applicant")**

**AMENDED AND RESTATED INITIAL ORDER
(Amending Initial Order Dated January 23, 2024)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an Amended and Restated Initial Order was heard this day by judicial videoconference via Zoom.

ON READING the affidavits of Robert Clark sworn January 23, 2024 and the Exhibits thereto, and January 28, 2024 and the Exhibits thereto (the "**Clark Affidavit**"), the Pre-Filing Report of KSV Restructuring Inc. ("**KSV**") as the proposed monitor dated January 23, 2024, the First Report of KSV as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated January 29, 2024, the Supplement to the First Report of the Monitor dated February 13, 2024, and the Amended Initial Order of this Court dated January 31, 2024, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Applicants, counsel to the Monitor, the Lender Representative Counsel (as defined below), counsel to the DIP Lender (as defined below), and such other counsel that were present, no else appearing although duly

served as appears from the affidavits of service of Joshua Foster, filed, and on reading the consent of KSV to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined shall have the meaning ascribed to them in the Clark Affidavit.
3. **THIS COURT ORDERS** that, for the avoidance of doubt, references in this Order to the "date of this Order", the "date hereof" or similar phrases refer to the date the Initial Order of this Court was granted in these proceedings, being January 23, 2024 (the "**Initial Order**").

APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

5. **THIS COURT ORDERS** that each of the Applicants shall have the authority to file and may, subject to further Order of this Court, file with the Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

6. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and the Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons

(collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement and the Definitive Documents (each as defined below), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order with the prior written consent of the Monitor, in consultation with the Lender Representatives (as defined below):

- (a) all outstanding and future wages, salaries, commissions, employee and pension benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), vacation pay and employee expenses payable prior to, on, or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) amounts owing for goods and services actually supplied to the Applicants prior to the date of this Order, with the Monitor considering, among other factors, whether (i) the supplier or service provider is essential to the Business and ongoing operations of the Applicants and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Property or the Business, (iii) making such payment is required to address environmental or regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicants after the date of this Order, including pursuant to the terms of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by any of the Applicants in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement and the Definitive Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on

the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, in each case, with the prior written consent of the Monitor, in consultation with the Lender Representatives, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied or to be supplied to any of the Applicants on or following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by any of the Applicants in connection with the sale of goods and services by any of the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Applicants.

10. **THIS COURT ORDERS** that, except as specifically permitted herein and in the DIP Agreement and the Definitive Documents, the Applicants are hereby directed, until further Order of this Court: (i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

11. **THIS COURT ORDERS** that notwithstanding any other provision of this Order and for greater certainty, the Applicants shall not make any payments or incur any liabilities, including without limitation drawing on the credit facility provided under the DIP Agreement, without the prior written consent of the Monitor.

RESTRUCTURING

12. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and the Definitive Documents, have the right to:

- (a) dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,500,000 in the aggregate, in each case, with the prior written consent of the Monitor; and
- (b) pursue all avenues of refinancing, restructuring, selling or reorganizing its Business or Property, in whole or part, with the oversight and involvement of the Monitor and subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including March 28, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or

tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of any of the Applicants or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

14. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Aruba Butt, Dylan Suitor and/or Ryan Molony (collectively, 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 this Court, and any and all Proceedings currently under way against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

15. **THIS COURT ORDERS** that, to the extent 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 that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other

entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any of the Applicants or the Monitor, or their respective employees, advisors and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower any Applicant to carry on any business which such Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Applicants or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, accounting services, temporary labour and staffing services, warehouse and logistics services, security services, insurance, transportation services, maintenance services, construction services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Applicants or exercising any other remedy provided under the agreements or arrangements, and that each of the Applicants 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 applicable Applicant in accordance

with the normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

NO PRE-FILING VERSUS POST-FILING SET-OFF

20. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (i) are or may become due to any of the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due from any of the Applicants in respect of obligations arising on or after the date of this Order, or (ii) are or may become due from any of the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to any of the Applicants in respect of obligations arising on or after the date of this Order, in each case without the prior written consent of the applicable Applicant and the Monitor or further Order of this Court.

APPOINTMENT OF LENDER REPRESENTATIVE COUNSEL

21. **THIS COURT ORDERS** that Chaitons LLP (the "**Lender Representative Counsel**") is hereby appointed as representative counsel for all of the secured lenders of the Applicants (collectively, the "**Lenders**"), including, without limitation, all of the 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 (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before this Court (collectively, the "**Insolvency Proceedings**"), for any issues affecting the Lenders in the Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Lenders.

22. **THIS COURT ORDERS** that the Lender Representative Counsel shall be entitled but not required to commence the process of identifying no more than six (6) Lenders to be nominated as Court-appointed representatives (collectively, the "**Lender Representatives**") as soon as practicable following the date hereof. The Lender Representatives, if and once appointed, shall represent the Lenders other than any Opt-Out Lender (as defined below), if any, in the Insolvency Proceedings and advise, and where appropriate instruct, the Lender Representative Counsel, including, without limitation, for the purpose of settling or compromising claims of the Lenders in the Insolvency Proceedings. The Lender Representative Counsel may rely upon the advice, information and instructions received from the Lender Representatives, if any, in carrying out its mandate without further communications or instructions from the Lenders, except as may be recommended by the Lender Representative Counsel or ordered by this Court.

23. **THIS COURT ORDERS** that, with the exception of any Opt-Out Lender, (i) the Lender Representative Counsel and the Lender Representatives, if any, shall represent all of the Lenders in the Insolvency Proceedings, and (ii) the Lenders shall be bound by the actions of the Lender Representative Counsel and the Lender Representatives, if any, in the Insolvency Proceedings.

24. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the Applicants, The Windrose Group Inc. and Lift Capital Incorporated shall provide the following information to the Lender Representative Counsel (collectively, the "**Lender Information**"), in each case, without charge: (i) the names, last known address, last known email addresses (if any) and entitlements of all of the Lenders (excluding any Opt-Out Lender that has delivered an Opt-Out Notice (as defined below) prior to the delivery of the Information), in each case, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or Lift Capital Incorporated, to be used solely for the purposes of the Insolvency Proceedings; and (ii) upon request of the Lender Representative Counsel, such documents and data as may be reasonably relevant to the issues affecting the Lenders in the Insolvency Proceedings, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or Lift Capital Incorporated. In providing the Lender Information, these parties are not required to obtain the express consent of any Lender authorizing the disclosure of the Lender Information to the Lender Representative Counsel for the purposes of the Insolvency Proceedings, and further, in accordance with clause 7(3)(c) of the

Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, each of these parties is authorized and permitted to disclose the Lender Information to the Lender Representative Counsel for the purposes of the Insolvency Proceedings, without the knowledge or consent of the Lenders.

25. **THIS COURT ORDERS** that notice of the appointment of Lender Representative Counsel shall be provided by: (i) the Lender Representative Counsel sending a letter to the Lenders at the addresses provided pursuant to paragraph 24 of this Order, advising of such appointment as soon as practicable following the date hereof; (ii) the inclusion of the details of such appointment in the CCAA Notice (as defined below); and (iii) the posting of notice of such appointment on the Monitor's Website (as defined below).

26. **THIS COURT ORDERS** that any Lender who does not wish to be represented by the Lender Representative Counsel and the Lender Representatives, if any, in the Insolvency Proceedings shall, within thirty (30) days of the date hereof, notify the Monitor and the Lender Representative Counsel in writing that such Lender is opting out of representation by the Lender Representative Counsel and the Lender Representatives, if any, by delivering to the Monitor and the Lender Representative Counsel an opt-out notice in the form attached as Schedule "A" hereto (each, an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Lender Representative Counsel or the Lender Representatives, if any, and shall represent itself or themselves, as the case may be, or be represented by any counsel that such Lender may retain at its or their, as the case may be, sole expense (each such Lender that delivers an Opt-Out Notice in compliance with the terms of this paragraph, an "**Opt-Out Lender**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Applicants as soon as reasonably practicable.

27. **THIS COURT ORDERS** that all reasonable and documented fees and disbursements as may have been incurred by the Lender Representative Counsel prior to the date of this Order or which shall be incurred by the Lender Representative Counsel shall be paid by the Applicants on a bi-weekly basis, forthwith upon the rendering of accounts to the Applicants. Any disagreement regarding such fees and disbursements may be remitted to this Court for determination.

28. **THIS COURT ORDERS** that no action or Proceeding may be commenced against the Lender Representative Counsel or the Lender Representatives, if any, in such capacities and/or in

respect of the performance of their duties under this Order, without leave of this Court on seven (7) days' notice to the Lender Representative Counsel or the Lender Representatives, as applicable, the Applicants and the Monitor.

29. **THIS COURT ORDERS** that the Lender Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or government ministry, department or agency, and to take all such steps as are necessary or incidental thereto. The Lender Representative Counsel and the Lender Representatives, if any, shall have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on their part.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

30. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a Plan in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

APPOINTMENT OF MONITOR

31. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

32. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court and/or the Lender Representatives at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) liaise and consult with the Applicants and the Lender Representatives, to the extent required, with respect to all matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to these proceedings;
- (d) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender, which may be used in these proceedings including reporting on a basis as agreed with the DIP Lender;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed with the DIP Lender;
- (f) monitor all payments, obligations and transfers as between the Applicants and parties related thereto;
- (g) advise the Applicants in their development of the Plan (if any) and any amendments to the Plan;
- (h) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;
- (i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of

the Applicants, to the extent that is necessary to adequately assess the Business and financial affairs or to perform its duties arising under this Order;

- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) (i) 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 and agreed by the Monitor, in each case, to the extent such investigation relates to the Property, the Business or such other matters as may be relevant to the proceedings herein as determined by the Monitor, and (ii) report to the Lender Representatives and the Court on the findings of such investigation as the Monitor deems necessary and appropriate; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

33. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

34. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act*, and regulations thereunder (collectively, "**Environmental Legislation**"), provided however that nothing herein

shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants, including, without limitation, the DIP Lender, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

36. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees, advisors and other representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings 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 date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings on a bi-weekly basis or pursuant to such other arrangements agreed to between the Applicants and such parties and, in addition, the Monitor, and counsel to the Applicants are hereby authorized to maintain their respective retainers, if any, provided by the Applicants prior to the commencement of these proceedings, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

38. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

39. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel and the Lender Representative Counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 46 and 48 hereof.

DIP FINANCING

40. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Harbour Mortgage Corp. or its permitted assignee (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that the borrowings under such credit facility shall not exceed \$12,000,000, plus interest, fees and expenses, unless permitted by further Order of this Court.

41. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP agreement between the Applicants and the DIP Lender dated as of January 26, 2024 and attached to the Clark Affidavit as Exhibit "F" (as may be amended and/or assigned from time to time, the "**DIP Agreement**").

42. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

43. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not exceed the amount of \$12,000,000, plus interest, fees and expenses, unless permitted by further Order of this Court, or secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 46 and 48 hereof.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon seven (7) days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

45. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any Plan filed by any of the Applicants under the

CCAA, or any proposal filed by any of the Applicants under the BIA, with respect to any advances made under the DIP Agreement and the Definitive Documents.

VALIDITY AND PRIORITY OF THE CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge (together, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,500,000); and

Second – DIP Lender's Charge (to the maximum amount of \$12,000,000, plus interest, fees and expenses).

47. **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.

48. **THIS COURT ORDERS** that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

50. **THIS COURT ORDERS** that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued

pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which any Applicant 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 Applicants entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a charge in the applicable Applicant's interest in such real property lease.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail (National Edition)*, a notice containing the information prescribed under the CCAA (the "**CCAA Notice**"); and (ii) within ten (10) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more

than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

53. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (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, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (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/sid> (the "**Monitor's Website**").

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Applicants, the Monitor, 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 true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown in the books and records of the Applicants and that any such service, distribution or notice shall be deemed to be received: (i) if sent by courier, on the next business day following the date of forwarding thereof; (ii) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (iii) if sent by ordinary mail, on the third business day after mailing.

55. **THIS COURT ORDERS** that the Applicants, the Monitor and each of their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other

correspondence, by forwarding true copies thereof by electronic message (including by e-mail) to the Applicants' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

56. **THIS COURT ORDERS** that any interested party wishing to object to the relief sought in a motion brought by the Applicants or the Monitor in these proceedings shall, subject to further order of this Court, provide the service list in these proceedings (the "**Service List**") with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Eastern Time) on the date that is two (2) days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicants.

GENERAL

57. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on not less than seven (7) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 46 and 48 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.


58. **THIS COURT ORDERS** that, notwithstanding paragraph 57 of this Order, each of the Applicants, the Monitor or the Lender Representative Counsel may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder or in the interpretation of this Order.

59. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

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

61. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

62. **THIS COURT ORDERS** that the Initial Order is hereby amended and restated pursuant to this Order, and 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.

 Digitally signed by
Jessica Kimmel
Date: 2024.02.15
15:09:21 -05'00'

SCHEDULE "A"
FORM OF OPT-OUT NOTICE

To: Chaitons LLP, in its capacity as Court-appointed Lender Representative Counsel
5000 Yonge Street, 10th Floor
North York, ON M2N 7E9
Attention: George Benchetrit
Email: george@chaitons.com

KSV Restructuring Inc., in its capacity as Court-appointed Monitor
220 Bay Street, 13th Floor
Toronto, ON M5J 2W4
Attention: Christian Vit
Email: cvit@ksvadvisory.com

with a copy to:

Bennett Jones LLP
Applicants' Counsel
3400 One First Canadian Place
Toronto, ON M5X 1A4
Attention: Joshua Foster
Email: fosterj@bennettjones.com

with a copy to:

Cassels Brock & Blackwell LLP
Monitor's Counsel
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON M5H 0B4
Attention: Ryan Jacobs and Joseph Bellissimo
Email:
rjacobs@cassels.com/jbellissimo@cassels.com

I, in my individual capacity or in my capacity as an authorized representative of the undersigned, as applicable (in either capacity, the "**Opt-Out Lender**"), hereby provide written notice that the Opt-Out Lender does not wish to be represented by Chaitons LLP, representative counsel (the "**Lender Representative Counsel**") for all of the secured lenders 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. (collectively, the "**Applicants**") in any proceeding respecting the insolvency of the Applicants (the "**Insolvency Proceedings**"). By opting out of this representation, the Opt-Out Lender hereby acknowledges and understands that if it wishes to take part in the Insolvency Proceedings, then it must do so as an independent party. Further, the Opt-Out Lender hereby acknowledges and understands that it is responsible for its own legal representation or for retaining its own legal counsel should it choose to do so, and that it would be personally liable for the costs of its own legal representation.

The Opt-Out Lender hereby acknowledges and understands that a copy of this Opt-Out Notice will be provided to the Applicants.

Witness

Signature of Opt-Out Lender or its
authorized representative

Name of individual or authorized
representative of the Opt-Out Lender:

Name of Opt-Out Lender
(if not a natural person):

Address:

Telephone:

**TO OPT OUT, THIS FORM MUST BE COMPLETED AND RECEIVED AT THE
ABOVE ADDRESS ON OR BEFORE FEBRUARY 22, 2024.**

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

**AMENDED AND RESTATED INITIAL
ORDER**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 573071)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)

Tel: (416) 777-7906

Email: fosterj@bennettjones.com

Thomas Gray (LSO# 82473H)

Tel: (416) 777-7924

Email: grayt@bennettjones.com

Lawyers for the Applicants

TAB G

THIS IS **EXHIBIT "G"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00713245-00CL DATE: 15 February 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: **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.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig Joshua Foster Thomas Gray	Bennett Jones LLP, lawyers for the Applicants	zweigs@bennettjones.com ; fosterj@bennettjones.com ; grayt@bennettjones.com ;

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Noah Goldstein David Sieradzki	KSV Restructuring Inc., the Monitor	ngoldstein@ksvadvisory.com ; dsieradzki@ksvadvisory.com ;
R. Shayne Kukulowicz	Cassels Brock & Blackwell LLP, lawyers for the Monitor	skukulowicz@cassels.com ;

George Benchetrit	Chaitons LLP, the Lender Representative Counsel	george@chaitons.com ;
Bruce Shepherd Nelson Da Silva Chantal Morin	Harbour Mortgage Corp., the DIP Lender	bshepherd@harbourmortgage.ca ; ndasilva@harbourmortgage.ca ; cmorin@harbourmortgage.ca ;
Tamara Markovic Jeffrey J. Simpson	Torkin Manes LLP, lawyers for the DIP Lender	tmarkovic@torkinmanes.com ; jsimpson@torkinmanes.com ;
Brent Marshall	Secured lender	marshall@uijlaw.com ;

ENDORSEMENT OF JUSTICE KIMMEL:

Procedural History

1. The court granted an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") on January 23, 2024 (the "Initial Order") in respect 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. (collectively, the "Applicants"). The reasons for the granting of the relief in the Initial Order are set out in the court's endorsement of January 23, 2024 (the "First Endorsement").
2. The Applicants sought an extension and expansion of the relief provided under the Initial Order, in the form of a proposed Amended and Restated Initial Order ("ARIO") to facilitate and advance these CCAA proceedings by their motion returnable January 31, 2024 (the "Come-Back Motion"), including:
 - a. extending the Initial Stay Period to and including March 28, 2024;
 - b. authorizing but not requiring the Applicants to pay, with the consent of the Monitor (as defined below), certain amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order;
 - c. approving 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 granting the Financial Advisor Charge to secure the Completion Fee (each as defined below) and the Applicants' indemnification obligations under the Financial Advisor Engagement Agreement;
 - d. approving the Applicants' ability to borrow up to \$12 million 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. (the "DIP Lender"), and granting the DIP Lender's Charge (as defined below) to secure all of the Applicants' obligations under the DIP Agreement and the DIP Facility; and
 - e. expanding the scope of the Administration Charge (as defined below) to include certain fees of the Financial Advisor which are not secured by the Financial Advisor Charge, and increasing the maximum amount of the Administration Charge from \$750,000 to \$1,500,000.
3. The court heard fulsome submissions from counsel for all interested parties who appeared on the Come-Back Motion, after which it was determined that a brief adjournment of the Come-Back Motion would be granted to February 15, 2024. The court granted certain limited relief and imposed certain terms of the brief adjournment that were determined to be necessary and appropriate to preserve the *status quo* and ensure that the intended benefits of these CCAA proceedings were not lost during the period of the adjournment, including:
 - a. The Stay Period under the Initial Order was extended to February 16, 2024.
 - b. The court approved a reduced interim DIP Facility and corresponding DIP Charge of up to a maximum of \$4 million.
 - c. The court authorized the payment of restricted pre-filing indebtedness to essential suppliers.

- d. The court approved an increase in the Administrative Charge from \$750,000 to \$1 million.
4. This limited relief was granted in an Amended Initial Order dated January 31, 2024 (the "January 31, 2024 Order"). The court's reasons for granting the adjournment, for imposing the terms of the adjournment and for granting the limited relief contained in the January 31, 2024 Order are set out in the court's endorsement dated February 2, 2024 (the "February 2, 2024 Endorsement"), which directed that the remaining issues that had been raised for the court's consideration on the Come-Back Motion, together with any other issues raised by motion or opposition through the delivery of materials provided for under the terms of adjournment, would be determined at the return of the Come-Back Motion on February 15, 2024.
5. Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the First Endorsement and the February 2, 2024 Endorsement, as applicable.

