

**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 January 31, 2024)**

January 28, 2024

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**ONTARIO
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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

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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 January 31, 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 Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on January 31, 2024 at 9:30 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 a Zoom link to be provided by the Court in advance of the motion.

THE MOTION IS FOR:

1. An amended and restated initial order (the "**ARIO**") 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 Initial Stay Period (as defined below) to and including March 28, 2024;
- (c) authorizing but not requiring the Applicants to pay, with the consent of the Monitor (as defined below), amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order (as defined below);
- (d) 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;
- (e) 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**");

- (f) 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
- (g) 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.

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, 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

5. 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.

6. 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 an initial order (the "**Initial Order**") under the CCAA.

7. 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'

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

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**"), 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 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**").

Extending the Stay of Proceedings

8. 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**").

9. Since the granting of the Initial Order, the Applicants have acted, and continue to act, in good faith and with due diligence to stabilize and continue the Business' ordinary course operations, apprise their stakeholders of these CCAA proceedings and liaise with the Lender Representative Counsel.

10. 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 deteriorative and contrary to the best interests of the Applicants' stakeholders; and

- (c) continue to pursue a comprehensive refinancing and/or restructuring transaction capable of underpinning a consensual plan of compromise or arrangement.

11. The Applicants are forecast to have sufficient liquidity, assuming the proposed ARIO is granted, to fund their obligations and the costs of these CCAA proceedings through the end of the Stay Period.

12. No creditor is expected to suffer material prejudice as a result of the proposed extension of the Stay of Proceedings. The Monitor is supportive of the proposed extension of the Stay of Proceedings and believes that it is reasonable and appropriate in the circumstances.

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

13. The Initial Order temporarily stayed all proceedings against or in respect of the Additional Stay Parties or any of the Additional Stay Parties' Property with respect to the Related Claims. 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.

14. 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.

15. 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, would be detrimental to the Applicants' stakeholders, including the Lenders and the Applicants' tenants.

16. 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.

Essential Payments During These CCAA Proceedings

17. The proposed ARIO authorizes (but does 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.

18. The aforementioned 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.

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

The Financial Advisor's Engagement and the Financial Advisor Charge

20. In connection with the commencement of these CCAA proceedings, the Applicants and HCC negotiated and entered into the Financial Advisor Engagement Agreement, the effectiveness of which is subject to the granting of the proposed ARIO.

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

22. 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**"). Additionally, the Financial Advisor Engagement Agreement entitles the Financial Advisor to (i) reimbursement of the Expenses and the Consultant Expenses (each as defined in the Financial Advisor Engagement Agreement) and (ii) a completion fee up to a maximum amount of \$1,500,000 (the "**Completion Fee**").

23. Pursuant to the proposed ARIO, the Completion Fee and the Applicants' indemnification obligations under the Financial Advisor Engagement Agreement will be secured by a charge on the Applicants' Property in favour of the Financial Advisor up to the maximum amount of \$1,500,000 (the "**Financial Advisor Charge**"). The 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**").

24. 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.

25. The Monitor is supportive of the Financial Advisor's engagement, the approval of the Financial Advisor Engagement Agreement and the granting of the Financial Advisor Charge.

The DIP Facility and the DIP Lender's Charge

26. The Applicants urgently require interim financing to fund their ongoing operations and value accretive renovations and to pursue their restructuring efforts. Accordingly, the Applicants, as borrowers (in such capacity, the "**Borrowers**"), entered into the DIP Agreement with the DIP Lender on January 26, 2024.

27. 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, but exclusive of unpaid fees. In

consideration for making the DIP Facility available to the Borrowers, the DIP Lender is entitled to, among other things, a non-refundable commitment fee of \$240,000.

28. The DIP Facility is conditional upon, among other things, 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**").

29. The DIP Facility and 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, or cede to numerous uncoordinated and value destructive enforcement proceedings.

30. The Monitor is supportive of the proposed DIP Facility and the granting of the DIP Lender's Charge.

Expanding and Increasing the Administration Charge

31. 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:

- (a) an increase to the Administration Charge up to the maximum amount of \$1,500,000; and

- (b) 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.

32. The increased quantum of the Administration Charge was determined by the Applicants, with the assistance of the Monitor, and is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge during the Stay Period.

33. 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.

34. The Monitor is supportive of the proposed increase to the Administration Charge.

Priority of the Charges

35. 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.

36. 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.

37. 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. The persons benefiting from the Encumbrances have been given notice of the within motion and the proposed form of ARIO.

Other Grounds

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

39. 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 of the *Courts of Justice Act*, R.S.O. 190, c. C. 43, as amended.

40. 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:

41. The Pre-Filing Report of KSV as proposed Monitor dated January 23, 2024 and the appendices thereto.

42. The First Report of the Monitor and the appendices thereto, to be filed.

43. The Affidavits of Robert Clark sworn January 23, 2024 and January 28, 2024, and the exhibits thereto.

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

January 28, 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 January 31, 2024)**

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Applicants

**AFFIDAVIT OF ROBERT CLARK
(Sworn January 28, 2024)**

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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

TAB A

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 28TH DAY OF JANUARY, 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.

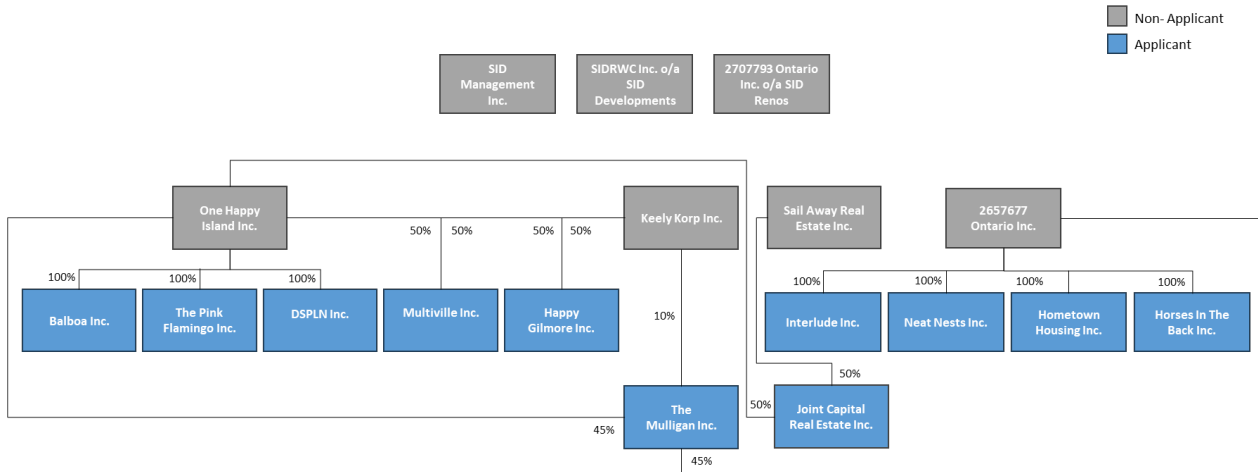
16. Given the Applicants' liquidity crisis, these CCAA proceedings present the only practical means of preserving and maximizing the value of the Business and the Properties for the benefit of the Applicants' stakeholders while the Applicants pursue a comprehensive refinancing and/or restructuring transaction 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. Sutor
Simcoe	CV-23-00000073-0000	Aris Stigter	Interlude Inc. and Mr. Sutor
Cochrane	CV-23-00000087-0000	Trevor Brunette	Interlude Inc., Mr. Sutor, Brandon Solomon and 1919832 Ontario Inc.
Parry Sound	CV-23-00000105-0000	Michel Eldebs and Milad Eldebs	Interlude Inc. and Mr. Sutor
Parry Sound	CV-23-00000111-0000	1896891 Ontario Inc., Sofia Pino and Mark Pino	Interlude Inc. and Mr. Sutor
Cochrane	CV-23-00000238-0000	MLB Holdings Limited	Interlude Inc. and Mr. Sutor
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. Sutor
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. Sutor 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. Sutor

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)**

BENNETT JONES LLP

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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 28TH DAY OF JANUARY, 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.

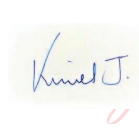
45. **THIS COURT ORDERS** that, notwithstanding paragraph 44 of this Order, each of the Applicants, the Monitor or the Lender Representative Counsel may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties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

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Tel: (416) 777-6254
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Thomas Gray (LSO# 82473H)
Tel: (416) 777-7924
Email: grayt@bennettjones.com

Lawyers for the Applicants

TAB C

THIS IS **EXHIBIT "C"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 28TH DAY OF JANUARY, 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

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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.

TAB D

THIS IS **EXHIBIT "D"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 28TH DAY OF JANUARY, 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

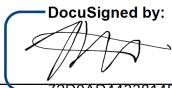
The headings of this Agreement are for convenience and reference only and shall not be considered in construing the provisions hereof.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]


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,

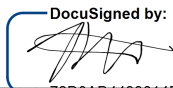
SID MANAGEMENT INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

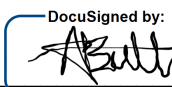
SIDRWC INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

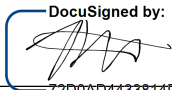
SID DEVELOPMENTS INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

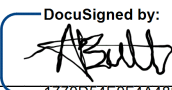
SID RENOS

Per: 
Name: Aruba Butt
I have authority to bind the corporation

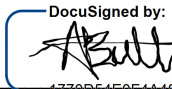
RWC MANAGEMENT INC.

Per: 
Name: Robert Clark
I have authority to bind the corporation

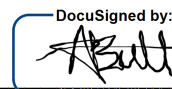
DSPLN INC.

Per: 
Name: Aruba Butt
I have authority to bind the corporation


BALBOA INC.

Per: 
Name: Aruba Butt
I have authority to bind the corporation

THE PINK FLAMINGO INC.

Per: 
Name: Aruba Butt
I have authority to bind the corporation

MULTIVILLE INC.

Per: 
Name: Aruba Butt
I have authority to bind the corporation

HAPPY GILMORE INC.

Per: DocuSigned by:
Aruba Butt
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Name: Aruba Butt
I have authority to bind the corporation

ONE HAPPY ISLAND INC.

Per: DocuSigned by:
Aruba Butt
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Name: Aruba Butt
I have authority to bind the corporation

KEELY KORP INC.

Per: DocuSigned by:
Ryan Molony
35DC35288E3C4A4...
Name: Ryan Molony
I have authority to bind the corporation

2657677 ONTARIO INC.

Per: DocuSigned by:
Dylan Suitor
369876E71BC24C0...
Name: Dylan Suitor
I have authority to bind the corporation

INTERLUDE INC.