Events since the January 31, 2024 Adjournment

6. The February 13, 2024 Supplement to the First Report of the Monitor ("Monitor's Supplementary Report") contains a detailed update to the court about, among other things:
 - a. Developments regarding the Lender Representative Counsel including the conduct of, and events following, the virtual meeting of Secured Lenders that the court directed be held, and that was held on February 5, 2024 (the "Secured Lender Meeting").
 - b. The determination of Lender Representative counsel, following consideration of the feedback received from Secured Lenders and having regard to the fact that Lion's Share Group Inc. ("Lion's Share") that the scope of its representation should be limited to the Applicants' Secured Lenders only.
 - c. The notice provided to affected unsecured Lenders of this reduced scope in the mandate of Lender Representative Counsel, through both:
 - i. Direct communication on February 9, 2024 with Claire Drage, the principal of The Windrose Group Inc. ("Windrose") and Chief Executive Officer of Lion's Share Group Inc. ("Lion's Share") that appears to be the holder of approximately 602 of the Applicants' 802 unsecured promissory notes, that the proposed ARIO will carve out unsecured Lenders from the mandate of Lender Representative Counsel in these proceedings; and
 - ii. An email sent on February 12, 2024 and notice posted on its case website to the distribution list of all Lenders (the "Lender Notice") to advise them of the decision by Lender Representative Counsel on the scope of its mandate and that this change would be reflected in the proposed ARIO.
 - d. An accounting of the uses of the initial authorized \$4 million advance under the DIP Facility approved by the January 31, 2024 Order (the "First Advance").
 - e. The Applicants' decision to adjourn the relief sought with respect to the appointment of a Financial Advisor, after consulting with the Monitor and the Committee to assess the need for, and role of, the Financial Advisor in these proceedings. The Financial Advisor's engagement, if any, remains subject to Court approval.

The Requested ARIO

7. Based on the significant efforts of the Applicants, the Monitor and Lender Representative Counsel and the now appointed members of the committee of Secured Lenders (the "Committee") that has been established under the previously approved mandate of Lender Representative Counsel contained in the Initial Order, all parties represented in court today support the granting of the updated ARIO now proposed by the Applicants, which reflects inputs from these stakeholders and the DIP Lender.
8. No one raised in advance, or appeared today to voice, any objection to the relief sought. Counsel for Lender Representative Counsel advised that so far no opt-out notices have been received from any

Secured Lenders to date. No one appeared today on behalf of Windrose, Lions Share or any other unsecured Lender, all of whom received the Lender Notice and some of whom have initiated other communications with the Monitor but did not raise any objection to the relief sought today.

9. Much of the relief sought in the ARIO is standard for a CCAA come back hearing, to incorporate matters that were not essential to the initial Stay Period but are required to further the applicants' refinancing and restructuring efforts.
10. The proposed ARIO also includes enhancements of the Monitor's oversight and supervision of the Applicants' use of the DIP Facility during these proceedings and the addition of investigatory powers regarding the use of lender advances prior to these proceedings and other pre-filing transactions (the "Monitor's Enhanced Powers"), requested by the Secured Lenders and supported by all other parties.
11. The court's jurisdiction for granting the Monitor's Enhanced Powers can be found in ss. 23(1)(c) and (k) and s. 11 of the CCAA. The Ontario Court of Appeal observed in *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, at para. 106:

The 2007 amendments to the CCAA expanded the description of the monitor's role and responsibilities. In essence, its minimum powers are set out in the Act and they may be augmented through the exercise of discretion by the court, typically the CCAA supervising judge. This framework is reflected in s. 23 of the CCAA, which enumerates certain duties and functions of a monitor. Paragraph 23(1)(k) directs that a monitor shall carry out "any other functions in relation to the company that the court may direct." Its express duties under s. 23(1)(c) include making, or causing to be made, any appraisal or investigation that the monitor "considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency".

See also *Essar* at paras. 107-108; and *8640025 Canada Inc. (Re)*, 2018 CarswellBC 557, 2018 BCCA 93, at para. 49.

12. The Monitor's Supplementary Report provides the rationale for its support of the extension of the Stay to March 28, 2024, based on its assessments and beliefs that:
 - a. the Applicants are acting in good faith and with due diligence;
 - b. no creditor will be prejudiced if the extension is granted;
 - c. subject to approval of the Applicants' additional borrowings under the DIP Facility, an extension of the Stay Period will provide the Applicants time to collaborate with the Monitor, Lender Representative Counsel and the Committee to develop a plan to pursue a refinancing or restructuring transaction with the ultimate objective of formulating a consensual plan of compromise or arrangement;
 - d. the Applicants' intention to formulate and seek court approval of a claims process prior to the expiry of the Stay Period; and
 - e. no party is opposed to the requested extension.
13. Counsel for the Monitor confirmed that the cash flows provided at the time of the initial return of the Come-Back Motion (discussed by the Monitor in its First Report) continue to apply and to support the extension of the Stay Period to March 28, 2024.
14. The Monitor's Supplementary Report details the reasons for the Monitor's support for, and recommendation to the court that it approve, all of the provisions of the now proposed form of ARIO. Counsel for the Applicants reviewed with the court all of the changes to the proposed form of ARIO against what had been proposed at the time of the January 31, 2024 order and also against the Initial Order. Much of the analysis and authority for the relief granted by the court in the Initial Order and the January 31, 2024 Order (and corresponding endorsements) applies to the relief sought in the ARIO. The

need for the increases in the authorized amount of the DIP Facility, the corresponding DIP Charge and the Administrative Charge was substantiated in the material filed for the initial return of the Come-Back Motion that was adjourned to today.

15. The court is satisfied, based on the reasons detailed in the Monitor's First Report and Supplementary Report and the submissions of counsel for the participating parties that the now proposed form of ARIO is fair, reasonable and appropriate in the circumstances. It provides additional breathing room and support for the Applicants' continuing pursuit of a comprehensive refinancing or restructuring and their efforts to implement a consensual plan of arrangement, if one can be achieved.

Order

16. Order to issue in the form signed by me today.
17. Counsel for the Applicants shall arrange for the next hearing date or dates once they know what issues will be brought before the court for consideration and they are able to estimate the amount of time that will be needed for the participating parties to make their submissions.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.

TAB H

THIS IS **EXHIBIT "H"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



February 13, 2024

**Supplement to the First Report of
KSV Restructuring Inc.
as CCAA Monitor 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.**

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COURT FILE NO.: CV-24-00713245-00CL

**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.**

**SUPPLEMENT TO THE FIRST REPORT OF KSV
RESTRUCTURING INC. AS MONITOR**

February 13, 2024

1.0 Introduction

1. This report (the “Supplemental Report”) supplements the Monitor’s first report to Court dated January 29, 2024 (the “First Report”). A copy of the First Report is attached as Appendix “A”, without attachments.
2. A portion of the relief sought by the Applicants at the Comeback Hearing on January 31, 2024 was adjourned to February 15, 2024. In an endorsement dated February 2, 2024 (the “Endorsement”), the Honourable Madam Justice Kimmel directed the Monitor to deliver “*a further report to provide any updates to the court that it deems appropriate and also to provide the details of any use of the DIP Facility in this intervening time*”. Copies of the Amended Initial Order dated January 31, 2024 (the “Amended Initial Order”) and the Endorsement are attached as Appendices “B” and “C”, respectively.
3. Capitalized terms used in this Supplemental Report have the meaning provided to them in the First Report, unless otherwise defined herein. This Supplemental Report is subject to the scope and terms of reference in the First Report.

1.1 Purposes of this Supplemental Report

1. The purposes of this Supplemental Report are to:
 - a) summarize material developments since the issuance of the First Report;

- b) set out the proposed revisions to the form of Amended and Restated Initial Order (“ARIO”) that was initially sought at the Comeback Hearing on January 31, 2024; and
- c) provide the Monitor’s recommendations regarding the relief sought by the Applicants.

2.0 Lender Representative Counsel

1. In accordance with the Endorsement, the Monitor arranged for a virtual meeting of the Applicants’ secured Lenders (the “Secured Lenders”) on February 5, 2024 (the “Secured Lender Meeting”). Approximately 160 participants comprised of Secured Lenders and/or their representatives attended the Secured Lender Meeting. Unsecured Lenders were not invited to the Secured Lender Meeting.
2. In accordance with the Endorsement, the Secured Lender Meeting was coordinated by the Monitor and was conducted on the basis that no Secured Lenders’ identity or contact details were available to other participants at the Secured Lender Meeting (other than the Monitor) unless the Secured Lender wished for their identity or contact details to be disclosed. While the Monitor has facilitated contact between certain Secured Lenders in situations in which such Secured Lenders have requested that the Monitor do so, the Monitor also continues to receive communications from other Secured Lenders (as well as unsecured Lenders) that do not want their identity and/or contact information to be publicly disclosed.
3. The Secured Lender Meeting included remarks on the CCAA process from representatives of Chaitons, in its capacity as Lender Representative Counsel, the Monitor and Sam Nash and Brent Marshall, legal counsel to certain Secured Lenders. The Monitor and Lender Representative Counsel fielded questions from Secured Lenders throughout the Secured Lender Meeting, which lasted approximately three hours.
4. Since the Secured Lender Meeting, Lender Representative Counsel has, among other things:
 - a) constituted a committee of six members in accordance with the provisions of the Initial Order (the “Committee”); and
 - b) negotiated with the Applicants certain amendments to the Initial Order, including that its representation be limited to the Applicants’ Secured Lenders (as discussed below).
5. The Initial Order contemplated that Lender Representative Counsel would represent the Applicants’ secured and unsecured Lenders. Since the granting of the Initial Order, the Lender Representative Counsel and the Monitor have received significant feedback from the Secured Lenders regarding the scope of Lender Representative Counsel’s representation, including at a virtual townhall meeting convened on January 29, 2024 and at the Secured Lender Meeting. Specifically, several Secured Lenders have repeatedly expressed (i) the need for Lender Representative Counsel to represent only the interests of Secured Lenders and (ii) the concern that Lender Representative Counsel’s current mandate to represent all Lenders could result in a conflict as these proceedings progress.

6. Following consideration of such feedback and having regard to the fact that Lion's Share Group Inc. ("Lion's Share") appears to be the holder of approximately 602 of the Applicants' 802 unsecured promissory notes, the Monitor understands that the Lender Representative Counsel has determined that the scope of its representation should be limited to the Applicants' Secured Lenders only. The Applicants intend to modify the scope of the Lender Representative Counsel's mandate accordingly pursuant to the proposed ARIO. Based on the feedback received by the Monitor and the composition of the Applicants' unsecured Lenders, the Monitor supports the proposed amendment to Lender Representative Counsel's mandate.
7. In order to provide notice to the affected unsecured Lenders:
 - a) on February 9, 2024, the Monitor and Lender Representative Counsel advised Claire Drage, the principal of The Windrose Group Inc. ("Windrose") and Chief Executive Officer of Lion's Share¹, that the proposed ARIO will carve out unsecured Lenders from the mandate of Lender Representative Counsel in these proceedings; and
 - b) on February 12, 2024, the Monitor sent by email and posted on its case website a notice (the "Lender Notice") to the distribution list of all Lenders to advise them of the decision by Lender Representative Counsel on the scope of its mandate and that this change would be reflected in the proposed ARIO. A copy of the Lender Notice is attached as Appendix "D".
8. Following sending the Lender Notice, the Monitor received responses from a number of unsecured Lenders expressing the view that the unsecured Lenders should have their own representative counsel. In addition, some unsecured Lenders were of the view that the costs of such separate counsel should be borne by the Applicants.
9. The Monitor understands that, at present, the Applicants, Lender Representative Counsel and the Committee intend to consider and discuss the potential appointment of representative counsel on behalf of unsecured Lenders, and the terms of any such future appointment. Such relief is not being sought in the ARIO. Additionally, the Monitor proposes to coordinate a meeting of the unsecured Lenders as soon as practicable following the February 15th court hearing in order for the unsecured Lenders to have a forum to directly communicate with each other and determine if they wish to pursue the appointment of their own representative counsel. Such meeting is expected to inform the aforementioned discussions between the Applicants, Lender Representative Counsel and the Committee.

3.0 DIP Facility

1. The Amended Initial Order authorized the Applicants to borrow up to \$4 million under the DIP Facility. On February 6, 2024, the DIP Lender funded the first advance request submitted by the Applicants in the amount of \$4 million (the "First Advance"). Pursuant to a Direction dated February 6, 2024 provided by the Applicants, the First Advance was funded by the DIP Lender into a trust account maintained by the Monitor, from which all disbursements have since been processed by the Monitor.

¹ Windrose sourced substantially all of the Applicants' original first mortgage loans and is a significant broker to certain of the Lenders and Lion's Share is a substantial holder of unsecured promissory notes.

2. An accounting of the uses of the First Advance under the DIP Facility is presented in the table below current to February 13, 2024.

Description	(\$000s)
DIP funding request	4,000
Interest reserve	(250)
Commitment and other fees	(243)
Funding advanced by DIP Lender	<u>3,507</u>
Disbursements	
Property tax arrears	(2,355)
Professional fees ²	(498)
Insurance	(183)
Other	(123)
Total Disbursements	<u>(3,159)</u>
Balance of DIP funds in Monitor's Trust Account	<u>348</u>

3. The Applicants continue to have a critical and immediate need for financing. Without access to the full amount of the DIP Facility (\$12 million), the Applicants will be unable to maintain their operations or pursue their restructuring objectives. Based on the foregoing, and for the reasons set out in the First Report, the Monitor continues to support this Honourable Court's approval of the DIP Facility and the corresponding DIP Lender's Charge and believes that both are necessary and appropriate in the circumstances, particularly with the granting of the proposed enhanced powers of the Monitor discussed below.

4.0 Monitor's Enhanced Powers

1. Lender Representative Counsel and the Applicants have agreed that the ARIO should provide the Monitor with an expanded role in these proceedings. Specifically, the ARIO provides, among other things, that:
- a) the Applicants shall not make any payments or incur any liabilities, including drawing on the DIP Facility, without the prior written consent of the Monitor. The Monitor further understands that the Committee will be seeking consultative rights prior to certain payments being made; and
 - b) the Monitor shall be authorized (i) to 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 Committee and agreed by the Monitor, in each case, to the extent such investigation relates to the Property, the Business or such other matters as may be relevant to the proceedings herein as determined by the Monitor, and (ii) to report to the Committee and the Court on the findings of such investigation as the Monitor deems necessary and appropriate.

² Includes pre-filing and certain post-filing fees for the period ended January 31, 2024 of the Applicants' legal counsel, the Monitor and its legal counsel and Lender Representative Counsel.

2. The Applicants, with the support of Lender Representative Counsel, are seeking the expansion of the Monitor's role to address specific concerns raised by the Lenders. These provisions will provide increased transparency, including on the Applicants' uses of Lender advances prior to these proceedings, and will ensure that the Monitor approves of the use of the DIP Facility during these proceedings. The Monitor therefore believes that the Monitor's expanded powers are necessary and appropriate in the circumstances and will benefit all stakeholders.

5.0 Stay Extension

1. The Stay Period currently expires on February 16, 2024. The Applicants are requesting an extension of the Stay Period until March 28, 2024, as well as an extension of the benefit of the stay of proceedings to the Additional Stay Parties and the Additional Stay Parties' Property (each as defined in the Initial Order) for the remainder of the Stay Period.
2. The Monitor supports the extension request for the following reasons:
 - a) the Applicants are acting in good faith and with due diligence;
 - b) the Monitor does not believe that any creditor will be prejudiced if the extension is granted;
 - c) subject to approval of the Applicants' additional borrowings under the DIP Facility, an extension of the Stay Period will provide the Applicants time to collaborate with the Monitor, Lender Representative Counsel and the Committee to develop a plan to pursue a refinancing or restructuring transaction with the ultimate objective of formulating a consensual plan of compromise or arrangement;
 - d) the Applicants intend to formulate and seek Court approval of a claims process prior to the expiry of the Stay Period; and
 - e) as of the date of this Supplemental Report, the Monitor is not aware of any party opposed to the requested extension.

6.0 Financial Advisor

1. All of the relief related to the proposed retention of the Financial Advisor, including the creation of a Financial Advisor Charge, has been adjourned at this time.
2. The Applicants will be consulting with the Monitor and the Committee to assess the need for, and role of, the Financial Advisor in these proceedings. The Financial Advisor's engagement, if any, remains subject to Court approval.

7.0 Conclusion and Recommendation

1. Based on the foregoing and for the reasons set out in the First Report, the Monitor respectfully recommends that this Court grant the ARIO.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR
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.
AND NOT IN ITS PERSONAL CAPACITY**

TAB I

THIS IS **EXHIBIT "I"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits

(or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 28TH
)
JUSTICE KIMMEL) DAY OF MARCH, 2024
)

**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. (collectively the "Applicants", and each an "Applicant")**

SECOND AMENDED AND RESTATED INITIAL ORDER
**(Amending Initial Order Dated January 23, 2024, as Amended and Restated on February
15, 2024)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for a Second Amended and Restated Initial Order was heard this day by judicial videoconference via Zoom.

ON READING the affidavits of Robert Clark sworn January 23, 2024 and the Exhibits thereto, January 28, 2024 and the Exhibits thereto (the "**First Clark Affidavit**"), March 24, 2024 and the Exhibits thereto, and March 27, 2024 and the Exhibits thereto, the Pre-Filing Report of KSV Restructuring Inc. ("**KSV**") as the proposed monitor dated January 23, 2024, the First Report of KSV as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated January 29, 2024, the Supplement to the First Report of the Monitor dated February 13, 2024, the Second Report of the Monitor dated March 26, 2024, the Amended Initial Order of this Court dated January 31, 2024, and the Amended and Restated Initial Order of this Court dated February 15, 2024, and on being advised that the secured creditors who are likely to

be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Applicants, counsel to the Monitor, the Secured Lender Representative Counsel (as defined below), the Unsecured Lender Representative Counsel (as defined below), counsel to the DIP Lender (as defined below), and such other counsel that were present, no else appearing although duly served as appears from the affidavits of service of Joshua Foster, filed, and on reading the consent of KSV to act as the Monitor,

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined shall have the meaning ascribed to them in the First Clark Affidavit.

3. **THIS COURT ORDERS** that, with the exception of paragraphs 30-38, references in this Order to the "date of this Order", the "date hereof" or similar phrases refer to the date the Initial Order of this Court was granted in these proceedings, being January 23, 2024 (the "**Initial Order**").

APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

5. **THIS COURT ORDERS** that each of the Applicants shall have the authority to file and may, subject to further Order of this Court, file with the Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

6. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, licences, undertakings and properties of every nature

and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and the Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement and the Definitive Documents (each as defined below), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order with the prior written consent of the Monitor, in consultation with the Secured Lender Representatives (as defined below):

- (a) all outstanding and future wages, salaries, commissions, employee and pension benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), vacation pay and employee expenses payable prior to, on, or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) amounts owing for goods and services actually supplied to the Applicants prior to the date of this Order, with the Monitor considering, among other factors, whether (i) the supplier or service provider is essential to the Business and ongoing operations of the Applicants and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Property or the Business, (iii) making such payment is required to address environmental or regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicants after the date of this Order, including pursuant to the terms of this Order; and

- (c) the fees and disbursements of any Assistants retained or employed by any of the Applicants in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement and the Definitive Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, in each case, with the prior written consent of the Monitor, in consultation with the Secured Lender Representatives, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied or to be supplied to any of the Applicants on or following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by any of the Applicants in connection with the sale of goods and services by any of the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Applicants.

10. **THIS COURT ORDERS** that, except as specifically permitted herein and in the DIP Agreement and the Definitive Documents, the Applicants are hereby directed, until further Order of this Court: (i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

11. **THIS COURT ORDERS** that notwithstanding any other provision of this Order and for greater certainty, the Applicants shall not make any payments or incur any liabilities, including without limitation drawing on the credit facility provided under the DIP Agreement, without the prior written consent of the Monitor.

RESTRUCTURING

12. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and the Definitive Documents, have the right to:

- (a) dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,500,000 in the aggregate, in each case, with the prior written consent of the Monitor; and
- (b) pursue all avenues of refinancing, restructuring, selling or reorganizing its Business or Property, in whole or part, with the oversight and involvement of the Monitor and subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including April 30, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of any of the Applicants or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

14. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Aruba Butt, Dylan Suitor and/or Ryan Molony (collectively, 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 this Court, and any and all Proceedings currently under way against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

15. **THIS COURT ORDERS** that, to the extent 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 that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any of the Applicants or the Monitor, or their respective employees, advisors and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower any Applicant to carry on any business which such Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Applicants or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, accounting services, temporary labour and staffing services, warehouse and logistics services, security services, insurance, transportation services, maintenance services, construction services, utility or other services to the Business or

any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Applicants or exercising any other remedy provided under the agreements or arrangements, and that each of the Applicants 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 applicable Applicant in accordance with the normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

NO PRE-FILING VERSUS POST-FILING SET-OFF

20. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (i) are or may become due to any of the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due from any of the Applicants in respect of obligations arising on or after the date of this Order, or (ii) are or may become due from any of the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to any of the Applicants in respect of obligations arising on or after the date of this Order, in each case without the prior written consent of the applicable Applicant and the Monitor or further Order of this Court.

APPOINTMENT OF SECURED LENDER REPRESENTATIVE COUNSEL

21. **THIS COURT ORDERS** that Chaitons LLP (the "**Secured Lender Representative Counsel**") is hereby appointed as representative counsel for all of the secured lenders of the

Applicants (collectively, the "**Secured Lenders**"), including, without limitation, all of the Secured 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 (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before this Court (collectively, the "**Insolvency Proceedings**"), for any issues affecting the Secured Lenders in the Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Secured Lenders.

22. **THIS COURT ORDERS** that the Secured Lender Representative Counsel shall be entitled but not required to commence the process of identifying no more than six (6) Secured Lenders to be nominated as Court-appointed representatives (collectively, the "**Secured Lender Representatives**") as soon as practicable following the date hereof. The Secured Lender Representatives, if and once appointed, shall represent the Secured Lenders other than any Secured Opt-Out Lender (as defined below), if any, in the Insolvency Proceedings and advise, and where appropriate instruct, the Secured Lender Representative Counsel, including, without limitation, for the purpose of settling or compromising claims of the Secured Lenders in the Insolvency Proceedings. The Secured Lender Representative Counsel may rely upon the advice, information and instructions received from the Secured Lender Representatives, if any, in carrying out its mandate without further communications or instructions from the Secured Lenders, except as may be recommended by the Secured Lender Representative Counsel or ordered by this Court.

23. **THIS COURT ORDERS** that, with the exception of any Secured Opt-Out Lender, (i) the Secured Lender Representative Counsel and the Secured Lender Representatives, if any, shall represent all of the Secured Lenders in the Insolvency Proceedings, and (ii) the Secured Lenders shall be bound by the actions of the Secured Lender Representative Counsel and the Secured Lender Representatives, if any, in the Insolvency Proceedings.

24. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the Applicants, The Windrose Group Inc. and Lift Capital Incorporated shall provide the following information to the Secured Lender Representative Counsel (collectively, the "**Secured Lender Information**"), in each case, without charge: (i) the

names, last known address, last known email addresses (if any) and entitlements of all of the Secured Lenders (excluding any Secured Opt-Out Lender that has delivered a Secured Opt-Out Notice (as defined below) prior to the delivery of the Secured Lender Information), in each case, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or Lift Capital Incorporated, to be used solely for the purposes of the Insolvency Proceedings; and (ii) upon request of the Secured Lender Representative Counsel, such documents and data as may be reasonably relevant to the issues affecting the Secured Lenders in the Insolvency Proceedings, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or Lift Capital Incorporated. In providing the Secured Lender Information, these parties are not required to obtain the express consent of any Secured Lender authorizing the disclosure of the Secured Lender Information to the Secured Lender Representative Counsel for the purposes of the Insolvency Proceedings, and further, in accordance with clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended (the "**PIPEDA**") each of these parties is authorized and permitted to disclose the Secured Lender Information to the Secured Lender Representative Counsel for the purposes of the Insolvency Proceedings, without the knowledge or consent of the Secured Lenders.

25. **THIS COURT ORDERS** that notice of the appointment of Secured Lender Representative Counsel shall be provided by: (i) the Secured Lender Representative Counsel sending a letter to the Secured Lenders at the addresses provided pursuant to paragraph 24 of this Order, advising of such appointment as soon as practicable following the date hereof; (ii) the inclusion of the details of such appointment in the CCAA Notice (as defined below); and (iii) the posting of notice of such appointment on the Monitor's Website (as defined below).

26. **THIS COURT ORDERS** that any Secured Lender who does not wish to be represented by the Secured Lender Representative Counsel and the Secured Lender Representatives, if any, in the Insolvency Proceedings shall, within thirty (30) days of the date hereof, notify the Monitor and the Secured Lender Representative Counsel in writing that such Secured Lender is opting out of representation by the Secured Lender Representative Counsel and the Secured Lender Representatives, if any, by delivering to the Monitor and the Secured Lender Representative Counsel an opt-out notice in the form attached as Schedule "A" hereto (each, a "**Secured Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Secured Lender Representative Counsel or the Secured Lender Representatives, if any, and shall represent itself

or themselves, as the case may be, or be represented by any counsel that such Secured Lender may retain at its or their, as the case may be, sole expense (each such Secured Lender that delivers a Secured Opt-Out Notice in compliance with the terms of this paragraph, a "**Secured Opt-Out Lender**"). The Monitor shall deliver copies of all Secured Opt-Out Notices received to the Applicants as soon as reasonably practicable.

27. **THIS COURT ORDERS** that all reasonable and documented fees and disbursements as may have been incurred by the Secured Lender Representative Counsel prior to the date of this Order or which shall be incurred by the Secured Lender Representative Counsel shall be paid by the Applicants on a bi-weekly basis, forthwith upon the rendering of accounts to the Applicants. Any disagreement regarding such fees and disbursements may be remitted to this Court for determination.

28. **THIS COURT ORDERS** that no action or Proceeding may be commenced against the Secured Lender Representative Counsel or the Secured Lender Representatives, if any, in such capacities and/or in respect of the performance of their duties under this Order, without leave of this Court on seven (7) days' notice to the Secured Lender Representative Counsel or the Secured Lender Representatives, as applicable, the Applicants and the Monitor.

29. **THIS COURT ORDERS** that the Secured Lender Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or government ministry, department or agency, and to take all such steps as are necessary or incidental thereto. The Secured Lender Representative Counsel and the Secured Lender Representatives, if any, shall have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on their part.

APPOINTMENT OF UNSECURED LENDER REPRESENTATIVE COUNSEL

30. **THIS COURT ORDERS** that Goldman Sloan Nash & Harber LLP (the "**Unsecured Lender Representative Counsel**") is hereby appointed as representative counsel for all of the unsecured lenders of the Applicants other than (i) The Lion's Share Group Inc. and (ii) any other unsecured lenders directly or indirectly controlled by, or under common control or otherwise affiliated with, The Lion's Share Group Inc. or its principal, Claire Drage (collectively, the

"Unsecured Lenders"), including, without limitation, all of the Unsecured Lenders that have RRSPs or other registered accounts administered by Olympia Trust Company, in the Insolvency Proceedings, for any issues affecting the Unsecured Lenders in the Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Unsecured Lenders.

31. **THIS COURT ORDERS** that the Unsecured Lender Representative Counsel shall be entitled but not required to commence the process of identifying no more than six (6) Unsecured Lenders to be nominated as Court-appointed representatives (collectively, the "**Unsecured Lender Representatives**") as soon as practicable following the date hereof. The Unsecured Lender Representatives, if and once appointed, shall represent the Unsecured Lenders other than any Unsecured Opt-Out Lender (as defined below), if any, 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. The Unsecured Lender Representative Counsel may rely upon the advice, information and instructions received from the Unsecured Lender Representatives, if any, in carrying out its mandate without further communications or instructions from the Unsecured Lenders, except as may be recommended by the Unsecured Lender Representative Counsel or ordered by this Court.

32. **THIS COURT ORDERS** that, with the exception of any Unsecured Opt-Out Lender, (i) the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, shall represent all of the Unsecured Lenders in the Insolvency Proceedings, and (ii) the Unsecured Lenders shall be bound by the actions of the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, in the Insolvency Proceedings.

33. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the Applicants, The Windrose Group Inc. and The Lion's Share Group Inc. shall provide the following information to the Unsecured Lender Representative Counsel (collectively, the "**Unsecured Lender Information**"), in each case, without charge: (i) 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 (as defined below) prior to the delivery of the Unsecured Lender Information), in

each case, to the extent in the possession or control of the Applicants, The Windrose Group Inc. and/or The Lion's Share Group Inc., to be used solely for the purposes of the Insolvency Proceedings; and (ii) 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, The Windrose Group Inc. and/or The Lion's Share Group Inc. In providing the Unsecured Lender Information, these parties are not required to obtain the express consent of any Unsecured Lender authorizing the disclosure of the Unsecured Lender Information to the Unsecured Lender Representative Counsel for the purposes of the Insolvency Proceedings, and further, in accordance with clause 7(3)(c) of the PIPEDA, each of these parties is authorized and permitted to disclose the Unsecured Lender Information to the Unsecured Lender Representative Counsel for the purposes of the Insolvency Proceedings, without the knowledge or consent of the Unsecured Lenders.

34. **THIS COURT ORDERS** that notice of the appointment of Unsecured Lender Representative Counsel shall be provided by: (i) the Unsecured Lender Representative Counsel sending a letter to the Unsecured Lenders at the addresses provided pursuant to paragraph 33 of this Order, advising of such appointment as soon as practicable following the date hereof; and (ii) the posting of notice of such appointment on the Monitor's Website.

35. **THIS COURT ORDERS** that any Unsecured Lender who does not wish to be represented by the Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, in the Insolvency Proceedings shall, within thirty (30) days of the date hereof, 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, by delivering to the Monitor and the Unsecured Lender Representative Counsel an opt-out notice in the form attached as Schedule "B" hereto (each, an "**Unsecured Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Unsecured Lender Representative Counsel or the Unsecured Lender Representatives, if any, and shall represent itself or themselves, as the case may be, or be represented by any counsel that such Unsecured Lender may retain at its or their, as the case may be, sole expense (each such Unsecured Lender that delivers an Unsecured Opt-Out Notice in compliance with the terms of this paragraph, an "**Unsecured Opt-Out Lender**"). The Monitor

shall deliver copies of all Unsecured Opt-Out Notices received to the Applicants as soon as reasonably practicable.

36. **THIS COURT ORDERS** that all reasonable and documented fees and disbursements as may have been incurred by the Unsecured Lender Representative Counsel prior to the date of this Order or which shall be incurred by the Unsecured Lender Representative Counsel shall be paid by the Applicants on a bi-weekly basis, forthwith upon the rendering of accounts to the Applicants. Any disagreement regarding such fees and disbursements may be remitted to this Court for determination.

37. **THIS COURT ORDERS** that no action or Proceeding may be commenced against the Unsecured Lender Representative Counsel or the Unsecured Lender Representatives, if any, in such capacities and/or in respect of the performance of their duties under this Order, without leave of this Court on seven (7) days' notice to the Unsecured Lender Representative Counsel or the Unsecured Lender Representatives, as applicable, the Applicants and the Monitor.

38. **THIS COURT ORDERS** that the Unsecured Lender Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or government ministry, department or agency, and to take all such steps as are necessary or incidental thereto. The Unsecured Lender Representative Counsel and the Unsecured Lender Representatives, if any, shall have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on their part.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

39. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a Plan in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

APPOINTMENT OF MONITOR

40. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

41. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court, the Secured Lender Representatives and/or the Unsecured Lender Representatives at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) liaise and consult with the Applicants, the Secured Lender Representatives and/or the Unsecured Lender Representatives, to the extent required, with respect to all matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to these proceedings;
- (d) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender, which may be used in these proceedings including reporting on a basis as agreed with the DIP Lender;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed

with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed with the DIP Lender;

- (f) monitor all payments, obligations and transfers as between the Applicants and parties related thereto;
- (g) advise the Applicants in their development of the Plan (if any) and any amendments to the Plan;
- (h) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;
- (i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Business and financial affairs or to perform its duties arising under this Order;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) (i) 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 Secured Lender Representatives and agreed by the Monitor, in each case, to the extent such investigation relates to the Property, the Business or such other matters as may be relevant to the proceedings herein as determined by the Monitor, and (ii) report to the Secured Lender Representatives, the Unsecured Lender Representatives and the Court on the findings of such investigation as the Monitor deems necessary and appropriate; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

42. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

43. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act*, and regulations thereunder (collectively, "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

44. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants, including, without limitation, the DIP Lender, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

45. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees, advisors and other representatives acting in such capacities shall incur any liability or obligation

as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

46. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings 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 date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings on a bi-weekly basis or pursuant to such other arrangements agreed to between the Applicants and such parties and, in addition, the Monitor, and counsel to the Applicants are hereby authorized to maintain their respective retainers, if any, provided by the Applicants prior to the commencement of these proceedings, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

47. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

48. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel, the Secured Lender Representative Counsel and the Unsecured Lender Representative Counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 55 and 57 hereof.

DIP FINANCING

49. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Harbour Mortgage Corp. or its permitted assignee (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other

general corporate purposes and capital expenditures, provided that the borrowings under such credit facility shall not exceed \$12,000,000, plus interest, fees and expenses, unless permitted by further Order of this Court.

50. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP agreement between the Applicants and the DIP Lender dated as of January 26, 2024 and attached to the First Clark Affidavit as Exhibit "F" (as may be amended and/or assigned from time to time, the "**DIP Agreement**").

51. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

52. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not exceed the amount of \$12,000,000, plus interest, fees and expenses, unless permitted by further Order of this Court, or secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 55 and 57 hereof.

53. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon seven (7) days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement,

Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

54. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any Plan filed by any of the Applicants under the CCAA, or any proposal filed by any of the Applicants under the BIA, with respect to any advances made under the DIP Agreement and the Definitive Documents.

VALIDITY AND PRIORITY OF THE CHARGES CREATED BY THIS ORDER

55. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge (together, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,500,000); and

Second – DIP Lender's Charge (to the maximum amount of \$12,000,000, plus interest, fees and expenses).

56. **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.

57. **THIS COURT ORDERS** that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other

security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment.

58. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

59. **THIS COURT ORDERS** that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which any Applicant 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 Applicants entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Applicants pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

60. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a charge in the applicable Applicant's interest in such real property lease.

SERVICE AND NOTICE

61. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail (National Edition)*, a notice containing the information prescribed under the CCAA (the "**CCAA Notice**"); and (ii) within ten (10) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

62. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (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, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (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/sid> (the "**Monitor's Website**").

63. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Applicants, the Monitor, 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 true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown in the books and records of the Applicants and that any such service, distribution or notice shall be deemed to be received: (i) if sent by courier, on the next business day following the date of forwarding thereof; (ii) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (iii) if sent by ordinary mail, on the third business day after mailing.

64. **THIS COURT ORDERS** that the Applicants, the Monitor and each of their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message (including by e-mail) to the Applicants' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

65. **THIS COURT ORDERS** that any interested party wishing to object to the relief sought in a motion brought by the Applicants or the Monitor in these proceedings shall, subject to further order of this Court, provide the service list in these proceedings (the "**Service List**") with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Eastern Time) on the date that is two (2) days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicants.

GENERAL

66. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on not less than seven (7)

business days' notice to the Service List and any other party or parties likely to be affected by the Order sought; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 55 and 57 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.


67. **THIS COURT ORDERS** that, notwithstanding paragraph 66 of this Order, each of the Applicants, the Monitor, the Secured Lender Representative Counsel or the Unsecured Lender Representative Counsel may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder or in the interpretation of this Order.

68. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

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

70. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

71. **THIS COURT ORDERS** that the Initial Order, as amended and restated on February 15, 2024, is hereby amended and restated pursuant to this Order, and 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.

 Digitally signed
by Jessica
Kimmel
Date: 2024.03.28
15:13:50 -04'00'

SCHEDULE "A"
FORM OF SECURED LENDER OPT-OUT NOTICE

To: Chaitons LLP, in its capacity as
Court-appointed Lender
Representative Counsel
5000 Yonge Street, 10th Floor
North York, ON M2N 7E9
Attention: George Benchetrit
Email: george@chaitons.com

KSV Restructuring Inc., in its capacity as
Court-appointed Monitor
220 Bay Street, 13th Floor
Toronto, ON M5J 2W4
Attention: Christian Vit
Email: cvit@ksvadvisory.com

with a copy to:

Bennett Jones LLP
Applicants' Counsel
3400 One First Canadian Place
Toronto, ON M5X 1A4
Attention: Joshua Foster
Email: fosterj@bennettjones.com

with a copy to:

Cassels Brock & Blackwell LLP
Monitor's Counsel
Suite 3200, Bay Adelaide Centre – North
Tower
40 Temperance Street
Toronto, ON M5H 0B4
Attention: Ryan Jacobs and Joseph Bellissimo
Email:
rjacobs@cassels.com/jbellissimo@cassels.com

I, in my individual capacity or in my capacity as an authorized representative of the undersigned, as applicable (in either capacity, the "**Opt-Out Lender**"), hereby provide written notice that the Opt-Out Lender does not wish to be represented by Chaitons LLP, representative counsel (the "**Lender Representative Counsel**") for all of the secured lenders 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. (collectively, the "**Applicants**") in any proceeding respecting the insolvency of the Applicants (the "**Insolvency Proceedings**"). By opting out of this representation, the Opt-Out Lender hereby acknowledges and understands that if it wishes to take part in the Insolvency Proceedings, then it must do so as an independent party. Further, the Opt-Out Lender hereby acknowledges and understands that it is responsible for its own legal representation or for retaining its own legal counsel should it choose to do so, and that it would be personally liable for the costs of its own legal representation.

The Opt-Out Lender hereby acknowledges and understands that a copy of this Opt-Out Notice will be provided to the Applicants.

Witness

Signature of Opt-Out Lender or its
authorized representative

Name of individual or authorized
representative of the Opt-Out Lender:

Name of Opt-Out Lender
(if not a natural person):

Address:

Telephone:

**TO OPT OUT, THIS FORM MUST BE COMPLETED AND RECEIVED AT THE
ABOVE ADDRESS ON OR BEFORE FEBRUARY 22, 2024.**

SCHEDULE "B"
FORM OF UNSECURED LENDER OPT-OUT NOTICE

To: Goldman Sloan Nash & Harber LLP, KSV Restructuring Inc., in its capacity as
in its capacity as Court-appointed Court-appointed Monitor
Lender Representative Counsel 220 Bay Street, 13th Floor
480 University Ave, Suite 1600 Toronto, ON M5J 2W4
Toronto, ON M5G 1V6 Attention: Christian Vit
Attention: Mario Forte Email: cvit@ksvadvisory.com
Email: forte@gsnh.com

with a copy to:

Bennett Jones LLP
Applicants' Counsel
3400 One First Canadian Place
Toronto, ON M5X 1A4
Attention: Joshua Foster
Email: fosterj@bennettjones.com

with a copy to:

Cassels Brock & Blackwell LLP
Monitor's Counsel
Suite 3200, Bay Adelaide Centre – North
Tower
40 Temperance Street
Toronto, ON M5H 0B4
Attention: Ryan Jacobs and Joseph Bellissimo
Email:
rjacobs@cassels.com/jbellissimo@cassels.com

I, in my individual capacity or in my capacity as an authorized representative of the undersigned, as applicable (in either capacity, the "**Opt-Out Lender**"), hereby provide written notice that the Opt-Out Lender does not wish to be represented by Goldman Sloan Nash & Harber LLP, representative counsel (the "**Lender Representative Counsel**") for certain of the unsecured lenders 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. (collectively, the "**Applicants**") in any proceeding respecting the insolvency of the Applicants (the "**Insolvency Proceedings**"). By opting out of this representation, the Opt-Out Lender hereby acknowledges and understands that if it wishes to take part in the Insolvency Proceedings, then it must do so as an independent party. Further, the Opt-Out Lender hereby acknowledges and understands that it is responsible for its own legal representation or for retaining its own legal counsel should it choose to do so, and that it would be personally liable for the costs of its own legal representation.

The Opt-Out Lender hereby acknowledges and understands that a copy of this Opt-Out Notice will be provided to the Applicants.