Per: DocuSigned by:
Dylan Suitor
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Name: Dylan Suitor
I have authority to bind the corporation

OLD THING BACK INC.

Per: DocuSigned by:
Dylan Suitor
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Name: Dylan Suitor
I have authority to bind the corporation

UPGRADE HOUSING INC.

Per: DocuSigned by:
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HAPPYTOWN HOUSING INC.

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Name: Dylan Suitor
I have authority to bind the corporation

HOMETOWN HOUSING INC.

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Name: Dylan Suitor
I have authority to bind the corporation

UPTOWN FUNK INC.

Per: DocuSigned by:
Dylan Suitor
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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 prepetition 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.

T A B L E

THIS IS **EXHIBIT "E"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 28TH DAY OF JANUARY, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)

FINANCIAL ADVISOR ENGAGEMENT AGREEMENT

(this “**Agreement**”)

BY AND AMONG: Those entities listed in Schedule “A” Schedule “A” (collectively, the “**Debtor Companies**” and each, a “**Debtor Company**”)

AND: Howards Capital Corp. (“**HC**”)

RECITALS:

A. HC and certain of the Debtor Companies are party to an amended and restated financial advisor engagement letter dated September 27, 2023, which is effective as of August 5, 2023 (the “**Original Engagement Letter**”), pursuant to which HC agreed to perform certain advisory services for the counterparties thereto, including certain of the Debtor Companies.

B. Pursuant to Section 4 of the Original Engagement Letter, the counterparties to the Original Engagement Letter, including certain of the Debtor Companies, agreed that in the event all or substantially all of such counterparties commenced debtor-in-possession proceedings under insolvency legislation (including the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), they would seek an order of the applicable court: (i) appointing HC as either financial advisor or chief restructuring officer, on commercially reasonable terms substantially the same as those in the Original Engagement Letter (including the compensation terms in Section 2 thereof); (ii) granting a priority charge (subordinate only to the administration charge, the directors’ and officers’ charge and any charge securing debtor-in-possession or interim financing) securing the obligations to HC as chief restructuring officer or financial advisor; and (iii) providing for customary protections and limitations of liability ordinarily accorded to chief restructuring officers or financial advisors, as applicable, in comparable proceedings.

C. The Debtor Companies have commenced proceedings under the CCAA (the “**CCAA Proceedings**”) pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), among other things, granting the Debtor Companies relief under the CCAA, and appointing KSV Restructuring Inc. (“**KSV**”) as monitor of the Debtor Companies (if appointed in such capacity, the “**Monitor**”).

D. Having obtained the Initial Order, the Debtor Companies intend to return to Court at a comeback hearing (the “**Comeback Hearing**”), where they will seek an amended and restated Initial Order (the “**ARIO**”), among other things, approving this Agreement and the Debtor Companies’ ability to borrow under a debtor-in-possession credit facility to finance their working capital requirements and other general corporate purposes, post-filing expenses and costs.

E. Subject to the granting of the ARIO, the Debtor Companies party thereto shall continue to retain HC under the terms of the Original Engagement Letter until the Effective Date (as defined below).

NOW THEREFORE in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Agreement shall commence on the date (the “**Effective Date**”) that the Court grants the ARIO and approves this Agreement in form and substance acceptable

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.

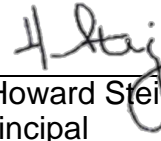
(l) **Currency.** All financial references in this Agreement are to Canadian dollars unless otherwise indicated.

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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: _____

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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.

T A B F

THIS IS **EXHIBIT "F"** REFERRED TO IN THE AFFIDAVIT
OF ROBERT CLARK, SWORN BEFORE ME
THIS 28TH DAY OF JANUARY, 2024.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



January 26, 2024

The entities listed on Schedule A attached

Attention: Robert Clark

Dear Mr. Clark:

Re: Debtor-in-Possession Financing under the *Companies' Creditors Arrangement Act* ("CCAA")

This agreement (the "**Agreement**") describes the terms under which Harbour Mortgage Corp. (FSRA License #10290) or its nominee or assignee (the "**Lender**") is prepared to provide financing to the CCAA Entities (as defined below), subject to the satisfaction of the conditions described in this Agreement. Capitalized terms used and not otherwise defined in this Agreement have the meaning ascribed to them in the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted in the CCAA Entities' CCAA proceedings on January 23, 2024.

Borrower(s)	The entities listed on Schedule A attached (the " CCAA Entities " or the " Borrowers " and each a " CCAA Entity " or " Borrower ").
DIP Facility	Non-revolving, super-priority, credit facility (the " DIP Facility ") in the aggregate amount of up to \$12,000,000.00, inclusive of principal and an Interest Reserve (as defined below), but excluding unpaid fees (the " Maximum Amount ").
Purpose	The DIP Facility is solely for the purpose of funding the following during the CCAA proceedings: (a) professional fees and expenses incurred by the Monitor, the Lender Representative Counsel, the Borrowers and any financial advisor retained by the Borrowers with the consent of the Monitor (the " Financial Advisor ") in respect of the DIP Facility and the CCAA proceedings, except for any success or completion fee that may become due to the Financial Advisor; (b) transaction costs, legal fees, and expenses incurred by the Lender in connection with the DIP Facility; (c) the Interest Reserve; (d) property tax arrears estimated at \$2,100,000.00; (e) renovations to be completed on the Collateral estimated at \$4,100,000.00; (f) critical vendor payments estimated at \$600,000.00; (g) the operating and property and renovation management costs, expenses and liabilities of the CCAA Entities (including, without limitation, wages and active employee benefits, insurance, security and necessary expenditures); (h) utilities owed by the CCAA Entities and deposits reasonably requested by the providers thereof; and (i) such other costs and expenses as agreed to in advance by the Lender, in writing.
Availability	Subject to the satisfaction of the conditions summarized in this Agreement, and compliance with the DIP Approval Order (as defined below), advances (each an " Advance " and collectively " Advances ")