Witness

Signature of Opt-Out Lender or its
authorized representative

Name of individual or authorized
representative of the Opt-Out Lender:

Name of Opt-Out Lender
(if not a natural person):

Address:

Telephone:

**TO OPT OUT, THIS FORM MUST BE COMPLETED AND RECEIVED AT THE
ABOVE ADDRESS ON OR BEFORE APRIL 27, 2024.**

**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

**SECOND AMENDED AND RESTATED
INITIAL ORDER**

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)
Tel: (416) 777-6254
Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)
Tel: (416) 777-7906
Email: fosterj@bennettjones.com

Thomas Gray (LSO# 82473H)
Tel: (416) 777-7924
Email: grayt@bennettjones.com

Lawyers for the Applicants

TAB J

THIS IS **EXHIBIT "J"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster
JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00713245-00CL

DATE: March 28th 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: RE BALBOA INC. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Lawyers for the Applicants	zweigs@bennettjones.com
Joshua Foster		fosterj@bennettjones.com
Thomas Gray		garyt@bennettjones.com

For Other,

Name of Person Appearing	Name of Party	Contact Info
Jeffery J. Simpson	Lawyer for the DIP Lender	jsimpson@torkin.com
Jennifer Stam	Lawyer for The Fuller Landau Group inc., Proposal Trustee of The Lion's Share Group Inc.	Jennifer.stam@nortonrosefulbright.com
George Benchetrit	The Secured Lender Representative Counsel	George@chaitons.com
Mario Forte	Lawyer for Proposed Unsecured Lender Representative Counsel	forte@gsnh.com
Mark van Zandvoort	Lawyer for Ad Hoc Group of Promissory Noteholders to The Lions Share Group Inc.	mvanzandvoort@airdberlis.com

Shayne Kukulowicz	Lawyer for the Monitor	skukulowicz@cassels.com
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ENDORSEMENT OF JUSTICE KIMMEL:

- [1] The Applicants seek a second amended and restated initial order (the "Second ARIO") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), among other things:
- a. extending the Stay of Proceedings 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 (the "BIA") 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.

[2] Capitalized terms in this endorsement not otherwise defined herein shall have the meaning ascribed to them in the Applicants' factum on this motion.

[3] The relief sought by this motion is not opposed by any party and is supported by the Monitor, for the reasons set out in its second report dated March 26, 2024 (the "Monitor's Second Report").

Appointment of Unsecured Lender Representative Counsel

[4] This Court has already found that it was necessary and appropriate for Secured Lender Representative Counsel to be appointed. The same circumstances that weighed in favour of the

appointment of the Secured Lender Representative Counsel now weigh in favour of the appointment of the Unsecured Lender Representative Counsel.

[5] The Monitor is supportive of GSNH's appointment as Unsecured Representative Counsel in these proceedings for the following reasons:

- a. Unsecured Lenders had access to Court-appointed paid legal representation at the outset of these CCAA proceedings, but such representation ended when the mandate of Chaitons was amended such that they became counsel for the Secured Lenders only;
- b. there are over 800 promissory notes and 300 Unsecured Lenders. The Monitor believes that the appointment of Unsecured Representative Counsel and the terms thereof are in the best interests of the Applicants and all of their stakeholders. It will provide an efficient way to streamline communications and dealings with the Unsecured Lender group, absent which significant cost and confusion may result if individual counsel were to represent some or all of the Unsecured Lenders, many of which would likely not have the benefit of experience acting in complex CCAA proceedings;
- c. the proposed terms of GSNH's mandate mirror those of Chaitons, meaning the Unsecured Lenders are effectively being granted the same Court-ordered legal representation as they were afforded under the Initial Order, including that the costs of Unsecured Representative Counsel are to be borne by the Applicants and covered by the Administration Charge;
- d. Mr. Forte of GSNH is highly qualified for this role. He has extensive experience acting as representative counsel in complex CCAA proceedings;
- e. the Monitor has only heard positive feedback about Mr. Forte and/or GSNH from Unsecured Lenders following the townhall meeting on March 4, 2024;
- f. the Monitor understands that the Applicants support, and that the Lender Representatives consent to, the appointment of Mr. Forte of GSNH as Unsecured Representative Counsel;
- g. each Unsecured Lender will have the ability to opt-out of the proposed representation; and
- h. approximately 602 of the promissory notes were issued to Lion's Share, of which Ms. Drage is the Chief Executive Officer. The remaining promissory notes were issued in favour of various individual lenders sourced by The Windrose Group Inc. ("Windrose"), a mortgage brokerage, through its principal broker, Ms. Drage.

Given the potential conflicts resulting from claims made by certain Unsecured Lenders against Lion's Share, Windrose and/or Ms. Drage, the Monitor believes it is appropriate for these parties to be excluded from the group of Unsecured Lenders represented by Unsecured Representative Counsel. The Monitor has advised Ms. Drage of the proposed exclusion and understands that Lion's Share, Windrose and/or Ms. Drage are not opposed to the proposed relief in this regard.

[6] For these reasons and those outlined in the evidence and factum filed by the Applicants on this motion, I am satisfied that the appointment of the Unsecured Lender Representative Counsel is necessary and appropriate in the circumstances and will facilitate the administration of these CCAA proceedings. The court's exercise of its discretion under s.11 of the CCAA to do so now is on the same basis as indicated in the prior endorsements dealing with the appointment of (Secured) Lender Representative Counsel.

[7] The addition of the professional fees for the Unsecured Lender Representative Counsel to those that are secured by the Administration Charge is a logical extension of their appointment. No concerns were raised about the sufficiency of the existing Administration Charge to cover these additional professional fees at this time.

[8] The advantages of having counsel for the different stakeholder groups were emphasized by all counsel appearing today. Counsel for the Proposal Trustee of the Lion's Share Group Inc. and for an ad hoc group of Promissory Noteholders to The Lions Share Group Inc., who are significant stakeholders in the Lion's Share ongoing BIA proceedings, appeared today and indicated their intention and desire to engage with the Applicants, the Monitor and other stakeholders as well.

Stay Extension

[9] The continued need for the Stay of Proceedings while the Applicants continue to work with the Monitor and stakeholders is apparent from the materials filed.

[10] The Monitor's reasons for supporting the Stay extension are detailed in its Second Report, as follows:

- a. the Applicants are acting in good faith and with due diligence to advance these CCAA proceedings;
- b. the Applicants have been working with Bennett Jones to respond to the Monitor's preliminary information requests in the context of the Investigation;
- c. the Investigation remains ongoing and the Monitor has not yet come to any conclusions;

- d. an extension of the Stay Period will provide the Applicants time to work with the Monitor, Lender Representative Counsel and Unsecured Representative Counsel (if appointed) to develop and implement (if approved) a sale and investment solicitation process ("SISP"). In this regard, the Monitor has assisted the Applicants to obtain proposals (or revised proposals) from a total of four firms to serve as a financial advisor for the principal purpose of executing a SISP under the oversight of the Monitor. The Applicants and the Monitor are speaking with those potential candidates and it is expected that a motion to approve a SISP will be brought as soon as possible and in any event prior to the proposed expiry of the Stay Period; and
- e. the Applicants have advised that they intend to work with the Monitor, Lender Representative Counsel and Unsecured Representative Counsel to formulate and seek Court approval of a claims process prior to the expiry of the Stay Period.

[11] Subsection 11.02(2) of the CCAA authorizes this Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary". To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence. See *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1631 at para. 7. I am so satisfied, having regard to the evidence of the Applicants and the reasons set forth in their factum and in the Monitor's Second Report and for the same reasons as indicated when the Stay of Proceedings was granted and extended by the court's prior orders in this matter (including with respect to the Additional Stay Parties and Tolling Relief that is provided for in the Second Amended and Restated Initial Order).

[12] The Applicants' cash flow forecast supports the extension of the Stay of Proceedings to April 30, 2024.

[13] The Monitor has advised the Applicants that it will only support a stay extension until April 30, 2024 and that the Monitor and Secured Representative Counsel expect the Applicants to bring a motion to approve a SISP and claims process as soon as possible and in any event prior to the end of the Stay Period. The Applicants and the Monitor agreed that such motion requires input from Unsecured Lenders Representative Counsel and, accordingly, could not be sought prior to this motion.

Next Steps

[14] The Applicants have indicated that they intend to bring a motion for the approval of the appointment of a financial advisor to assist in the development and implementation of a SISP and that they will then decide about the timing and mechanics of a proposed SISP.

[15] The Secured Lender Representative Counsel and the Monitor are concerned about timing and want to see a SISP approved before the end of the extended Stay Period. To that end, the Monitor intends to consult with the Applicants and stakeholders about the possibility of a Monitor led SISP and the appointment of a financial advisor to assist the Monitor in that process. While this consultation and any recommendations arising from it come within the existing powers of the Monitor (for example, see paragraphs 32 (b) and (c) of the ARIO), it is acknowledged that, if such a process is approved, there would need to be a companion request for the expansion of the Monitor's powers to implement any proposed SISP. The Secured Lender Representative Counsel supports the concept of a Monitor led SISP. If the Monitor decides to recommend this process, rather than SISP led by the Applicants with their proposed financial advisor, a motion will be brought returnable at the same time as the Applicants' motion for the approval of the appointment of a financial advisor and as an alternative to the Applicants' request.

[16] All parties are concerned about timing and agree that these issues need to be decided before the Stay next expires. These motions have been scheduled for a half day on April 12, 2024. I am not available that week or the next week, so these motions have been scheduled before another judge sitting on the Commercial List. Counsel shall agree on a timetable for the exchange of their materials for these motions to ensure that all materials have been served, filed and uploaded into the appropriate CaseLines bundle by no later than 2:30 p.m. on April 11, 2024.

[17] If the parties encounter difficulties in their efforts to brief and organize themselves for these April 12, 2024 motions I will make myself available next week for a case conference to provide further directions. That may be arranged through the Commercial List Office, with reference to this endorsement.

[18] The Second Amended and Restated Initial Order may issue in the form signed by me today.

A handwritten signature in cursive script that reads "Kimmel J." with a period at the end.

KIMMEL J.

TAB K

THIS IS **EXHIBIT "K"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

HOWARDS

CAPITAL CORP

April 1, 2024

KSV Restructuring Inc., in its capacity as Monitor
220 Bay Street, 13th Floor
Toronto, Ontario
M5J 2W4

Attention: Mr. Noah Goldstein and Mr. David Sieradzki

RE: Sale and Investment Solicitation Process (SISP) for 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. (the Applicants).

Howard Steinberg, through Howards Capital Corp. (HCC) and other personal corporations, has extensive advisory, turnaround and management experience. As you know, KSV has various first-hand experience working with Howard and/or HCC in the context of formal insolvency proceedings under the CCAA. HCC's principal, Howard Steinberg, is formerly a senior executive of several financial institutions and has been involved in numerous restructurings in that capacity as well.

Howard's real estate experience dates back to 1989 when, as principal, he began purchasing predominantly residential rental properties for conversion into homeownership (known as condominium conversions). From 1989 to 1995 a total of 454 rental units across 6 rental communities were acquired and then divested on a retail basis to homeowners. Post 1995 he joined RBC as a Managing Director focusing on restructuring and monetizing private equity investments made by the bank. This included managing RBC's \$60 million investment in Tricon Capital Group (real estate focused multiple billion dollar fund). He then founded GE Capital's national restructuring group practice focusing on providing DIP financings, and subsequently established an office for a large private equity/hedge fund based out of New York. Following the credit crisis of 2008 he joined the Rose Corporation as President to help restructure its 50+ real estate investments located across North America.

Since 2012 and most applicable to this mandate Howard founded and led the acquisition, renovation, financing, management and sale of approximately 614 residential properties in the State of Florida. The properties were sold to dozens of investor groups and homeowners. Each property was purchased on an individual basis and financed by Blackstone, regional banks and/or a non-bank lender. All properties were sold in an orderly manner ending in 2021.

Although the Applicants own real estate, which is an asset class that has been sold countless times in insolvency proceedings, the Applicants' asset base is unique and requires a particular approach and relevant experience to maximize value.

SISP Process

I recommend that the SISP be structured in two phases as outlined below beginning upon the anticipated Court approval date of April 12, 2024. The SISP will be flexible and will solicit any and all proposals, including (i) a sale of the entire portfolio, (ii) a sale of the entire portfolio to a small number of buyers, (iii) a sale of certain parts of the portfolio to one or more buyers combined with a refinancing of the remaining portfolio, and (iv) a refinancing of the entire portfolio. I would deem the SISP a failure if the best outcome was to simply sell each of the properties individually at the end of the SISP.

I suggest that the SISP be run under the oversight of the Monitor, with extensive consultation from the Secured Lender Representative Counsel, Unsecured Lender Representative Counsel, and the Applicants.

PHASE 1	DESCRIPTION	TIMING
Preparation	<ul style="list-style-type: none"> a. Assemble due diligence information b. Setup of Virtual Data Room (VDR) c. Identify known potential bidders and potential financing sources d. Prepare the teaser, NDA, and process letter 	April 12 - April 28
Solicitation Process	<ul style="list-style-type: none"> a. Disseminate the teaser, NDA and process letter to potential bidders b. Disseminate the teaser, NDA and process letter to potential financing sources c. Engage with reputable local brokers in Timmins, Sault Ste. Marie, and Sudbury to obtain opinions of value and/or appraisals <ul style="list-style-type: none"> a. Opinions of value and/or appraisals to consider a scenario where all properties are listed at the same time, and also where properties are strategically listed over time d. Provide access to the VDR to those who have executed the NDA 	April 29 – May 31
Phase 1 Non-Binding LOI Deadline	<ul style="list-style-type: none"> a. Deadline for receipt of non-binding LOIs 	May 31

HOWARDS

CAPITAL CORP

Assessment of Non-Binding LOIs	<ul style="list-style-type: none"> a. Assess the Non-Binding LOIs received in consultation with the Monitor, Lenders and Applicants b. Determine optimal value maximizing strategies based on Non-Binding LOIs received, and prepare Phase 2 process letter 	May 31 – June 6
Phase 2		
Phase 2 Diligence	<ul style="list-style-type: none"> a. Engage with approved bidders, financiers and local brokers to complete due diligence process 	June 7 – July 8
Phase 2 Binding Bids Deadline	<ul style="list-style-type: none"> a. Deadline for final offers to purchase, finance or realty office proposals 	July 8
Negotiation and Selection of Transactions(s), which could include a potential Auction	<ul style="list-style-type: none"> a. In consultation with the Monitor, Applicants and Lenders determine a final path forward and with which party/parties 	July 8 – July 22
Approval Motion(s)	<ul style="list-style-type: none"> a. Hearing for Approval Motion(s) 	No later than July 31
Closing(s)		As soon as possible following Court approval

Consideration

- a. **Monthly Fee:** CAD\$30,000 (plus applicable taxes), in each case payable monthly in advance, pro-rated for the number of days for which HCC is Financial Advisor in respect of the first and last months of its appointment.
- b. **Completion Fee:** In the event of a (i) sale transaction, (ii) refinancing, or (iii) restructuring or any combination thereof: an amount equal to 1% of the sale proceeds, refinancing or restructured amounts, less 100% of any monthly fees paid.

Expenses

The Debtor Companies shall reimburse HCC for all reasonable documented out-of-pocket expenses incurred by it (including any applicable taxes).

HOWARDS

CAPITAL CORP

Sincerely,



Howard Steinberg
Howards Capital Corp.

T A B L E

THIS IS **EXHIBIT "L"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



145 King Street West
Suite 1100
Toronto ON
M5H 1J8

www.cbre.com

April 4, 2024

Mr. David Sieradzki & Mr. Noah Goldstein
KSV Advisory
220 Bay Street, 13th Floor
Toronto, Ontario
M5J 2W4

David and Noah,

Re: Balboa Portfolio - Engagement Proposal

On behalf of our team, thank you again for the call yesterday and for considering CBRE Limited ("CBRE") for real estate advisory services as they relate to the portfolio of rental houses across multiple Ontario markets (the "Offering" or "Portfolio"). CBRE's proposed Listing Team includes certain members of CBRE's National Investment, Capital Markets, and Private Client Teams with leadership from Barbara Bardos, Joshua Sonshine, and Casey Gallagher (the "Listing Team"). From our discussions, we understand that KSV Advisory (the "Monitor") are considering options for the Offering including refinancing or sale. We reiterate that our objective is to get the best possible outcome that drives high pricing and certainty for all stakeholders through an efficient marketing process.

CBRE proposes a two-tiered marketing strategy to sell or refinance the Portfolio. Phase I will be initiated by offering the Portfolio in its entirety to the buyer and lender market ensuring extensive reach to local, national, and international prospects through CBRE's global platform. The Listing Team will simultaneously pursue a targeted marketing effort to top prospects, and leverage mass media including social media, newspaper advertisements and other relevant publications and media outlets. Offers to purchase or finance will be requested ~8 weeks following the launch of marketing efforts. Concurrently, the Listing Team will refine a strategy to bundle the assets through a second/subsequent phase in a manner that maximizes sale and refinance value and mitigates negative impacts to local markets. Throughout the marketing period, CBRE will encourage all offers for the entire Portfolio or component parts.



This assignment will require a thorough evaluation of the assets and local market dynamics. Establishing connections with local brokers, investors, developers, and relevant city officials will be critical in gaining insights and providing the crucial information, opportunities, and resources necessary to navigate local markets effectively and maximize value.

This letter provides CBRE's proposed fee terms for advisory services. The fee proposal includes a flat fee to cover out of pocket costs incurred by CBRE in reviewing, underwriting, marketing, and negotiating the Offering as well as a performance-based commission, calculated on sale or financing proceeds. CBRE's fee schedule considers individual property sales (anticipated to be posted on local market MLS systems), full, and sub-portfolio sales and is structured to reasonably cover a wide variety of sale outcomes as follows:

Balboa Portfolio	
Work Fee	
Sales Team	\$100,000
Debt Team	\$25,000
Full Portfolio Sale	
Value Range	Fee
Full Portfolio Sale:	.75% of the gross sale price of the Portfolio
Full Portfolio Refinancing:	.75% of loan proceeds arranged
Partial Portfolio Sale	
Value Range	Fee
Individual Property	5% (or equivalent standard MLS fee per market)
██████████	4%
██████████	3%
██████████	2%
██████████	1.5%
██████████	1%
██████	0.75%
Loan Arrange Partial-Portfolio	
Value Range	Fee
\$60MM to \$100MM	~0.60% of Loan Proceeds arranged
\$100MM+	~0.50 of Load Proceeds arranged

As part of the CBRE's scope of services, representatives on the Listing Team shall be responsible for, among other things, identifying and contacting appropriate potential purchasers or financiers for the Offering, obtaining proposals from qualified purchasers/lenders, negotiating economic deal terms and conditions subject to the Monitor's approval, and assisting and expediting the final negotiated agreements to full execution. The Listing Team will provide weekly reports to the Monitor including sales and marketing efforts, material changes in market conditions, prospects contacted, showings of the Offering and offers made. The Listing Team shall participate in reasonably scheduled conference calls and will be available for regular meetings with existing stakeholders. The Brokerage shall use its best efforts and due diligence to perform its duties and obligations hereunder.

The Brokerage shall provide its services and conduct its business as an independent contractor for its own account, in its own name, and not as an agent, employee or partner of the Owner and shall not have any authority to bind the Owner. Each transaction shall be on terms agreed upon by the Owner, in its sole discretion.

We recognize that with sensitive files such as this Offering, exploring all possible options provides value to stakeholders in demonstrating diligence and transparency. We have proposed a comprehensive CBRE team for this effort as we are confident our market coverage will unearth all possible options; be they finance or sale of the Portfolio. Please let us know if you have any questions or would like to arrange a call to discuss.

Sincerely,



Barbara Bardos



Casey T. Gallagher



Joshua Sonshine

TAB M

THIS IS **EXHIBIT "M"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

September 27, 2023

Via EMAIL
Privileged & Confidential

Howards Capital Corp.
4482 Hayes Road
Kelowna, BC
V1W 5A7

Re: Engagement of Howards Capital Corp. to Provide Services to SID Management Inc. and those of its affiliates listed in Appendix “A” hereto (collectively, the “Debtor Companies” and each, a “Debtor Company”)

Dear Sir:

As you know, the Debtor Companies seek to retain a financial advisor (the “**Financial Advisor**”) to review, report and make recommendations in connection with the business, assets, affairs and operations of the Debtor Companies. This letter agreement (this “**Agreement**”) sets out the terms upon which Howards Capital Corp. (“**you**” or “**HCC**”) has agreed to act as Financial Advisor of the Debtor Companies and provide the services set out herein.