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	<p>under the DIP Facility will be made available in tranches of no less than \$500,000.00, as requested by the Borrowers pursuant to a drawdown certificate issued by the Borrowers and approved by the Monitor (each an “Advance Request”), which in aggregate shall not exceed the Maximum Amount. Advances shall be funded by wire transfer into an account designated by the Borrowers. The Lender is entitled to an administration fee of \$500 for each Advance.</p>
Repayment	<p>The Borrowers are to repay all obligations owing under the DIP Facility, including without limitation, interest, fees, expenses and other amounts payable by the Borrowers (the “DIP Obligations”) by no later than the earliest to occur of (the “DIP Facility Termination Date”): (a) October 31, 2024, as such date may be extended by the CCAA Entities (with the consent of the Monitor) and the Lender in writing (“Repayment Date”); or (b) an Event of Default (as defined below) that has not been remedied within any applicable cure period; or (c) the effective date of any CCAA plan of arrangement.</p> <p>Amounts outstanding under the DIP Facility, including all principal, accrued interest, fees and other amounts then unpaid with respect thereto, shall be due and payable in full on the DIP Facility Termination Date, and the DIP Facility shall be automatically terminated, with no further notice.</p> <p>All asset sales or other dispositions by the Borrowers, including in the ordinary course of business, shall be approved by the Lender and 100% of the net cash proceeds of such asset sales shall be applied to repay amounts outstanding under the DIP Facility, subject to any amounts the Monitor believes need to be reserved in respect of the Administration Charge which is to rank in priority to the DIP Charge (as defined below).</p>
Voluntary Payments	<p>The Borrowers may make repayments of not less than \$500,000.00 on account of the DIP Obligations at any time and from time to time without bonus or penalty but on two days’ prior written notice.</p>
Interest Rate	<p>Interest on the principal amount of each Advance outstanding from time to time shall be calculated at the greater of Royal Bank prime rate + 4.80% or 12.00% per annum, which interest shall be calculated on the daily outstanding balance owing under the DIP Facility, not in advance, and shall be compounded monthly on the last day of each month and shall be payable from the Interest Reserve on the first day of each month.</p>
Interest Reserve	<p>The Lender shall reduce the loan availability by \$1,000,000.00 to cover interest payments (the “Interest Reserve”). The initial Advance Request shall include \$250,000.00 to fund the Interest Reserve account. The Interest Reserve account shall be replenished (at the Lender’s discretion, acting reasonably) on a quarterly basis, or more often if required, based on actual loan utilization. If the Interest Reserve of \$1,000,000.00 is depleted prior to the DIP Facility being repaid in full, the Borrowers shall be responsible to pay all remaining required interest payments.</p>


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Fees	<p>The Borrowers will pay the following fees:</p> <ul style="list-style-type: none"> • a non-refundable commitment fee in the amount of \$240,000.00 which shall be paid from the initial Advance; • if the loan is extended by the Lender at its sole discretion for a period not to exceed 6 months, an extension fee of \$120,000.00 will be payable in full on the Repayment Date; and • all reasonable legal fees and disbursements of legal counsel incurred by the Lender in connection with the DIP Facility.
Joint and Several Obligations	<p>The obligations and liabilities of the Borrowers hereunder shall be joint and several.</p>
Security	<p>The payment and performance of the DIP Obligations shall be secured by a super-priority Court ordered charge in favour of the Lender (the “DIP Charge”) over all of the property, assets and undertakings of the CCAA Entities, including the real property of the Borrowers listed on Schedule B attached (the “Collateral”), all personal property and undertakings of the Borrowers pursuant to the <i>Personal Property Security Act</i> (Ontario) (the “PPSA”) and shall include a general assignment of rents and leases.</p> <p>The DIP Charge will rank in priority to all other encumbrances of any kind whatsoever except for (a) a Court ordered administration charge to secure payment of professional fees of, among others, the Borrowers’ counsel, the Monitor and its legal counsel in a principal amount not to exceed \$1,500,000.00 (the “Administration Charge”) and (b) any permitted encumbrances as provided for in the DIP Approval Order (as defined below) approved by Lender (“Permitted Encumbrances”).</p> <p>The charges applicable in the CCAA shall rank in the following order of priority: first, the Administration Charge, second, the DIP Charge, and third, a Court ordered charge to secure the payment of any success or completion fee and certain other obligations of the Borrowers in favour of the Financial Advisor in a principal amount not to exceed \$1,500,000.00 (the “FA Charge”). For greater certainty, all claims of the secured and unsecured creditors of the CCAA Entities shall not be Permitted Encumbrances and shall rank subsequent in priority to the DIP Charge.</p> <p>The Lender may take such steps from time to time as it deems necessary or appropriate to file, register, record or perfect the DIP Charge.</p>
Conditions Precedent to the DIP Facility and to Advances	<p>The DIP Facility will become effective upon, and the ability of the Borrowers to obtain Advances from time to time shall be subject to, the satisfaction of the following conditions:</p> <ul style="list-style-type: none"> • the delivery to the Lender, with a copy to the Monitor, of an Advance Request; • an Order in the CCAA proceedings, in form and content satisfactory to the Lender (the “DIP Approval Order”) will have been obtained.


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	<p>Without limiting the generality of the foregoing, the DIP Approval Order shall (a) approve the DIP Facility and this Agreement; (b) grant the DIP Charge subject only to the Administration Charge and the Permitted Encumbrances; (c) treat the Lender as an unaffected creditor in the CCAA proceedings and provide for the exclusion of the Lender from any stay of proceedings in respect of any Advances; and (d) appoint the Monitor. The DIP Approval Order shall be in full force and effect and, shall not have been stayed, reversed, vacated, or otherwise amended, in any manner without the prior written consent of the Lender;</p> <ul style="list-style-type: none"> ● there will be no pending appeals, injunctions or other legal impediments relating to the completion of the DIP Facility or pending litigation seeking to restrain or prohibit the completion of the DIP Facility; ● the representations and warranties in this Agreement will be true and correct in every material respect and the Borrowers shall have complied in all material respects with all covenants under this Agreement; ● all fees and expenses owing to the Lender shall have been paid, or shall be paid from the contemplated Advance; ● registration of the DIP Charge under the PPSA; ● all property tax arrears are to be paid at closing; ● no Event of Default will have occurred or be continuing; and ● the Lender shall not have demanded repayment of the DIP Obligations.
<p>Representations and Warranties</p>	<p>To induce the Lender to make the DIP Facility available to the Borrowers, the Borrowers represent and warrant to the Lender the following (which representations and warranties will be deemed to be repeated upon each Advance being made to the Borrowers):</p> <ul style="list-style-type: none"> ● the Borrowers are corporations duly incorporated, and validly existing under the laws of their jurisdiction of incorporation and are duly qualified, licensed or registered to carry on business under the laws applicable to each of them in all jurisdictions in which the nature of their assets or business makes such qualification necessary; ● the Borrowers have all requisite corporate power and authority to own and operate their properties, assets and business, and to enter into and perform their obligations under this Agreement, subject to the DIP Approval Order to be issued by the Court; ● the execution and delivery of this Agreement by the Borrowers and the performance by the Borrowers of the obligations hereunder have been duly authorized by all necessary corporate action and no authorization under any applicable law, and no registration, qualification, designation, declaration or filing with any Governmental Authority, is or was necessary therefor other than obtaining the DIP Approval Order, where the term “Governmental Authority” herein means any domestic or foreign (a) federal, provincial, state, municipal,

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local or other government, (b) any governmental or quasi-governmental authority of any nature, including any governmental ministry, agency, branch, department, court, commission, board, tribunal, bureau or instrumentality, or (c) any body exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature;

- the businesses of the Borrowers have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the businesses have been or are being carried on;


- each Borrower has good and marketable title to its property and assets including the real property of the Borrowers listed on Schedule B, and no Person has any agreement, option, or right to acquire an interest in such property other than in the ordinary course of business of the Borrowers;

- subject to obtaining the DIP Approval Order and the terms thereof, all consents, notices and approvals necessary for each Borrower to enter into the transactions contemplated by this Agreement and the other Loan Documents to which it is a party have been obtained;

- subject to obtaining the DIP Approval Order and the terms thereof, the execution, delivery and performance by each Borrower of this Agreement and the other loan documents do not, and will not, contravene, violate or result in a breach of their constating documents, any shareholders' agreement, applicable laws or material contracts;

- each Borrower has in full force and effect policies of insurance with sound and reputable insurance companies in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses;

- except as disclosed to the Lender in writing and DSPLN Inc.'s fire code violation in respect of the property located at 456 Douglas Street, Sault Ste Marie ON P6C 1S9, and as it relates to the Collateral: (a) the Borrowers are and have been in material compliance with all applicable environmental laws, including obtaining, maintaining and complying with all permits required by any applicable environmental law; (b) none of the Borrowers are party to, and no real property currently or previously owned, leased or otherwise occupied by or for the Borrowers is subject to or the subject of, any contractual obligation or any pending or threatened order, action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability or similar notice under or pursuant to any environmental law; (c) no encumbrance in favour of any Governmental Authority securing, in whole or in part, environmental liabilities has attached to any property of the Borrowers and no facts, circumstances or conditions exist that could reasonably be expected to result in any such encumbrance attaching to any such property; (d) the Borrowers have not caused or suffered to occur a release or conditions creating any potential for a release at, to or from any real property; (e) the Borrowers are not and have not engaged in

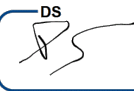
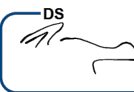
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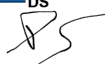