This Engagement Letter amends and restates the terms of the Engagement Letter dated August 5, 2023 among the parties (the “**Original Engagement Letter**”), which Original Engagement Letter was terminated by notice given by the Debtor Companies dated September 1, 2023, with effect on October 1, 2023. This Engagement Letter, including the amendments to the Original Engagement Letter, shall be effective as of August 5, 2023 (the “**Effective Date**”).

Provision and Description of Financial Advisor Services.

Your appointment as Financial Advisor will commence on the Effective Date and will continue until your appointment is terminated in accordance with the terms of this Agreement. It is hereby agreed and acknowledged by the parties to this Agreement that:

- (a) HCC will be providing the Financial Advisor services set out herein primarily through its principal, Howard Steinberg, who will lead the overall engagement hereunder;
- (b) HCC will cause Howard Steinberg to devote his working time, skills and competence as circumstances require to the role of Financial Advisor and to the provision of the Financial Advisor services set out herein; and

- (c) HCC may, with the prior written consent of the Debtor Companies, use any of its personnel or agents as HCC considers necessary in the course of its engagement hereunder.

As Financial Advisor, you shall provide the following financial advisory services:

- (a) review and assess the Debtor Companies' current financial situation and go-forward prospects;
- (b) review the Debtor Companies' short-term and medium-term liquidity situation, including a review of the most recent cash flow forecast and underlying financing model;
- (c) review the Debtor Companies' current business plan and underlying financial model;
- (d) review and perform a detailed assessment of the Debtor Companies' assets;
- (e) assess the estimated security position of secured creditors, based on available financial information;
- (f) as requested by the Debtor Companies from time to time, engage with the Debtor Companies' stakeholders, including creditors, investors and potential new investors, provided that you shall have no authority to act on behalf of or bind the Debtor Companies to any agreements or undertakings;
- (g) in consultation with the Debtor Companies and the Debtor Companies' legal counsel, assess strategic alternatives available to the Debtor Companies; and
- (h) review any other matters relevant to the foregoing or as requested by the Debtor Companies, and acceptable to you.

Without limiting the foregoing, HCC shall, within 30 days of the Effective Date:

- (a) create and deliver to the Debtor Companies one or more presentation decks, confidential information memoranda and/or teasers, summarizing the details of the Debtor Companies' assets, financial status and operations, each in form and content as is commercially reasonable for the purposes of marketing a Sale Transaction, Refinancing and/or Restructuring (each as defined below) to potential purchasers, financiers or investors;
- (b) attend at least one in-person meeting with management of the Debtor Companies and such other Debtor Company advisors or representatives as the Debtor Companies may reasonably request, at the offices of the Debtor Companies, or such other location in the Greater Toronto Area as the Debtor Companies may reasonably request; and

- (c) make contact, and use commercially reasonable efforts to schedule virtual or in-person meetings, with such potential purchasers, financiers or investors (i) as HCC determines are prudent to contact, or (ii) as the Debtor Companies may reasonably request, in each case for the purposes of marketing a Sale Transaction, Refinancing and/or Restructuring (each as defined below).

The Debtor Companies acknowledge that they have consented to HCC's engagement as Financial Advisor effective as of the Effective Date upon the terms and conditions set out herein and that they will provide, to the extent reasonably practicable, the full co-operation of the Debtor Companies' management, officers, employees, professional advisors and agents to HCC throughout the term of HCC's engagement as Financial Advisor. In particular, the Debtor Companies agree that, subject to applicable law and the Debtor Companies' confidentiality obligations:

- (a) HCC shall have full access to the books, records and information (however stored) of the Debtor Companies and HCC may copy any documents or information;
- (b) HCC shall have access to the Debtor Companies' facilities, assets and premises on reasonable terms to be arranged with the Debtor Companies;
- (c) the Debtor Companies and their officers, employees and agents shall answer all inquiries fairly, fully and to the best of their ability and they shall provide HCC with any information that it may request with respect to the affairs of the Debtor Companies;
- (d) the Debtor Companies authorize HCC to contact the Debtor Companies' professional advisors as HCC deems appropriate in connection with the Financial Advisor's engagement; and
- (e) HCC shall be entitled to provide Blake, Cassels & Graydon LLP ("**Blakes**") with copies of all documents, records, reports and information received or prepared by HCC in the course of this engagement and HCC may fully disclose to Blakes all matters arising out of HCC's engagement hereunder; provided, however, that Blakes: (i) is informed of the confidential nature of such documents, records, reports and information; (ii) is directed to hold such documents, records, reports and information in the strictest confidence; and (iii) agrees to act in accordance with the terms and conditions of the Confidentiality Agreement (as defined below).

2. Compensation.

- (a) From and after the Effective Date to the date that HCC's appointment is terminated, the Debtor Companies will pay to HCC fees in the amount of CAD\$65,000 (plus applicable

taxes) for the first month of HCC's appointment as Financial Advisor following the Effective Date,¹ CAD\$57,500 (plus applicable taxes) for the second month of HCC's appointment as Financial Advisor following the Effective Date² and thereafter, CAD\$50,000 (plus applicable taxes) per month, in each case payable monthly in advance less any withholdings required by law, for HCC's services as Financial Advisor, pro-rated for the number of days for which you are Financial Advisor in respect of the first and last months of your appointment ("**Monthly Fee**" or "**Monthly Fees**"). Payment of any Monthly Fees will be made by the Debtor Companies to HCC upon receipt by the Debtor Companies of HCC's Monthly Fee invoice.

- (b) In addition to the Monthly Fee, in the event that any one or more residential home or homes owned by any of the Eligible Debtor Companies³ is sold by the applicable Eligible Debtor Companies after the Effective Date, HCC will receive a closing fee (the "**Transaction Closing Fee**") in an amount equal to 1% of the Net Transaction Proceeds⁴ of each sale, *provided that* the Transaction Closing Fee shall not be payable in respect of (i) any homes listed for sale prior to the Effective Date, and/or (ii) the first sixty homes listed for sale (or, if not listed, sold) by the Eligible Debtor Companies after the Effective Date. The Transaction Closing Fee(s), less any withholdings required by law, shall be paid upon and from the closing of the applicable sale of the homes. The obligation of the Eligible Debtor Companies to pay the Transaction Closing Fee in respect of any sale agreed to by the Eligible Debtor Companies after the Effective Date and prior to the termination of this Agreement (regardless of when the sale actually closes) shall survive for a period of nine months following termination of this Agreement, *provided that* no Transaction Closing Fee shall be payable in respect of any home sold to Core Developments and/or Avaneu Inc. where such sale closes subsequent to or during an Insolvency Event (as defined below).

¹ HCC acknowledges and confirms that the \$65,000 first month payment (plus applicable taxes) has been paid in full.

² HCC acknowledges and confirms that the \$57,500 second month payment (plus applicable taxes) has been paid in full.

³ "**Eligible Debtor Companies**" means the Debtor Companies, excluding Old Thing Back Inc., Upgrade Housing Inc., Happytown Housing Inc., Hometown Housing Inc., Uptown Fund Inc. and Horses In The Back Inc., and "**Eligible Debtor Company**" means any of the Eligible Debtor Companies.

⁴ "**Net Transaction Proceeds**" means, as applicable, the aggregate proceeds of one or more sales payable to any Eligible Debtor Company (whether actually paid to such Eligible Debtor Company or directed elsewhere) net of: (i) the Eligible Debtor Companies' reasonable legal fees and expenses, accountants' fees and expenses, realtor fees and commissions, and any other reasonable advisory fees and expenses incurred by the Eligible Debtor Companies in connection with the sale(s); (ii) other reasonable customary fees and expenses actually incurred by the Eligible Debtor Companies in connection with the sale(s); and (iii) taxes paid or reasonably estimated to be payable in connection with the sale(s).

- (c) In addition to receiving the Monthly Fee and the Transaction Closing Fee, HCC will receive a completion fee (the “**Completion Fee**”) of:
- (i) in the event of a sale of (i) all or substantially all of the shares of the Eligible Debtor Companies (whether directly, or indirectly as a result of the sale of all or substantially all of the shares of one or more parent companies of the companies that make up the Eligible Debtor Companies), or (ii) all or substantially all of the business or assets of the Eligible Debtor Companies, regardless of the number of purchasers or number of transactions constituting such sale, regardless of whether such sale is a going-concern sale or a liquidation sale or multiple liquidation sales, and regardless of whether or not the purchaser or purchasers are existing creditors or insiders of the Debtor Companies (a “**Sale Transaction**”), an amount equal to 1% of the Net Sale Proceeds⁵ of the Sale Transaction, *provided that* any assets in respect of which a Transaction Fee has been earned shall not be included in the calculation of the Completion Fee in the event of a Sale Transaction;
 - (ii) in the event of a refinancing of all, or substantially all, of the Eligible Debtor Companies’ indebtedness (a “**Refinancing**”) in a transaction that does not include the sale of a material portion of the Eligible Debtor Companies’ shares, business or assets, an amount equal to 1% of the Net Refinanced Indebtedness⁶;
 - (iii) in the event of a restructuring of all, or substantially all, of the Eligible Debtor Companies’ indebtedness, which may include, without limitation, a debt to equity conversion in connection with a material number of creditors, or renegotiation of existing debt terms in connection with a material number of creditors (each, being a “**Restructuring**”), an amount equal to 1% of the amount of the original indebtedness that is restructured as part of the Restructuring; or

⁵ “**Net Sale Proceeds**” means, as applicable, (a) the aggregate proceeds of one or more sales payable to any Eligible Debtor Company (whether actually paid to such Eligible Debtor Company or directed elsewhere) and (b) any amount credit bid by any secured creditor or secured creditors as part of any sale, in each case net of: (i) the Eligible Debtor Companies’ reasonable legal fees and expenses, accountants’ fees and expenses, liquidator fees and expenses, and any other reasonable advisory fees and expenses incurred by the Eligible Debtor Companies in connection with the sale(s), (ii) other reasonable customary fees and expenses actually incurred by the Eligible Debtor Companies in connection with the sale(s); and (iii) taxes paid or reasonably estimated to be payable in connection with the sale(s). For the avoidance of doubt, Net Sale Proceeds shall also be net of any Net Transaction Proceeds that may arise out of the Sale Transaction and that have already been paid to HCC.

⁶ “**Net Refinanced Indebtedness**” means the aggregate availability under any new credit facility, whether or not actually advanced, net of: (a) the Eligible Debtor Companies’ reasonable legal fees and expenses, accountants’ fees and expenses, and any other reasonable advisory fees and expenses incurred by the Eligible Debtor Companies in connection with the refinancing; and (b) other reasonable customary fees and expenses actually incurred by the Eligible Debtor Companies in connection with the refinancing.

- (iv) in the event of a combination of any of a (i) Sale Transaction, (ii) Refinancing, or (iii) Restructuring an amount equal to: (A) 1% of the Net Sale Proceeds from the Sale Transaction; (B) 1% of the Net Refinanced Indebtedness; and (C) 1% of the original indebtedness that is restructured as part of the Restructuring.

The Completion Fee, less any withholdings required by law, shall be paid upon and from the closing of a Sale Transaction, Refinancing and/or Restructuring, as applicable. In the event that a Termination Notice (as defined below) is delivered by the Debtor Companies in accordance with section 3, or this Agreement automatically terminates as a result of an Insolvency Event: (i) within 30 days after the Effective Date, the Completion Fee and any Transaction Closing Fee shall be reduced to one-third of the Completion Fee and any Transaction Closing Fee that would otherwise be payable pursuant to sections 2(c)(i)-(iv) and 2(b) hereof, respectively; (ii) during the period that is 31 to 60 days after the Effective Date, the Completion Fee and any Transaction Closing Fee shall be reduced to two-thirds of the Completion Fee or Transaction Closing Fee that would otherwise be payable pursuant to sections 2(c)(i)-(iv) and 2(b) hereof, respectively; and (iii) 61 days or more after the Effective Date, the Completion Fee and any Transaction Closing Fee shall be determined in accordance with sections 2(c)(i)-(iv) and 2(b) hereof, respectively. Notwithstanding the foregoing: (i) no Completion Fee shall be payable in respect of such portion of any Sale Transaction, Refinancing and/or Restructuring involving Core Developments and/or Avaneu Inc. that is closed, consummated or completed subsequent to or during an Insolvency Event; and (ii) in the event that a Termination Notice is delivered by HCC in accordance with section 3: (A) within 60 days after the Effective Date, HCC shall not be entitled to any Completion Fee or any Transaction Closing Fee; and (B) 61 days or more after the Effective Date, the Completion Fee and any Transaction Closing Fee shall be reduced to one-half of the Completion Fee any Transaction Closing Fee that would otherwise be payable pursuant to sections 2(c)(i)-(iv) and 2(b) hereof, respectively. The obligation of the Eligible Debtor Companies to pay the Completion Fee in accordance with the terms hereof shall survive for a period of nine months following termination of this Agreement.

- (d) The Debtor Companies will reimburse HCC for any reasonable, documented out-of-pocket expenses HCC incurs in connection with the services provided under this Agreement (including travel, accommodation, communication expenses and courier fees), and for reasonable, documented legal and professional fees incurred in connection with the performance of your duties hereunder (collectively, “**Reimbursements**”), including the reasonable, documented fees and disbursements of your counsel, Blakes, in negotiating and finalizing this Agreement. For certainty, following the execution of this Agreement, any further work to be performed by Blakes shall require the prior written consent of the

Debtor Companies. All Reimbursements are to be billed by HCC on a monthly basis, and a payment of any Reimbursements, less any withholdings required by law, inclusive of all applicable taxes, will be made by the Debtor Companies to HCC upon receipt by the Debtor Companies of HCC's Reimbursements invoice.

- (e) In consideration of you accepting the Financial Advisor mandate, the Debtor Companies shall provide HCC with an advance retainer payment on account of Monthly Fees, Reimbursements and applicable taxes in the amount of \$30,000.⁷ This retainer will be held in trust by Blakes, and credited against HCC's final statement of account; provided, however, that if an interim account remains unpaid for a period of more than 30 days, you may at your discretion apply the retainer to payment of such account and cease to provide any further services until any outstanding accounts have been paid in full and a further advance retainer payment has been made by the Debtor Companies such that Blakes holds a retainer balance of \$30,000. Any portion of the retainer remaining after payment of HCC's final statement of account will be returned to the Debtor Companies forthwith.

3. Term.

This engagement will commence as of the Effective Date. This Agreement shall terminate (i) by either HCC or the Debtor Companies, without cause, at any time, upon not less than 30 days prior written notice to the other party delivered at any time after December 1, 2023 (a "**Termination Notice**"), provided that, for the avoidance of doubt, no Termination Notice shall be delivered prior to December 1, 2023, or (ii) automatically immediately upon the occurrence of an Insolvency Event⁸ involving all, or substantially all, of the Debtor Companies, *provided that* in the event that this Agreement is terminated: (i) you shall continue to be entitled to pro-rated Monthly Fees, Reimbursements, and any Transaction Closing Fee, and any other related fees, costs and expenses up to the effective date of termination; and (ii) subject to section 2(b) and the final paragraph of section 2(c), the obligation of the Eligible Debtor Companies to pay the Completion Fee and any Transaction Closing Fee in respect of any sale entered into after the Effective

⁷ HCC acknowledges and confirms that such retainer has been paid in full.

⁸ "**Insolvency Event**" means, in respect of any of the Debtor Companies, the occurrence of any one or more of the following events: (i) such Debtor Company ceases to carry on its business, commences any proceeding under Insolvency Legislation including a proposal or an assignment in bankruptcy, petitions or applies to any tribunal for, or consents to, the appointment of any receiver, trustee or similar liquidator in respect of all or a substantial part of its property, admits the material allegations of a petition or application filed with respect to it in any proceeding commenced in respect of it under Insolvency Legislation, or takes any corporate action for the purposes of effecting any of the foregoing; or (ii) any proceeding or filing is commenced against such Debtor Company seeking to have an order for relief entered against it as a debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or compromise of it or its debts under any Insolvency Legislation or seeking the appointment of a receiver, trustee, custodian or other similar official for it or any of its property or assets.

Date and prior to this Agreement being terminated shall survive for a period of nine months following such termination.

4. Insolvency Event

It is hereby agreed and acknowledged by the parties that it may be in the Debtor Companies' best interests to facilitate a Sale Transaction, Refinancing, Restructuring or some combination thereof under applicable Insolvency Legislation,⁹ and that such proceedings would be consistent with, and not a departure from, the overall objectives of the parties that are memorialized in this Agreement. Accordingly, in the event that an Insolvency Event occurs in respect of all or substantially all of the Debtor Companies that is a debtor-in-possession proceeding initiated by the Debtor Companies (such as, without limitation, proposal proceedings under the *Bankruptcy and Insolvency Act* or debtor-in-possession proceedings under the *Companies' Creditors Arrangement Act*), the Debtor Companies shall seek an order of the applicable Court: (i) appointing HCC as either financial advisor or chief restructuring officer (such role to be in the Debtor Companies' sole discretion), on commercially reasonable terms substantially the same as those in this Agreement (including the compensation terms in Section 2 hereof); (ii) granting a priority charge (subordinate only to the administration charge, the directors and officer's charge and any charge securing debtor-in-possession or interim financing) securing the Debtor Companies' obligations to HCC as chief restructuring officer or financial advisor, whether pre-filing under this Agreement or post-filing; and (iii) providing for customary protections and limitations of liability ordinarily accorded to chief restructuring officers or financial advisors, as applicable, in comparable proceedings.

5. Relationship of the Parties.

The parties intend that an independent contractor relationship will be created by this Agreement. Neither HCC nor any of its personnel or agents is to be considered an employee or agent of the Debtor Companies. The Debtor Companies acknowledge that HCC's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to generally accepted accounting principles or the rules of any provincial, territorial or national professional or regulatory body. Accordingly, while the information gathered will be reviewed for reasonableness, HCC's work will not necessarily identify any errors or irregularities, if such exist, on the part of the Debtor Companies or its officers or employees. Furthermore, HCC is entitled to rely on the accuracy and validity of the data disclosed to it or supplied to it by employees and representatives of the Debtor Companies, without verification. HCC is under no obligation to update data submitted to it unless specifically requested by the Debtor Companies to do so. The Debtor Companies agree and acknowledge that the

⁹ "Insolvency Legislation" means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-up and Restructuring Act* (Canada).

Financial Advisor services to be rendered by HCC may include the assistance in the preparation and review of projections, forecasts and other forward-looking statements, and that numerous factors can affect the actual results of the Debtor Companies' operations, which may materially and adversely differ from those projections, forecasts and other forward-looking statements. HCC makes no representation or guarantee that any business plan or restructuring alternative is the best course of action. HCC shall not be required to certify any financial statements or information or to provide representations with respect thereto in connection with any audit or securities law disclosure documents. For greater certainty, during the course of HCC's engagement hereunder, HCC shall: (i) not assume any decision making or other management responsibilities in connection with the affairs of the Debtor Companies; (ii) have no right or ability to cause the Debtor Companies to consummate any Sale Transaction, Refinancing or Restructuring; and (iii) have no responsibility for the affairs of the Debtor Companies. In addition, HCC shall not do anything or perform any act pursuant to which HCC assumes any possession or control of the property, assets, undertakings, premises or operations of the Debtor Companies for any purpose whatsoever.

6. Conflicts.

HCC is not currently aware of any relationship that would create a conflict of interest with the Debtor Companies or those parties-in-interest of which any person has made HCC aware. Howard Steinberg has previously worked with Core Developments and Avanev Inc. in connection with developing a real estate credit opportunity fund, and may continue to do so through an affiliated company that is not HCC. Core Developments and/or Avanev Inc. are, or may be, creditors of the Debtor Companies or otherwise adverse to them, and neither HCC nor any affiliates thereof will advise or work with the Debtor Companies, Core Developments or Avanev Inc. in connection with any claims by or against each other. Howard Steinberg's relationship with Core Developments and/or Avanev Inc. will not preclude either entity from participating in a Sale Transaction, Refinancing or Restructuring, which in any event, like any Sale Transaction, Refinancing or Restructuring, the Debtor Companies shall have the exclusive right to consent to the consummation of; provided, however, that HCC shall not engage with nor solicit interest from Core Developments and/or Avanev Inc. with respect to any Sale Transaction, Refinancing or Restructuring without the prior written consent of the Debtor Companies. It is possible that, in addition to Core Developments and Avanev Inc., HCC or one or more of its affiliates may have rendered or will render services to or have business associations with other entities or people which had or have or may have relationships with the Debtor Companies, including other creditors of the Debtor Companies. To HCC's knowledge, HCC has not represented the interests of any such entities or people in connection with this engagement by the Debtor Companies. In the event the terms of this engagement are accepted, neither HCC nor any of its affiliates will represent the interests of any such entities or people in connection with this engagement by the Debtor Companies.