	<p>operations that, and no facts, circumstances or conditions exist that, in the aggregate, would have a reasonable likelihood of resulting in material environmental liabilities; and (f) the Borrowers have made available to the Lender copies of all existing environmental reports, reviews and audits and all documents pertaining to actual or potential environmental liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody or control;</p> <ul style="list-style-type: none"> ● once granted, the DIP Charge is effective to create, in favour of the Lender, a legal, valid, binding, and enforceable perfected security interest in the Collateral, without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements, or other agreements or documents; ● no (a) Event of Default has occurred; and (b) no event has occurred which, with the passage of time or the giving of notice, would constitute an Event of Default; and ● there are no unregistered charges, carried interests, rights of first refusal, or other rights for the benefit of third parties affecting the Collateral other than the rights of the Borrowers' existing secured and unsecured creditors, which shall rank subsequent in priority to the DIP Charge.
Positive Covenants	<p>Until the DIP Obligations have been repaid in full and the DIP Facility terminated, the Borrowers covenant and agree to do the following:</p> <ul style="list-style-type: none"> ● treat the Lender as an unaffected creditor in the CCAA proceedings in respect of the DIP Obligations and any other present and future indebtedness, liabilities and obligations of the Borrowers to the Lender; ● ensure that the DIP Obligations and any other present and future indebtedness, liabilities and obligations of the Borrowers to the Lender shall not be subject to any compromise or arrangement; ● comply with all orders made in the CCAA proceedings except to the extent such orders have been in whole or in part stayed, reversed, modified or amended; ● not request any order or variation of an order that would have an adverse effect on the DIP Charge; ● keep the Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Borrowers; ● deliver to the Lender such reporting and other information from time to time reasonably required by the Lender; ● use the Advances only for the purposes contemplated hereby; ● maintain their corporate existence; ● in respect of the period commencing on the date of CCAA proceedings, pay promptly when due all statutory priority payables, including those



	<p>payments which rank ahead of the DIP Charge, which shall include all statutory liens, trusts and other Crown claims, employee source deductions, HST and workplace safety and insurance premiums;</p> <ul style="list-style-type: none"> ● insure and keep insured, to the extent necessary, the Collateral on terms acceptable to the Lender, acting reasonably, and taking commercially reasonable steps to name the Lender as loss payee and additional insured; ● provide the Lender with written notice of any matter, act or thing that constitutes an Event of Default or would, with the passage of time, constitute an Event of Default; ● subject to notice rights of tenants and confidentiality arrangements acceptable to the Borrowers and the Lender, permit the Lender and its representatives access at any reasonable time to the premises, books, records, information or data of the Borrowers and permit the Lender to make copies of and abstracts from such records, information or data; and ● materially comply with all applicable laws, rules and regulations applicable to the business of the Borrowers, including without limitation environmental laws.
<p>Negative Covenants</p>	<p>Until the DIP Obligations have been repaid in full and the DIP Facility terminated, the Borrowers covenant and agree not to do or cause to be done the following:</p> <ul style="list-style-type: none"> ● apply for or consent to any change, amendment or modification to the DIP Approval Order that would adversely affect the Lender without the prior written consent of the Lender, or fail to oppose any application or motion for a change, amendment or modification to the DIP Approval Order that would adversely affect the Lender; ● create, assume, incur or suffer to exist any encumbrance, without the consent of the Lender, during the CCAA proceedings other than the DIP Charge, the Administration Charge, the FA Charge and any Permitted Encumbrance; ● borrow any further funds without the prior written consent of the Lender; ● make any corporate distributions of any kind whatsoever to any director, officer or shareholder of the Borrowers, unless approved by the Lender and the Monitor; ● enter into any transaction without the approval of the Court whereby all or substantially all of its undertaking, property and assets would become the property of any other person whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise, it being understood that a primary purpose of these proceedings is to conduct a process to restructure the Borrowers and solicit interest in a transaction for the Collateral and other assets of the


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	<p>CCAA Entities;</p> <ul style="list-style-type: none"> ● make or give any financial assurances, in the form of bonds, letter of credit, financial guarantees or otherwise to any Person or governmental authority; ● create, incur or permit to exist any liens, security interests or encumbrances on any assets, property and undertaking of any of the Borrowers, without the consent of the Lender, other than: (a) liens, security interests or other encumbrances in existence on the date hereof; (b) the Administration Charge; (c) the DIP Charge; (d) the FA Charge; and (e) any Permitted Encumbrance; ● except for renovations to the existing properties, make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise; ● change their names or liquidate, dissolve or merge, amalgamate or consolidate with any other Person; ● cease (or threaten to cease) to carry on their business or activities as currently being conducted or modify or alter in any material manner the nature and type of their operations, business or the manner in which such business is conducted; ● enter into, renew, amend, modify or assume any employment, consulting, management, service or analogous agreement or arrangement with any director, senior or executive officer or senior management of the Borrowers or any related party, or make any payment to any such Person in respect of any bonus, severance package or other payment of any kind whatsoever other than as consented to by the Monitor and the Lender; and ● perform or engage in any additional work or improvements to the Collateral, without the prior written consent and approval of the Lender.
<p>Reporting Covenants</p>	<p>Until the DIP Obligations have been repaid in full and the DIP Facility terminated, the Borrowers covenant and agree to do or cause to be done the following:</p> <ul style="list-style-type: none"> ● provide prompt written notice of any action, investigation, suit, proceeding, claim or dispute before any court, governmental department, bureau, agency or similar body affecting the Borrowers not stayed in the CCAA proceedings; ● no less than monthly, on a date and at a time convenient to the Lender, acting reasonably, and starting on the 1st business day of the month following the initial Advance, the Monitor shall make itself available on a conference call, in which the Monitor and the Lender will participate, where the Lender will be updated with respect to developments relating to the Borrowers and the CCAA proceedings; ● no less than monthly, on a date and at a time convenient to the Lender, acting reasonably, the Monitor and Borrowers shall make themselves available on a conference call, in which the Monitor, the Borrowers and

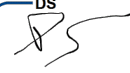
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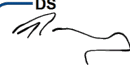
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	<p>the Lender will participate, where the Lender will be updated with respect to developments relating to the Borrowers and the CCAA proceedings;</p> <ul style="list-style-type: none"> ● the Borrowers and the Monitor shall provide updated monthly reporting including cash flow projections, progress of renovations with a detailed budget including cost to date and cost to complete, updated rent rolls and operating expenses for the Collateral, the Borrowers' financial statements (if available), updates on the implementation of the Borrowers' business plan including any discussions held to sell any of the Collateral and any other information the Lender may require; and ● provide confirmation that property taxes are current for the Collateral.
Expenses	<p>The Borrowers will reimburse the Lender for all reasonable documented fees (including legal and professional fees on a full indemnity basis), disbursements and out-of-pocket expenses incurred by the Lender in any manner in connection with the CCAA proceedings, this Agreement, any borrowings and any enforcement of this Agreement and the DIP Charge. All such fees, disbursements and expenses shall be included in the DIP Obligations and secured by the DIP Charge.</p>
Events of Default	<p>The occurrence of any one or more of the following events, without the prior written consent of the Lender, shall constitute an event of default ("Event of Default") under this DIP Facility:</p> <ul style="list-style-type: none"> (a) the issuance of an order terminating the CCAA proceedings or lifting the stay in the CCAA proceedings to permit the enforcement of any security against any of the Borrowers or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against any of the Borrowers; (b) the issuance of an order granting an encumbrance of equal or superior status to that of the DIP Charge, other than the priority payables, the Administration Charge and any Permitted Encumbrance; (c) the issuance of an order staying, reversing, vacating or otherwise modifying the DIP Charge or, any orders in a manner which adversely impacts the rights and interests of the Lender; (d) if (i) the DIP Approval Order is varied in a manner adverse to the Lender without the consent of the Lender or (ii) the stay of proceedings contained in any order is terminated or is lifted to allow an action adverse to the Lender; (e) the failure of the Borrowers to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder; (f) any representation or warranty by any of the Borrowers herein or in any certificate delivered by any of the Borrowers to the

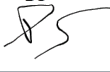
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	<p>Lender shall be incorrect or misleading in any material respect as of the date made or deemed made;</p> <p>(g) an order is made, a liability arises or an event occurs, including any change in the business, assets or conditions, financial or otherwise, of either of the Borrowers that will have a material adverse effect on the Borrowers;</p> <p>(h) any material violation or breach of any order by any Borrower;</p> <p>(i) the sale of all or substantially all the assets of the Borrowers that does not provide for the payment in full of the obligations owing under the DIP Facility;</p> <p>(j) the appointment of a receiver, receiver-manager, interim receiver, trustee in bankruptcy, proposal trustee or similar trustee, without the consent of the Lender;</p> <p>(k) if any of the Borrowers seek to obtain a “critical supplier charge” or similar protection pursuant to the CCAA in favour of any person, seek to continue the CCAA proceedings under the jurisdiction of a court other than the Court, or seek to initiate any restructuring proceedings other than the CCAA proceedings in any court or jurisdiction; and</p> <p>(l) the failure of the Borrowers to perform or comply with any other term or covenant under this Agreement and such default shall continue unremedied for a period of three (3) business days following notice from the Lender to the Borrowers.</p>
<p>Remedies</p>	<p>Upon the occurrence of an Event of Default, whether or not there is availability under the DIP Facility, without any notice or demand whatsoever, the right of the Borrowers to receive any Advance or other accommodation of credit shall be terminated, subject to any applicable notice provision in any order (as the case may be), including the DIP Approval Order, and the Lender may, subject to any applicable notice provision in any order, including the DIP Approval Order, declare the entire amount of the obligations under the DIP Facility to be immediately due and payable, without the necessity of presentment for payment, notice of non-payment or notice of protest (all of which are hereby expressly waived), whereupon all DIP Obligations shall become due and payable by the Borrowers. Without limiting the foregoing but subject to any applicable notice provision in any order issued in the CCAA proceedings, including the DIP Approval Order, the Lender shall have the right to: (a) set off or combine any amounts then owing by the Lender to a Borrower against the obligations of such Borrower to the Lender; (b) exercise any and all rights and remedies available to the Lender under the <i>Bankruptcy and Insolvency Act</i> (Canada), the PPSA, or other applicable law, in equity, pursuant to this Agreement or otherwise; and (c) apply to the Court for an order for the appointment of a receiver, interim receiver, or receiver and manager of some or all of the assets of the Borrowers, or</p>