7. Confidentiality.

You acknowledge that all information obtained by HCC or any of its personnel or agents in respect of the Debtor Companies, and any documents and working papers containing or prepared using any such information, will remain confidential, will be used only for the purpose of the Financial Advisor advising the Debtor Companies and will not be disclosed by HCC nor any of its personnel or agents without the prior written consent of the Debtor Companies. HCC and each of its personnel and agents shall furthermore be bound by the terms of the confidentiality agreement, dated August 5, 2023, among the Debtor Companies and HCC (the “**Confidentiality Agreement**”).

8. Indemnification.

The indemnification provisions, attached hereto as Appendix “B”, are incorporated herein by reference and the termination of this Agreement shall not affect those provisions, which shall survive termination. Furthermore, all those provisions contained in Appendix “B” are in addition to any protections or remedies afforded to HCC under applicable law.

9. Notices

Any notice hereunder by either party to the other shall be given in writing by personal delivery, or certified mail, return receipt requested, or by electronic transmission, in any case delivered to the applicable address set forth below:

- (i) to any Debtor Company:

394 Appleby Line
Burlington, ON L7L 2X8

Attention: Robert Clark
E-mail: robbywclark@gmail.com

With a copy to:

Bennett Jones LLP
First Canadian Place
100 King St. W., Suite 3400
Toronto, ON M5X 1A4

Attention: Sean Zweig
Email: zweigs@bennettjones.com

(ii) to HCC:

4482 Hayes Road
Kelowna, BC
V1W 5A7

Attention: Howard Steinberg
E-mail: howard@howardscapital.com
With a copy to:

Blake, Cassels & Graydon LLP
Commerce Court West
199 Bay Street, Suite 4000
Toronto, ON M5L 1 A9

Attention: Chris Burr / Daniel Loberto
Email: chris.burr@blakes.com / daniel.loberto@blakes.com

10. Amendments; Waiver; Assignment

No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by the parties. No waiver by either party hereto, at any time, of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Neither party may assign this Agreement or any of its rights and obligations hereunder. Any purported assignment made in contravention of this section shall be null and void.

11. Severability

The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated. Moreover, if any provision contained in this Agreement is determined by a Court of competent jurisdiction to be excessively broad as to duration, activity,

geographic application or subject, such provision shall be construed, by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law.

12. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (determined without regard to the choice of law provisions thereof). Each party irrevocably submits to the jurisdiction of the Courts of competent jurisdiction in the Province of Ontario in respect of any action or proceeding relating to this Agreement (but not otherwise).

13. Entire Agreement

This Agreement and the Confidentiality Agreement contain the entire agreement between the parties and any predecessors thereof with respect to the subject matter hereof, and supersedes all prior agreements, understandings and arrangements, oral and written between the parties either jointly or individually, with respect to the subject matter hereof.

14. Counterparts

This Agreement may be executed by the parties hereto in counterparts and electronically, each of which shall be deemed an original, but both such counterparts shall together constitute one and the same document.

15. Headings

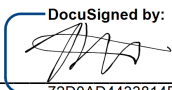
The headings of this Agreement are for convenience and reference only and shall not be considered in construing the provisions hereof.

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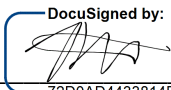
If the foregoing is satisfactory, please indicate your agreement by signing the enclosed copy of this Agreement and returning it to us.

Yours very truly,

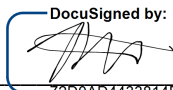
SID MANAGEMENT INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

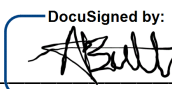
SIDRWC INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

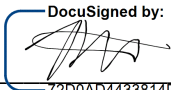
SID DEVELOPMENTS INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

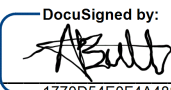
SID RENOS

Per: 
Name: Aruba Butt
I have authority to bind the corporation

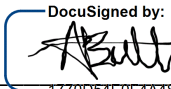
RWC MANAGEMENT INC.

Per: DocuSigned by:

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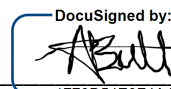
DSPLN INC.

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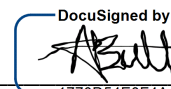
BALBOA INC.

Per: DocuSigned by:

Name: Aruba Butt
I have authority to bind the corporation

THE PINK FLAMINGO INC.


Per: DocuSigned by:

Name: Aruba Butt
I have authority to bind the corporation

MULTIVILLE INC.

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Name: Aruba Butt
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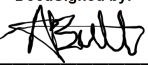
HAPPY GILMORE INC.

Per: _____
Name: Aruba Butt
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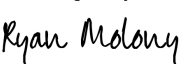
ONE HAPPY ISLAND INC.

Per: _____
Name: Aruba Butt
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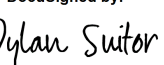
KEELY KORP INC.

Per: _____
Name: Ryan Molony
I have authority to bind the corporation

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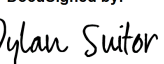
2657677 ONTARIO INC.

Per: _____
Name: Dylan Suitor
I have authority to bind the corporation

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INTERLUDE INC.

Per: _____
Name: Dylan Suitor
I have authority to bind the corporation

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OLD THING BACK INC.

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Dylan Suitor
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Name: Dylan Suitor
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UPGRADE HOUSING INC.

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I have authority to bind the corporation

HAPPYTOWN HOUSING INC.

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I have authority to bind the corporation

HOMETOWN HOUSING INC.

Per: DocuSigned by:
Dylan Suitor
369876E71BC24C0...
Name: Dylan Suitor
I have authority to bind the corporation

UPTOWN FUNK INC.

Per: DocuSigned by:
Dylan Suitor
369876E71BC24C0...
Name: Dylan Suitor
I have authority to bind the corporation

HORSES IN THE BACK INC.

DocuSigned by:

Dylan Suitor


Per: _____

Name: Dylan Suitor

I have authority to bind the corporation

Agreed and accepted as of the _____ day of September, 2023:

HOWARDS CAPITAL CORP.

Per:  _____
Name: Howard Steinberg

I have authority to bind the corporation

APPENDIX "A"

AFFILIATES

- SIDRWC Inc.
- SID Developments Inc.
- SID Renos
- RWC Management Inc.
- DSPLN Inc.
- Balboa Inc.
- The Pink Flamingo Inc.
- Multiville Inc.
- Happy Gilmore Inc.
- One Happy Island Inc.
- Keely Korp Inc.
- 2657677 Ontario Inc.
- Interlude Inc.
- Old Thing Back Inc.
- Upgrade Housing Inc.
- Happytown Housing Inc.
- Hometown Housing Inc.
- Uptown Funk Inc.
- Horses In The Back Inc.

APPENDIX "B"

INDEMNITY PROVISIONS

- A. The Debtor Companies agree to indemnify and hold harmless each of HCC, its affiliates and their respective shareholders, managers, members, employees, agents, representatives and subcontractors (each, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") against any and all losses, claims, damages, liabilities, penalties, obligations, disbursements and expenses, including the reasonable, documented costs (fees and disbursements) for counsel or others (including employees of HCC, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing the agreement to which this Indemnity is attached as Appendix "B" (the "**Agreement**") (including these indemnity provisions), as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' acceptance of or the performance or non-performance of their obligations under the Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Debtor Companies also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Debtor Companies for or in connection with the engagement of HCC, except to the extent any such liability for losses, claims, damages, liabilities or expenses are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Debtor Companies further agree that they will not, without the prior consent of an Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which such Indemnified Party seeks indemnification hereunder (whether or not such Indemnified Party is an actual party to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding.
- B. These indemnification provisions shall be in addition to any liability which the Debtor Companies may otherwise have to the Indemnified Parties. In the event that, at any time whether before or after termination of the Agreement, as a result of or in connection with the Agreement or HCC's and its personnel's role under the Agreement, HCC or any Indemnified Party is required to produce any of its personnel (including former employees) or for examination, discovery, deposition or other written, recorded or oral presentation, or HCC or any of its personnel (including former employees) or any other Indemnified Party is required to produce or otherwise

review, compile, submit, duplicate, search for, organize or report on any material within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the Debtor Companies will reimburse the Indemnified Party for its out of pocket expenses, including the reasonable, documented fees and expenses of its counsel, and will compensate the Indemnified Party for the time expended by its personnel based on such personnel's then current hourly rate.

- C. If any action, proceeding or investigation is commenced to which any Indemnified Party proposes to demand indemnification hereunder, such Indemnified Party will notify the Debtor Companies with reasonable promptness; provided, however, that any failure by such Indemnified Party to notify the Debtor Companies will not relieve the Debtor Companies from their obligations hereunder. The Debtor Companies shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under the Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Debtor Companies hereby accept its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which an Indemnified Party is a party is also against the Debtor Companies, the Debtor Companies may, in lieu of advancing the expenses of separate counsel for such Indemnified Party, provide such Indemnified Party with legal representation by the same counsel who represents the Debtor Companies, provided such counsel is reasonably satisfactory to such Indemnified Party, at no cost to such Indemnified Party; provided, however, that if such counsel or counsel to the Indemnified Party shall determine that due to the existence of actual or potential conflicts of interest between such Indemnified Party and the Debtor Companies, such counsel is unable to represent both the Indemnified Party and the Debtor Companies, then the Indemnified Party shall be entitled to use separate counsel of its own choice, and the Debtor Companies shall promptly advance its expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent an Indemnified Party from using separate counsel of its own choice at its own expense. The Debtor Companies will be liable for any settlement of any claim against an Indemnified Party made with the Debtor Companies' written consent, which consent shall not be unreasonably withheld.
- D. In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the relative fault of the Debtor Companies, on the one hand, and the Indemnified Parties, on the other hand, in

connection with the statements, acts or omissions which resulted in the losses, claims, damages, liabilities and costs giving rise to the indemnification claim and other relevant equitable considerations shall be considered; and further provided that in no event will the Indemnified Parties' aggregate contribution for all losses, claims, damages, liabilities and expenses with respect to which contribution is available hereunder exceed the amount of fees actually received by the Indemnified Parties pursuant to the Agreement. No person found liable for a fraudulent misrepresentation shall be entitled to contribution hereunder from any person who is not also found liable for such fraudulent misrepresentation.

- E. In the event the Debtor Companies and HCC seek judicial approval for the assumption of the Agreement or authorization to enter into a new engagement agreement pursuant to either of which HCC would continue to be engaged by the Debtor Companies, the Debtor Companies shall promptly pay expenses reasonably incurred by the Indemnified Parties, including the reasonable, documented fees and expenses of counsel, in connection with any motion, action or claim made either in support of or in opposition to any such retention or authorization, whether in advance of or following any judicial disposition of such motion, action or claim, promptly upon submission of invoices therefor and regardless of whether such retention or authorization is approved by any court. The Debtor Companies will also promptly pay the Indemnified Parties for any expenses reasonably incurred by them, including the reasonable, documented fees and expenses of counsel, in seeking payment of all amounts owed to it under the Agreement (or any new engagement agreement) whether through submission of a fee application or in any other manner, without offset, recoupment or counterclaim, whether as a secured claim, an administrative expense claim, an unsecured claim, a pre-petition claim or a post-petition claim.
- F. Neither termination of the Agreement nor the filing of a petition or application under the *Companies' Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada) (nor the conversion of an existing case to a different form of proceeding, including a receivership) shall affect these indemnification provisions, which shall hereafter remain operative and in full force and effect.
- G. The rights provided herein shall not be deemed exclusive of any other rights to which the Indemnified Parties may be entitled under the certificate of incorporation or by-laws of the Debtor Companies, any policy of insurance, any other agreements, any vote of shareholders or disinterested directors of the Debtor Companies, any applicable law or otherwise.

TAB N

THIS IS **EXHIBIT "N"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 8TH DAY OF APRIL, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

to HC and the Debtor Companies (the “**Approval Order**”) and shall continue, unless otherwise terminated pursuant to the terms hereof, until the earlier of: (i) the closing of a Sale Transaction (as defined below); (ii) the implementation of a Refinancing (as defined below); (iii) the effective date of a Restructuring (as defined below); and (iv) the termination of the CCAA Proceedings (such earlier occurrence, the “**Completion**”).

2. **DUTIES.**

(a) **General.** HC shall provide the Services (as defined below) to the Debtor Companies in connection with the CCAA Proceedings in the best interests of all the stakeholders of the Debtor Companies, as set out in this Agreement.

(b) **Appointment as Financial Advisor.** Effective upon receipt of the Approval Order, HC is hereby retained as financial advisor to the Debtor Companies (the “**Financial Advisor**”). HC shall cause Howard Steinberg, HC’s principal (“**Steinberg**”), to devote his working time, skills and competence as circumstances require to the role of Financial Advisor. HC shall primarily perform the Services remotely, but Steinberg may attend at the Debtor Companies’ premises as required from time to time to the extent necessary for HC’s performance of the Services. The Debtor Companies acknowledge and agree that HC and Steinberg may engage in other commitments and business activities (some of which are in the residential real estate sector and include outside directorships) during the term of this Agreement, provided that such activities do not interfere with the effective performance of the Services of HC hereunder.

(c) **Reporting Relationships.** HC and Steinberg shall report exclusively to the Monitor, Robert Clark and the directors and officers of the Debtor Companies.

(d) **Consultant Expenses.** The Services will be provided on behalf of HC by Steinberg and other consultants, agents and/or advisors retained by HC (collectively, “**Consultants**”, which for greater certainty does not include Steinberg) as HC may determine is appropriate in consultation with and with the prior written consent of the Debtor Companies and the Monitor. The Debtor Companies agree, subject to approval in advance by the Debtor Companies and the Monitor, to pay for all reasonable fees and reasonable out-of-pocket expenses of HC associated with the Consultants (the “**Consultant Expenses**”) in addition to the Monthly Fee and Expenses (each as defined below) within one (1) month of HC submitting invoices therefor. The work to be performed by the Consultants shall not be duplicative of that performed by Steinberg, the other employees of HC, the employees of the Debtor Companies, or the Monitor. The need for and use of the Consultants, if any, shall be reviewed by HC with the Debtor Companies and the Monitor on a periodic basis. Subject to the foregoing, HC shall be solely liable for all fees and expenses of the Consultants and shall indemnify and hold harmless the Debtor Companies against any claims made by or on behalf of any of the Consultants against any Debtor Company relating to any claim for unpaid fees and expenses, wages, overtime, vacation pay, or any other claim under employment standards legislation, including reasonable notice of termination or payment in lieu thereof. For greater certainty, other than the obligation of the Debtor Companies to pay Consultant Expenses to HC pursuant to this Section 2(d), in no event shall the Debtor Companies be responsible for any obligations relating to the Consultants and the performance by the Consultants of the Services.

(e) **Standard of Performance.** HC shall, and shall cause Steinberg and each of the Consultants to, provide the Services, including all ancillary services, in good faith. HC shall ensure that the Services are performed diligently and in accordance with professional standards of an appointment of this nature. In carrying out the Services, HC shall, and shall cause Steinberg and the Consultants to, at all times act in a manner which is in the best interests of the Debtor Companies and otherwise in accordance with the terms of this Agreement. HC represents and warrants to the Debtor Companies that: (i) HC holds a harmonized sales tax (“**HST**”) registration number (773457262RC0001) and that it shall be responsible for deducting and remitting HST on the Monthly Fee to the appropriate taxing authority; (ii) HC is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); and (iii) Steinberg and each of the Consultants is lawfully entitled to work in Canada.

(f) **Specific Duties.** HC shall, and shall cause Steinberg and each of the Consultants to, provide the following services (collectively, the “**Services**”), in each case in accordance with this Agreement and subject to all orders of the Court in the CCAA Proceedings. The Services shall include without limitation:

- acting as Financial Advisor of the Debtor Companies on the terms contemplated hereby;
- assisting in the development of financial data and presentations to the Debtor Companies, and their creditors, potential purchasers, potential investors, and other stakeholders on a go forward basis;
- assisting in the development of the Debtor Companies’ long-term business plan and related financial projections;
- reviewing and assessing the Debtor Companies’ current financial situation, business and go-forward prospects;
- analyzing the Debtor Companies’ financial liquidity and alternatives to improve such liquidity;
- providing strategic advice with regard to restructuring or refinancing the Debtor Companies’ obligations and funded indebtedness;
- assisting in arranging financing for the Debtor Companies, as requested;
- assessing the estimated security position of secured creditors of the Debtor Companies, based on available financial information and evaluating alternative capital structures;
- overseeing the management of the assets and operations of the Debtor Companies with a view to improving operations and profitability;
- developing, for consideration by the Debtor Companies and the Monitor strategic alternatives for the Debtor Companies, and implementing such strategic alternative(s) to the extent approved by the Monitor, the Debtor Companies, and, as applicable, the Court;

- subject to the Confidentiality Agreements (as defined below) and Section 8 hereof, dealing, negotiating and communicating with creditors, potential purchasers, potential investors, and other stakeholders regarding the Debtor Companies, the Debtor Companies' obligations and funded indebtedness and the CCAA Proceedings, as well as the Monitor;
- assisting with the preparation of all filings, applications or similar materials that may be necessary or desirable in connection with the CCAA Proceedings; and
- providing such other advisory services as are customarily provided in connection with the analysis and negotiation of a transaction similar to a potential Sale Transaction, a Refinancing and/or a Restructuring, as requested and mutually agreed.

Except as contemplated by this Agreement, HC may not subcontract performance of the Services and agrees and acknowledges that Steinberg shall be primarily responsible for providing the Services on behalf of HC. Steinberg's primary provision of the Services is a material term of this Agreement.

3. **CONSIDERATION FOR FINANCIAL ADVISOR SERVICES.**

Subject to receipt of the ARIO and the Approval Order, the Debtor Companies shall provide the following consideration to HC for Services rendered hereunder:

(a) **Monthly Fee.** CAD\$75,000 (plus applicable taxes) per month, in each case payable monthly in advance less any withholdings required by law, for HC's Services, pro-rated for the number of days for which HC is Financial Advisor in respect of the first and last months of its appointment ("**Monthly Fee**" or "**Monthly Fees**").

(b) **Completion Fee.** In addition to receiving the Monthly Fee, HC will receive a completion fee (the "**Completion Fee**") of:

- (i) in the event of a voluntary sale approved by the Debtor Companies of (a) all or substantially all of the shares of the Debtor Companies (whether directly, or indirectly as a result of the sale of all or substantially all of the shares of one or more parent companies of the companies that make up the Debtor Companies, or pursuant to a reverse vesting order), or (b) all or substantially all of the business or assets of the Debtor Companies, regardless of the number of purchasers or number of transactions constituting such sale, regardless of whether such sale is a going-concern sale or a liquidation sale or multiple liquidation sales, and regardless of whether or not the purchaser or purchasers are existing creditors or insiders of the Debtor Companies (a "**Sale Transaction**"), an amount equal to 1% of the Net Sale Proceeds¹ of the Sale Transaction up to a maximum of CAD\$1.5 million;

¹ "**Net Sale Proceeds**" means, as applicable, (a) the aggregate proceeds of one or more sales payable to any Debtor Company (whether actually paid to such Debtor Company or directed elsewhere) and (b) any amount credit bid by any secured creditor or secured creditors as part of any sale, in each case net of: (i) the Debtor Companies' reasonable legal fees and expenses, accountants' fees and expenses, liquidator fees and expenses, and any other reasonable advisory fees and expenses incurred by the Debtor Companies in connection with the sale(s), (ii) other reasonable customary fees and expenses actually

- (ii) in the event of a refinancing of all, or substantially all, of the Debtor Companies' indebtedness (a "**Refinancing**") in a transaction that does not include the sale of a material portion of the Debtor Companies' shares, business or assets, an amount equal to 1% of the Net Refinanced Indebtedness up to a maximum of CAD\$1.5 million;²
- (iii) in the event of a restructuring of all, or substantially all, of the Debtor Companies' indebtedness, which may include, without limitation, a debt to equity conversion in connection with a material number of creditors, a plan of compromise or arrangement in the CCAA Proceedings, a proposal under the proposal provisions of the *Bankruptcy and Insolvency Act* (Canada), or a renegotiation of existing debt terms in connection with a material number of creditors (each, being a "**Restructuring**"), an amount equal to 1% of the amount of the original indebtedness that is restructured and/or compromised as part of the Restructuring up to a maximum of CAD\$1.5 million; or
- (iv) in the event of a combination of any of a (i) Sale Transaction, (ii) Refinancing, or (iii) Restructuring: an amount equal to (A) 1% of the Net Sale Proceeds from the Sale Transaction; (B) 1% of the Net Refinanced Indebtedness; and (C) 1% of the original indebtedness that is restructured or compromised as part of the Restructuring up to a maximum of CAD\$1.5 million.

(c) The Completion Fee, less any withholdings required by law, shall be paid upon the closing of a Sale Transaction, Refinancing and/or Restructuring, as applicable. The obligation of the Debtor Companies to pay the Completion Fee in accordance with the terms hereof shall survive for a period of nine months following termination of this Agreement by the Debtor Companies. Notwithstanding the foregoing or any other provision of this Agreement, HC shall not be entitled to any Completion Fee if HC terminates this Agreement.

(d) **Expenses.** The Debtor Companies shall reimburse HC for all reasonable documented out-of-pocket expenses incurred by it (including any applicable taxes) in connection with the Services (the "**Expenses**") upon submission of invoices therefor (including without limitation travel). Expenses of greater than CAD\$20,000 in the aggregate for any month, including, for greater certainty, travel or other expenses incurred by HC with respect to Steinberg or the Consultants, must be pre-approved by the Debtor Companies and the Monitor. In addition to the Monthly Fee, HC shall submit an invoice for the Expenses plus applicable taxes within two (2) months of the Expenses having been incurred. The reimbursable Expenses shall include reasonable legal fees of Blake, Cassels & Graydon LLP incurred in connection with this Agreement. For the avoidance of doubt, this Section 3(d) shall not apply to any claims for expense

incurred by the Debtor Companies in connection with the sale(s); and (iii) taxes paid or reasonably estimated to be payable in connection with the sale(s).

² "**Net Refinanced Indebtedness**" means the aggregate availability under any new credit facility, whether or not actually advanced, net of: (a) the Debtor Companies' reasonable legal fees and expenses, accountants' fees and expenses, and any other reasonable advisory fees and expenses incurred by the Debtor Companies in connection with the refinancing; and (b) other reasonable customary fees and expenses actually incurred by the Debtor Companies in connection with the refinancing.

reimbursement made pursuant to the Indemnity Provisions attached hereto as Schedule "B", which expense reimbursement claims shall be governed by the terms of that Schedule.

(e) **No Benefits, etc.** None of HC, Steinberg or the Consultants shall be entitled to any payment or benefit except as expressly set forth in this Agreement, including, without limitation, any health and welfare benefits, insurance benefits, pension or retirement benefits or vacation entitlements or pay in lieu thereof.

4. **INFORMATION.** The Debtor Companies will use their commercially reasonable efforts to ensure that HC has access to such accurate and complete information regarding the Debtor Companies as HC requires in order to perform the Services hereunder. HC shall be entitled to rely upon such information and shall be under no obligation to verify independently any such information so provided. HC shall also be under no obligation to investigate any changes in any such information occurring after the date it was provided to HC. In the event that HC believes it does not have the necessary information or cooperation from the Debtor Companies required to provide the Services, it shall promptly inform the Debtor Companies and the Monitor of such situation.

5. **ADDITIONAL SERVICES.** If HC is requested to perform services in addition to the Services described herein, then the terms and conditions relating to such additional services will be outlined in a separate agreement and the fees for such services will be in addition to the fees payable hereunder and will be negotiated separately and in good faith.

6. **COURT APPROVAL AND SECURITY FOR FEES.** At the Comeback Hearing, the Debtor Companies shall seek Court approval of this Agreement pursuant to the Approval Order, which Approval Order may be incorporated in the ARIO to be sought in the CCAA Proceedings. The Approval Order shall:

(a) provide that neither of HC nor Steinberg shall incur any liability or obligation as a result of the provision of the Services except as may result from the gross negligence or wilful misconduct of such person;

(b) provide that HC and Steinberg shall enjoy the benefit of a stay of proceedings granted in the CCAA Proceedings;

(c) provide that HC shall be entitled to the benefit of the Administration Charge (as defined in the ARIO) as security for the Debtor Companies' obligation to pay the Monthly Fee and Expenses and Consultant Expenses (but not the Completion Fee), it being acknowledged and agreed by the parties hereto that the quantum of the Administration Charge in respect of the Monthly Fees, the Expenses, and the Consultant Expenses shall be limited to CAD\$150,000. The Administration Charge will also secure the fees and expenses of the Lender Representative Counsel (as defined in the Initial Order), the Monitor and those of legal counsel to the Monitor and the Debtor Companies, all on a *pari passu* basis;

(d) provide that HC shall be entitled to the benefit of a Court-ordered priority charge as security for the Debtor Companies' obligation to pay (a) the Completion Fee, and (b) any obligations of the Debtor Companies' under the "Indemnity Provisions" attached as Appendix "B" hereto up to the maximum amount of CAD\$1.5 million (the "**Financial Advisor Charge**"). Such Financial Advisor Charge shall rank junior to the Administration Charge, any debtor-in-possession or interim financing charge, and any charge in favour of the Debtor Companies' directors and officers; and

(e) provide that the obligations of the Debtor Companies arising under this Agreement are not obligations which may be compromised within the CCAA Proceedings.

7. **TERMINATION.** Any of the parties hereto may terminate this Agreement for any reason at any time prior to Completion upon not less than 30 days' prior written notice to the other parties. In addition to the foregoing, the Debtor Companies may terminate this Agreement for any reason with immediate effect by providing written notice to HC and payment to HC of one Monthly Fee installment in lieu of prior written notice. In the event of any termination by the Debtor Companies in accordance with this Section 7: (i) HC shall be entitled to receive any prorated Monthly Fee and reimbursement of all Expenses and Consultant Expenses up to the effective termination date; and (ii) HC shall be entitled to the Completion Fee in accordance with Section 3(d) hereof.

8. **CONFIDENTIALITY.** HC recognizes that the Services to be performed by it hereunder are special, unique and extraordinary in that, by reason of the Services it shall provide hereunder, it will acquire Confidential Information (as defined in the Confidentiality Agreements) and trade secrets concerning the operation of the Debtor Companies, the use or disclosure of which could cause the Debtor Companies substantial losses and damages which could not be readily calculated and for which no remedy at law may be adequate. Accordingly, HC agrees and acknowledges that HC and each of its personnel and agents (including Steinberg) shall continue to be bound by the terms of the confidentiality agreements, dated August 5, 2023 and January [●], 2024 among HC and the counterparties thereto (together, the "**Confidentiality Agreements**"), except as such terms are explicitly amended or varied by this Section 8. For the avoidance of doubt, the parties hereto hereby agree and acknowledge that references to the "Engagement Letter" and "Engagement" in the Confidentiality Agreements shall include this Agreement and the engagement contemplated herein, respectively.

Notwithstanding anything to the contrary in the Confidentiality Agreements, in the event that HC or any of its representatives, by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena or other similar processes, are requested or become legally compelled to disclose any of the Confidential Information, HC agrees that it or its representatives, or both, as the case may be, will, to the extent permitted at law and practicable in the circumstances, provide the Debtor Companies and the Monitor with prompt written notice of such request or requirement so that the Debtor Companies may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, HC or its representatives, as the case may be, who are requested to disclose the Confidential Information may furnish that portion of the Confidential Information which, in the written opinion of Blake, Cassels & Graydon LLP or other counsel reasonably acceptable to the Debtor Companies, it is legally compelled to disclose; provided, however, that HC or its representatives requested to disclose the Confidential Information shall use their commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so disclosed. It is acknowledged and agreed that in the circumstances described by this paragraph, the Debtor Companies shall reimburse HC for all reasonable legal fees incurred by it, which fees shall not be subject to the legal fee cap set out in Section 3(e) above.

Upon the Debtor Companies' request, for any reason, HC and its representatives will promptly deliver to the Debtor Companies all documents and other materials (and all copies and extracts thereof) constituting Confidential Information without retaining a copy or extract thereof; provided, however, that HC may retain copies of the Confidential Information (a) that is stored on HC's information technology backup and disaster recovery systems until the ordinary course deletion thereof, (b) that is maintained for compliance purposes, or (c) to the extent required to defend or maintain any litigation relating to this Agreement or the Confidential Information. If the Debtor

Companies request or give prior written consent, HC or its representatives shall destroy all documents or other materials constituting Confidential Information in their possession, including in electronic form (subject to the exception in the preceding sentence) with any such destruction confirmed by them in writing to the Debtor Companies. Whether or not there is a return or destruction of the Confidential Information, HC and its representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

9. GENERAL PROVISIONS

(a) **Independent Contractor.** Nothing contained in this Agreement shall be construed as creating a relationship between the Debtor Companies, on the one hand, and HC (including, for greater certainty, Steinberg or any of the Consultants), on the other hand, other than that of an independent contractor. HC and any of its directors, officers, employees, agents or other representatives, including Steinberg and the Consultants, shall not be deemed a partner, employee, joint venturer or agent of the Debtor Companies by virtue of this Agreement. No Debtor Company shall be responsible for any employee deductions or contributions which an employer would be required to effect if any of HC's employees, agents or other representatives (including the Consultants) were employees of any Debtor Company.

(b) **Intellectual Property.** The Debtor Companies are and shall be the sole and exclusive owner of all right, title and interest throughout the world in and to all the results and proceeds of the Services performed under this Agreement, including but not limited to all reports prepared by HC and its representatives for the Debtor Companies and all notes, analyses, compilations, studies, summaries and other materials prepared by HC in connection with the performance of the Services (collectively, "**Deliverables**"), including all patents, copyrights, trademarks, trade secrets and other intellectual property rights (collectively "**Intellectual Property Rights**") therein. HC irrevocably assigns to the Debtor Companies all rights, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. HC irrevocably and unconditionally waives all moral rights that HC may now have or may have in the future relating to the Deliverables. Upon the request of the Debtor Companies, HC shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist the Debtor Companies to prosecute, register, perfect, record or enforce its Intellectual Property Rights in any Deliverables.

(c) **Notices.** Any notice hereunder by any party to the others shall be given in writing by personal delivery, or certified mail, return receipt requested, or by email transmission, in any case delivered to the applicable address set forth below:

(i) To any Debtor Company:

394 Appleby Line
Burlington, ON L7L 2X8

Attention: Robert Clark
Email: robbywclark@gmail.com

With a copy that shall not constitute notice to:

KSV Restructuring Inc., as proposed Monitor of
the Debtor Companies
150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9
Canada

Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com

With a copy that shall not constitute notice to:

Bennett Jones LLP
First Canadian Place
100 King St. W.
Suite 3400
Toronto, ON M5X 1A4

Attention: Sean Zweig / Josh Foster
Email: zweigs@bennettjones.com / fosterj@bennettjones.com

(ii) To HC:

Howards Capital Corp.
4482 Hayes Road
Kelowna BC V1W 5A7

Attention: Howard Steinberg
Tel: (561) 997-4543
[Email: howard@howardscapital.com](mailto:howard@howardscapital.com)

With a copy that shall not constitute notice to:

Blake, Cassels & Graydon LLP
Commerce Court West
199 Bay Street
Suite 4000
Toronto, ON M5L 1 A9

Attention: Chris Burr / Daniel Loberto
Email: chris.burr@blakes.com / daniel.loberto@blakes.com

or to such other persons or other addresses as one party may specify to the others in writing.

(d) **Amendment; Waiver.** No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by the parties. No waiver by any party hereto, at any time, of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

(e) **Assignment.** HC may assign this Agreement or any of its rights and obligations hereunder to an entity in which Steinberg is the sole owner with the prior written consent of the Debtor Companies and the Monitor. The Debtor Companies may assign this Agreement or any of their

rights and obligations hereunder with the prior written consent of HC and the Monitor. Any unapproved assignment made in contravention of this section shall be null and void and have no legal effect.

(f) **Severability.** The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated.

(g) **Governing Law/Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal law of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the Court with respect to any dispute arising under or in connection with this Agreement.

(h) **Entire Agreement.** This Agreement and the Confidentiality Agreements contain the entire agreement of the Debtor Companies and HC with respect to the subject matter hereof, and supersedes all prior agreements, understandings and arrangements, oral and written between the parties either jointly or individually, with respect to the subject matter hereof, including the Original Engagement Letter, which Original Engagement Letter is hereby terminated with the consent of the parties, effective on the Effective Date (including each of its survival provisions save for Section 8 thereof). For the avoidance of doubt, the parties hereby confirm and agree that there shall be no duplication of compensation, payment or reimbursement to HC whatsoever as between the Original Engagement Letter and this Agreement.

(i) **Survival.** The following provisions will survive the termination of this Agreement indefinitely: Sections 7, 8 and 9. Subject to Section 3(c) hereof, the obligation to pay the Completion Fee shall survive in accordance with the terms of Section 3(d) hereof.

(j) **Counterparts.** This Agreement may be executed by the parties hereto in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same document.

(k) **Headings.** The headings of this Agreement are for convenience and reference only and shall not be considered in construing the provisions hereof.

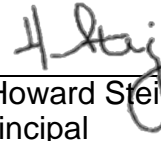
(l) **Currency.** All financial references in this Agreement are to Canadian dollars unless otherwise indicated.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 24th day of January, 2024.

HOWARDS CAPITAL CORP.

Per:



Name: Howard Steinberg
Title: Principal

DSPLN INC.

DocuSigned by:
Aruba Butt
Per: 6F00E87C9E414C8
Name: Aruba Butt
Title: Director

BALBOA INC.

DocuSigned by:
Aruba Butt
Per: 6F00E87C9E414C8
Name: Aruba Butt
Title: Director

THE PINK FLAMINGO INC.

DocuSigned by:
Aruba Butt
Per: 6F00E87C9E414C8
Name: Aruba Butt
Title: Director

MULTIVILLE INC.

DocuSigned by:
[Signature]
Per: 49ECD94604294AD...
Name: Ryan Molony
Title: Director

HAPPY GILMORE INC.

DocuSigned by:
[Signature]
Per: 49ECD94604294AD...
Name: Ryan Molony
Title: Director

INTERLUDE INC.

DocuSigned by:
Dylan Suitor
Per: _____
Name: Dylan Suitor
Title: Director

THE MULLIGAN INC.

DocuSigned by:
Aruba Butt
Per: _____
Name: Aruba Butt
Title: Director

NEAT NESTS INC.

DocuSigned by:
Dylan Suitor
Per: _____
Name: Dylan Suitor
Title: Director

HOMETOWN HOUSING INC

DocuSigned by:
Dylan Suitor
Per: _____
Name: Dylan Suitor
Title: Director

HORSES IN THE BACK INC.

DocuSigned by:
Dylan Suitor
Per: _____
Name: Dylan Suitor
Title: Director

JOINT CAPTAIN REAL ESTATE INC.

DocuSigned by:

Aruba Butt

Per: _____

6E00E87C9E414C8...

Name: Aruba Butt

Title: Director

SCHEDULE "A"

DEBTOR COMPANIES

- DSPLN Inc.
- Balboa Inc.
- The Pink Flamingo Inc.
- Multiville Inc.
- Happy Gilmore Inc.
- Interlude Inc.
- The Mulligan Inc.
- Neat Nests Inc.
- Hometown Housing Inc.
- Horses In The Back Inc.
- Joint Captain Real Estate Inc.

SCHEDULE "B"

INDEMNITY PROVISIONS

- A. The Debtor Companies agree to indemnify and hold harmless each of HC, its affiliates and their respective shareholders, managers, members, employees, agents, representatives and subcontractors (each, an **"Indemnified Party"** and collectively, the **"Indemnified Parties"**) against any and all losses, claims, damages, liabilities, penalties, obligations, disbursements and expenses, including the reasonable, documented costs (fees and disbursements) for counsel or others (including employees of HC, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing the agreement to which this Indemnity is attached as Appendix "B" (the **"Agreement"**) (including these indemnity provisions), as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' acceptance of or the performance or non-performance of their obligations under the Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Debtor Companies also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Debtor Companies for or in connection with the engagement of HC, except to the extent any such liability for losses, claims, damages, liabilities or expenses are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Debtor Companies further agree that they will not, without the prior consent of an Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which such Indemnified Party seeks indemnification hereunder (whether or not such Indemnified Party is an actual party to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding.
- B. These indemnification provisions shall be in addition to any liability which the Debtor Companies may otherwise have to the Indemnified Parties. In the event that, at any time whether before or after termination of the Agreement, as a result of or in connection with the Agreement or HC's and its personnel's role under the Agreement, HC or any Indemnified Party is required to produce any of its personnel (including former employees) or for examination, discovery, deposition or other written, recorded or oral presentation, or HC or any of its personnel (including former employees) or any other Indemnified Party is required to produce or otherwise review, compile, submit, duplicate, search for, organize or report on any material within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the Debtor Companies will reimburse the Indemnified Party for its out of pocket expenses, including the reasonable, documented fees and expenses of its counsel, and will compensate the Indemnified Party for the time expended by its personnel based on such personnel's then current hourly rate.
- C. If any action, proceeding or investigation is commenced to which any Indemnified Party proposes to demand indemnification hereunder, such Indemnified Party will notify the Debtor Companies with reasonable promptness; provided, however, that any failure by such Indemnified Party to notify the Debtor Companies will not relieve the Debtor

Companies from their obligations hereunder. The Debtor Companies shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under the Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Debtor Companies hereby accept its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which an Indemnified Party is a party is also against the Debtor Companies, the Debtor Companies may, in lieu of advancing the expenses of separate counsel for such Indemnified Party, provide such Indemnified Party with legal representation by the same counsel who represents the Debtor Companies, provided such counsel is reasonably satisfactory to such Indemnified Party, at no cost to such Indemnified Party; provided, however, that if such counsel or counsel to the Indemnified Party shall determine that due to the existence of actual or potential conflicts of interest between such Indemnified Party and the Debtor Companies, such counsel is unable to represent both the Indemnified Party and the Debtor Companies, then the Indemnified Party shall be entitled to use separate counsel of its own choice, and the Debtor Companies shall promptly advance its expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent an Indemnified Party from using separate counsel of its own choice at its own expense. The Debtor Companies will be liable for any settlement of any claim against an Indemnified Party made with the Debtor Companies' written consent, which consent shall not be unreasonably withheld.

- D. In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the relative fault of the Debtor Companies, on the one hand, and the Indemnified Parties, on the other hand, in connection with the statements, acts or omissions which resulted in the losses, claims, damages, liabilities and costs giving rise to the indemnification claim and other relevant equitable considerations shall be considered; and further provided that in no event will the Indemnified Parties' aggregate contribution for all losses, claims, damages, liabilities and expenses with respect to which contribution is available hereunder exceed the amount of fees actually received by the Indemnified Parties pursuant to the Agreement. No person found liable for a fraudulent misrepresentation shall be entitled to contribution hereunder from any person who is not also found liable for such fraudulent misrepresentation.
- E. Neither termination of the Agreement nor the filing of a petition or application under the *Companies' Creditors Arrangement Act (Canada)* or the *Bankruptcy and Insolvency Act (Canada)* (nor the conversion of an existing case to a different form of proceeding, including a receivership) shall affect these indemnification provisions, which shall hereafter remain operative and in full force and effect.
- F. The rights provided herein shall not be deemed exclusive of any other rights to which the Indemnified Parties may be entitled under the certificate of incorporation or by-laws of the Debtor Companies, any policy of insurance, any other agreements, any vote of shareholders or disinterested directors of the Debtor Companies, any applicable law or otherwise.

**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 April 8, 2024)**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)

Tel: (416) 777-7906

Email: fosterj@bennettjones.com

Thomas Gray (LSO# 82473H)

Tel: (416) 777-7924

Email: grayt@bennettjones.com

Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) FRIDAY, THE 12TH
)
JUSTICE CAVANAGH) DAY OF APRIL, 2024
)

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. (collectively the "Applicants", and each an "Applicant")

SISP APPROVAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, extending the stay period, approving the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "**SISP**"), approving the engagement of the SISP Advisor (as defined below), and granting certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Clark sworn April 8, 2024 and the Exhibits thereto, the affidavit of Joshua Foster sworn April [●], 2024 and the Exhibits thereto (the "**Foster Affidavit**"), the Third Report of KSV Restructuring Inc., in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated April [●], 2024 (the "**Third Report**"), and such other materials that were filed, and on hearing the submissions of counsel to the Applicants, counsel to the Monitor, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel, counsel to the Lion's Share Representative, counsel

to the DIP Lender, and such other counsel that were present, no else appearing although duly served as appears from the affidavit of service of Joshua Foster, filed,

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP or the Second Amended and Restated Initial Order of the Honourable Madam Justice Kimmel dated March 28, 2024, as applicable.

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including June 24, 2024.

APPROVAL OF THE SISP ADVISORS' ENGAGEMENTS

4. **THIS COURT ORDERS** that the Applicants are hereby authorized to engage Howards Capital Corp. ("**HCC**") and CBRE Limited ("**CBRE**") as advisors (together, the "**SISP Advisors**" and each, a "**SISP Advisor**") pursuant to the engagement agreement dated April [●], 2024, between the Applicants and HCC attached to the Foster Affidavit as Exhibit "●" (the "**HCC Engagement Agreement**"), and the engagement agreement dated April [●], 2024, between CBRE and the Applicants attached to the Foster Affidavit as Exhibit "●" (the "**CBRE Engagement Agreement**"), respectively. The Applicants are hereby authorized and directed to make the payments contemplated under the HCC Engagement Agreement and the CBRE Engagement Agreement (together, the "**Engagement Agreements**" and each, an "**Engagement Agreement**") when earned and payable in accordance with their respective terms and conditions.

5. **THIS COURT ORDERS** that the SISP Advisors and their respective controlling persons, shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of either HCC's or CBRE's

engagement by the Applicants as SISP Advisors or any matter referred to in the Engagement Agreements, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the applicable SISP Advisor or its controlling person(s), in performing their obligations under the applicable Engagement Agreement.

6. **THIS COURT ORDERS** that no action or Proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the SISP Advisors and their respective controlling persons, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the applicable SISP Advisor, or with leave of this Court on notice to the Applicants, the Monitor and the applicable SISP Advisor. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the applicable SISP Advisor at least seven (7) days prior to the return date of any such motion for leave.

7. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the applicable SISP Advisor, each of the SISP Advisors shall be treated as unaffected in any Plan filed by any of the Applicants under the CCAA, or any proposal filed by any of the Applicants under the BIA, with respect to any of the Applicants' obligations under the applicable Engagement Agreement.

APPROVAL OF THE SISP

8. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with the terms of this Order) be and is hereby approved and the Applicants, the SISP Advisors and the Monitor, are authorized and directed to carry out the SISP in accordance with its terms and the terms of this Order, and are hereby authorized and directed to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

9. **THIS COURT ORDERS** that the Applicants, the SISP Advisors and the Monitor and their respective Assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their

duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Applicants, the SISP Advisors or the Monitor, as applicable, as determined by this Court in a final order that is not subject to appeal or review.

10. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order or in the SISP, neither the SISP Advisors nor the Monitor shall take Possession of the Business or the Property or be deemed to take Possession of the Business or the Property, including pursuant to any provision of the Environmental Legislation.

PIPEDA

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the Applicants, the SISP Advisors, the Monitor and each of their respective advisors are hereby authorized and permitted to disclose and transfer to each Potential Bidder personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (each a "**Transaction**"). Each Potential Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Applicants, the SISP Advisors or the Monitor, as applicable, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Applicants, the SISP Advisors or the Monitor. Any successful bidder shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the applicable successful bid, shall be entitled to use the personal information provided to it that is related to the Business and/or the Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, the SISP Advisors or the Monitor or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicants, the SISP Advisors or the Monitor.

APPROVAL OF THE MONITOR'S REPORTS, ACTIVITIES AND FEES

12. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated January 23, 2024, the First Report of the Monitor dated January 29, 2024, the Supplement to the First Report of the Monitor dated February 13, 2024, the Second Report of the Monitor dated March 26, 2024, the Third Report, and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

13. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Third Report, be and are hereby approved.

SEALING

14. **THIS COURT ORDERS** that the unredacted copy of the CBRE Engagement Agreement attached as confidential Exhibit "●" to the Foster Affidavit is hereby sealed and shall not form part of the Court record, subject to further order of this Court.

GENERAL

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

16. **THIS COURT ORDERS** that the Applicants or the Monitor may apply to this Court to amend, vary or supplement this Order or for advice and directions with respect to the SISP at any time.

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

foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

18. **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.

SCHEDULE "A"

SISP

SALE, REFINANCING AND INVESTMENT SOLICITATION PROCESS FOR THE PROPERTY OR BUSINESS 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.

1. On January 23, 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**") were granted an initial order (as amended, and amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Among other things, the Initial Order:
 - (a) appointed KSV Restructuring Inc. as the Monitor in the Applicants' proceedings under the CCAA (in such capacity, the "**Monitor**");
 - (b) approved the Applicants' ability to borrow under a debtor-in-possession credit facility pursuant to a DIP Agreement dated January 26, 2024 between the Applicants and Harbour Mortgage Corp. or its permitted assignee (the "**DIP Lender**");
 - (c) appointed Chaitons LLP as representative counsel (in such capacity, the "**Secured Lender Representative Counsel**") for all of the Secured Lenders in the Insolvency Proceedings; and
 - (d) appointed Goldman Sloan Nash & Harber LLP as representative counsel (in such capacity, the "**Unsecured Lender Representative Counsel**") for all of the Unsecured Lenders in the Insolvency Proceedings.
2. On April 12, 2024 the Court granted an order (the "**SISP Approval Order**") that, among other things: (i) authorized the Applicants to implement and undertake a sale, refinancing and investment solicitation process ("**SISP**") in accordance with the terms hereof; and (ii) approved the Applicants' retention of the SISP Advisor (as defined below) in connection therewith.
3. Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the Initial Order or the SISP Approval Order, as applicable. Copies of the Initial Order and the SISP Approval Order can be found at the following website maintained by the Monitor: <https://www.ksvadvisory.com/experience/case/SID> (the "**Monitor's Website**").

The Opportunity

4. This SISP sets out the manner in which the Monitor, with the assistance of the SISP Advisors (as defined below), and in consultation with the Applicants, shall solicit non-binding letters of intent ("**LOIs**" and each, a "**LOI**") for a refinancing, sale and/or other strategic investment or transaction involving the business, assets and/or equity of the Applicants (collectively, the "**Property**") or any part thereof from interested parties (the "**Opportunity**").
5. The SISP contemplates a two-stage process that involves the submission by interested parties of LOIs in Phase 1 and the submission of binding offers in Phase 2. This SISP currently only prescribes the process for the submission of LOIs in Phase 1. The parameters for the submission

and evaluation of binding offers in Phase 2 shall be determined and communicated to the applicable interested parties following the completion of Phase 1, as detailed below.

6. The SISP shall be conducted in all respects by the Monitor, supported by and with the assistance of the SISP Advisors and, subject to para 13, in consultation with the Applicants, Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and The Fuller Landau Group Inc. in its capacity as court-appointed receiver and trustee in bankruptcy of The Lion's Share Group Inc. (in such capacity, the "**Lion's Share Representative**"). In connection therewith, the Monitor with the assistance of the applicable SISP Advisors, and in consultation with the Applicants, may identify one or more subsets of the Property to be marketed pursuant to the SISP for a refinancing, sale or other strategic investment or transaction while concurrently marketing the remainder or whole of the Property for a refinancing, sale or other strategic investment or transaction. Interested parties may submit LOIs for any subset of the Property, whether or not such Property is specifically marketed by the applicable SISP Advisors.
7. Parties who wish to have their offers for the Property considered must participate in the SISP.

SISP Advisors

8. In connection with the SISP, the Applicants have retained: (i) Howards Capital Corp. to assist solely in respect of any refinancing of or other strategic investment in the Property, and (ii) CBRE Limited solely in respect of any sale transaction(s) in respect of the Property (in such capacities, collectively the "**SISP Advisors**"). At the appropriate stage of the SISP, the SISP Advisors, as applicable, with the consent of the Monitor and in consultation with the Applicants, are authorized to engage one or more local real estate agents or brokerages to market the Property or any subsets of the Property.

Milestones

9. The SISP shall be conducted subject to the terms hereof and the following key milestones, which milestones may be extended by the Monitor, with the prior consent of the Applicants, in consultation with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative, or as may otherwise be ordered by the Court:
 - (a) the SISP Advisors will each independently prepare and deliver to the Monitor a list of potential interested parties to be solicited (collectively, the "**Known Potential Bidders**") as soon as reasonably practicable after the granting of the SISP Approval Order and, in any event, by no later than April 26, 2024. The SISP Advisors shall include as Known Potential Bidders any parties suggested by the Monitor, the Applicants, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel or the Lion's Share Representative;
 - (b) the SISP Advisors will commence the solicitation process to all Known Potential Bidders by no later than April 29, 2024, it being understood that the SISP Advisors shall be at liberty to provide marketing materials approved by the Monitor and commence discussions with interested parties (with the involvement of the Monitor) prior to such date;
 - (c) the Monitor, with the assistance of the Applicants and the SISP Advisors, shall establish a virtual data room (the "**VDR**") by no later than April 28, 2024; and

- (d) non-binding LOIs shall be submitted by no later than 5:00 p.m. (Toronto time) on June 10, 2024 (the "**LOI Deadline**").
10. The timing and certain other parameters for Phase 2 of the SISP shall be determined following a review of the non-binding LOIs submitted by the LOI Deadline as detailed in sections 15-18 below.

Solicitation of Interest

11. The Monitor, through the SISP Advisors, will:
- (a) disseminate marketing materials and a process letter (which letter shall, among other things, direct recipients to the Monitor's Website for a copy of this SISP) to all of the Known Potential Bidders, and any other party who contacts the Monitor, the SISP Advisors, the Applicants, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel or the Lion's Share Representative, or who the Monitor, the SISP Advisors, the Applicants, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel or the Lion's Share Representative become aware may have an interest in the Opportunity (collectively, "**Other Interested Parties**");
 - (b) solicit interest from all of the Known Potential Bidders and Other Interested Parties with a view to such parties entering into non-disclosure agreements in form and substance satisfactory to the Applicants and the Monitor (each an "**NDA**") (only Known Potential Bidders and Other Interested Parties that execute an NDA shall be deemed to be potential bidders in the SISP (each, a "**Potential Bidder**") and obtain access to the VDR);
 - (c) provide each Potential Bidder with: (i) a confidential information memorandum in respect of the Opportunity; and (ii) access to the VDR containing diligence information in respect of the Opportunity and such other diligence opportunities as the Monitor or SISP Advisors consider advisable or appropriate; and
 - (d) request that each Potential Bidder submit a non-binding LOI that meets the requirements set forth in Section 12 below by the LOI Deadline.

Phase 1

12. Any Potential Bidder who wishes to submit a non-binding LOI in the SISP must submit an LOI that complies with the following criteria (it being understood that the Monitor, in consultation with the SISP Advisors and Applicants, may waive strict compliance with any one or more of the requirements specified below) (each such LOI, a "**Qualified LOI**"):
- (a) it sets forth the identity of the Potential Bidder, including its contact information, full disclosure of its direct and indirect principals and equity holders, and information as to the Potential Bidder's wherewithal to complete a refinancing, sale or other strategic investment or transaction pursuant to the SISP;
 - (b) it sets forth the principal terms of the proposed refinancing, sale or other strategic investment or transaction (the "**Transaction**"), including:
 - (i) the structure, financing and nature of the Transaction (refinancing, recapitalization, reorganization, sale, investment, etc.), including, without limitation, the sources of financing for the purchase price;

- (ii) whether all or a specifically identified subset of the Property will be subject to the Transaction (and if applicable, whether the specifically identified subset of the Property was marketed pursuant to the SISP or was separately identified by the Potential Bidder);
 - (iii) the purchase price or other consideration offered in connection with the Transaction, including any material assumed liabilities;
 - (iv) a description of any conditions or approvals required and any additional due diligence required for the Potential Bidder to make a final binding bid;
 - (v) all conditions to closing that the Potential Bidder may wish to impose on the closing of the Transaction;
 - (vi) whether the Potential Bidder requires any services from the Applicants' existing property manager;
 - (vii) any anticipated corporate, shareholder, internal or regulatory approvals required to close the Transaction and the anticipated timeframe for obtaining such approvals;
 - (viii) in the case of a restructuring, refinancing or hybrid Transaction, it identifies (A) the aggregate amount of the equity and debt investment, including liabilities to be assumed by the Potential Bidder (including the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed Transaction and any related contingencies, as applicable) to be made in the Applicants, (B) the underlying assumptions regarding the *proforma* capital structure, and (C) the consideration to be allocated to the Applicants' stakeholders;
 - (ix) any other terms or conditions that the Potential Bidder believes are material to the Transaction; and
 - (x) any other information as may be reasonably requested by the Applicants, the SISP Advisors or the Monitor, in consultation with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative; and
- (c) it is received by the Monitor by no later than the LOI Deadline at the email addresses specified on Schedule "A" hereto.
13. Forthwith following the LOI Deadline, the Monitor shall provide copies of all of the LOIs received to the Applicants, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative, provided that the directors and officers of the Applicants (the "**D&Os**"), the Secured Lender Representatives, the Unsecured Lender Representatives and the Lion's Share Representative, respectively, have previously executed an NDA (or are otherwise subject to confidentiality obligations) acceptable to the Applicants and the Monitor and provided written confirmation to the Monitor that they have not and will not directly or indirectly, acting individually or in concert, submit or actively participate as a bidder in an LOI or any other bid in the SISP. The D&Os, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative shall not be entitled to consultation with respect to the review of LOIs received by the LOI Deadline or

the next steps to be taken in respect of any Qualified LOI in the event that any of the D&Os, the Secured Lender Representatives, the Unsecured Lender Representatives or the Lion's Share Representative, respectively, fail to execute an NDA (or remain subject to confidentiality obligations with the Applicants) or elect to actively participate as a bidder in and/or submit an LOI or any other bid in the SISP. For greater certainty, a Potential Bidder's proposed retention of the Applicants' existing management, 2707793 Ontario Inc. o/a SID Renos and/or SID Management Inc. or any of their directors or officers, as reflected within an LOI, any other bid in the SISP or otherwise, shall not constitute the D&Os' direct or indirect involvement in the submission of or participation as a bidder in such LOI or bid in the SISP and shall not disqualify the D&Os from receiving or reviewing copies of the LOIs or from being consulted with respect to the LOIs or the next steps to be taken in respect of any Qualified LOI. For greater certainty, participation as a bidder for the purpose of this Section shall not include a credit bid of no more than a Secured Lender's individual claim (including principal, interest and any other obligations owing to such Secured Lender), plus any amounts owing in priority thereto, submitted by such Secured Lender pursuant to Section 23.

14. Notwithstanding any other provision of this SISP, the Monitor may take protective measures to limit access to LOIs or the identity of Potential Bidders to safeguard the integrity of the SISP.

Assessment of LOIs and Determination of Phase 2 Parameters

15. Subject to Section 13, the Monitor, the SISP Advisors, the Applicants, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative (collectively, the "**Reviewing Parties**") shall review the LOIs received, and the Monitor in consultation with the SISP Advisors, the Applicants, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative, shall determine which of the LOIs, if any, constitute Qualified LOIs.
16. The Monitor (including through the SISP Advisors) may request clarification from any Potential Bidder that submitted an LOI.
17. Subject to Section 13, following the review and assessment contemplated under Section 15, the Reviewing Parties shall discuss what next steps should be taken in respect of the Qualified LOIs received (if any). Such steps may include, without limitation: (i) pursuing refinancing, sale or hybrid components of any Qualified LOI or collection of Qualified LOIs, including a recombination or reconstitution of subsets of the Property which may create the best opportunity to maximize value for all stakeholders; (ii) coordinating the aggregation of certain or all of the Qualified LOIs; (iii) remarketing certain or all of the Property; (iv) engaging one or more local real estate agents or brokerages to assist in marketing and selling certain or all of the Property; (v) the parameters that will govern the submission of binding offers in Phase 2 of the SISP; and (vi) any auction procedures to be implemented in connection with Phase 2 of the SISP.
18. If no Qualified LOIs have been received or the Monitor determines that no Qualified LOIs are likely to result in a binding offer for the benefit of the Applicants and their stakeholders, the Monitor, with the prior consent of the Applicants or by order of the Court, may terminate the SISP and in such case shall advise all Potential Bidders that submitted an LOI by the LOI Deadline of such termination.
19. Subject to Section 13, if the Reviewing Parties all agree on appropriate parameters for the submission and evaluation of binding offers in Phase 2, those parameters shall be communicated

by the SISP Advisors to parties that submitted Qualified LOIs in binding process letters acceptable to the Reviewing Parties (the "**Process Letters**").

20. The Process Letters may provide for different timing and commercial parameters in respect of different Qualified LOIs based on, among other things, the type of transaction, local market conditions and such other commercial parameters that would reasonably be expected to apply to such a Transaction in the circumstances. Such parameters must provide that any Transaction will be subject to approval by the Court and will be consummated on an "as is, where is" basis without surviving representations, warranties, covenants or indemnities of any kind, nature or description.
21. If the Reviewing Parties cannot agree on (i) whether the SISP should progress to Phase 2 or (ii) appropriate parameters for the submission and evaluation of binding offers in Phase 2, the Monitor shall forthwith bring a motion seeking the Court's advice and directions on same. Unless the Monitor and Applicants consent otherwise after consultation with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative, such motion shall be served and filed by the Monitor within 14 days following the LOI Deadline.

Miscellaneous

22. Any amendments to this SISP may only be made with the consent of all of the Reviewing Parties, or by further order of the Court.
23. Any Secured Lender of the Applicants, and the DIP Lender, each acting on its own behalf, shall have the right to credit bid their secured debt against the assets secured thereby up to the full face value of such Secured Lender's claims, including principal, interest and any other obligations owing to such Secured Lender; provided that any such secured lender shall be required to: (i) pay in full in cash any obligations of the Applicants in priority to its secured debt, including any obligations secured by the Charges and allocated to the applicable Property; and (ii) pay appropriate consideration for any assets of the Applicants which are contemplated to be acquired and that are not subject to such Secured Lender's security.
24. Notwithstanding any other provision of this SISP, the Lion's Share Representative shall be entitled to consult with and provide any information it receives to Aird & Berlis LLP, the court appointed representative counsel in The Lion's Share Group Inc.'s receivership proceedings (Court File No CV-24-00717669-00CL), provided that the Lion's Share Representative shall have entered into an NDA with Aird & Berlis LLP that is in form and substance satisfactory to the Applicants and the Monitor prior to sharing any confidential information.

SCHEDULE "A": E-MAIL ADDRESSES FOR DELIVERY OF BIDS

To the Monitor at:

KSV Restructuring Inc., as Monitor of
the Applicants
220 Bay Street
13th Floor, PO Box 20
Toronto, ON, M5J 2W4

Attention: Noah Goldstein / David Sieradzki / Christian Vit
Email: ngoldstein@ksvadvisory.com / dsieradzki@ksvadvisory.com / cvit@ksvadvisory.com

with a copy to counsel for the Monitor at:

Cassels Brock & Blackwell LLP
Suite 3200
Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Attention: Ryan Jacobs / Shayne Kukulowicz / Joseph Bellissimo
Email: rjacobs@cassels.com / skukulowicz@cassels.com / jbellissimo@cassels.com

**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

SISP APPROVAL ORDER

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Lawyers for the Applicants

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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MOTION RECORD
(Returnable April 12, 2024)

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