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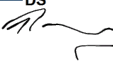
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	<p>a trustee in bankruptcy of the Borrowers. No failure or delay by the Lender in exercising any of its rights hereunder or at law shall be deemed a waiver of any kind. All payments received by the Lender shall be applied first to any fees due to the Lender and any expenses of the Lender, then to accrued and unpaid interest, and then to principal. The rights and remedies of the Lender under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA in the CCAA proceedings.</p>
<p>Payments; Calculation and Payment of Interest</p>	<ol style="list-style-type: none"> 1. All computations of interest or fees “per annum” for advances under the DIP Facility shall be made on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed, and using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest. 2. For the purposes of the <i>Interest Act</i> (Canada) and disclosure under such Act, wherever interest to be paid under this Agreement is to be calculated on the basis of any period of time that is less than a calendar year (a “deemed year”), such rate of interest shall be expressed as a yearly rate by multiplying such rate of interest for the deemed year by the actual number of days in the calendar year in which the rate is to be ascertained and dividing it by the number of days in the deemed year. 3. All payments made to the Lender will be made free and clear of any taxes, withholdings or other deductions of any nature. If any such taxes, deductions or withholdings are required by law to be made or paid and the Borrowers makes or pays such deductions or withholdings from payments it makes to the Lender, the Borrowers shall, as a separate obligation, pay to the Lender such amounts as are necessary to indemnify the Lender from any losses arising from such taxes, deductions or withholdings.
<p>Indemnity</p>	<p>Each of the Borrowers agrees to indemnify and hold harmless the Lender and each of its affiliates and the directors, officers, employees, partners, agents, trustees, administrators, managers, advisors and representatives of it and its affiliates (each, an “Indemnified Party”) from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities, including the reasonable fees, disbursements and other charges of counsel of any Indemnified Party, incurred in connection with the financing contemplated hereby or the use of proceeds of the DIP Facility and, upon demand, to pay and reimburse for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim, except to the extent they result from such Indemnified Party’s gross negligence or willful misconduct as determined by a court of competent jurisdiction. The indemnities granted under this Agreement shall survive any</p>

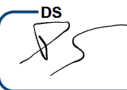
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	termination of the DIP Facility.
Successors and Assigns	The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender, which consent may be refused in the sole and absolute discretion of the Lender. The Lender may, at any time with the prior written consent of the Monitor, assign or participate to one or more assignees or participants all or a portion of its rights and obligations under this Agreement.
Further Assurances	Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and in each of the other loan documents and give effect to the transactions contemplated hereby and thereby.
Severance	If any term or provision of this Agreement is found, for any reason, to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision thereof or invalidate or render unenforceable such term or provision in any other jurisdiction.
Amendments in Writing:	This Agreement may not be amended or modified except pursuant to an agreement or agreements entered into by the parties hereto in writing.
Counterparts	This Agreement and any amendments, waivers, consents or supplements hereto may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by sending a scanned copy ("PDF" or "TIF") by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.
Notice	<p>All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed at the addresses set forth below (or to such other address that may be designated by the receiving party from time to time in accordance with this Section):</p> <p style="padding-left: 40px;">To any Borrower:</p> <p style="padding-left: 40px;">394 Appleby Line Burlington, ON L7L 2X8</p> <p style="padding-left: 40px;">Attention: Robert Clark Email: robbywclark@gmail.com</p> <p style="padding-left: 40px;">With a copy that shall not constitute notice to: Bennett Jones LLP</p>






	<p>First Canadian Place 100 King St. W. Suite 3400 Toronto, ON M5X 1A4</p> <p>Attention: Sean Zweig / Josh Foster Email: zweigs@bennettjones.com / fosterj@bennettjones.com</p> <p>With a copy that shall not constitute notice to:</p> <p>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</p> <p>To the Lender:</p> <p>Harbour Mortgage Corp. 36 Toronto Street, Suite 500 Toronto, Ontario M5C 2C5</p> <p>Attention: Nelson Da Silva Email: ndasilva@harbourmortgage.ca</p> <p>With a copy to:</p> <p>Torkin Manes LLP 151 Yonge Street, Suite 1500 Toronto, Ontario M5C 2W7</p> <p>Attention: Len Rodness Email: lrodness@torkinmanes.com</p> <p>All Notices shall be delivered by personal delivery, nationally recognized overnight courier, facsimile or email of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Notice is effective upon receipt by the receiving party and if the party giving the Notice has complied with the requirements of this Section.</p>
Entire Agreement	This Agreement contains the entire agreement of the Borrowers and the Lender 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

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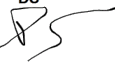
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	hereof.
Governing Law and Jurisdiction	The laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereto hereby irrevocably attorn to the exclusive jurisdiction of the Court with respect to any dispute arising under or in connection with this Agreement.

The following page is the signature page.

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If you are in agreement with the terms and conditions set out in this Agreement, please sign the acceptance set out below.

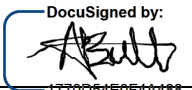
By:



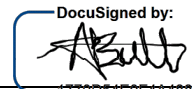
Nelson Da Silva
Chief Investment Officer
Harbour Mortgage Corp.

The undersigned accept and agree to the terms and conditions set out in this Agreement.

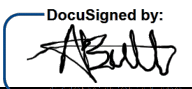
DSPLN INC.

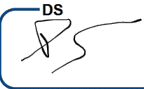
Per: 
Name: Aruba Butt
Title: Director

BALBOA INC.

Per: 
Name: Aruba Butt
Title: Director

THE PINK FLAMINGO INC.

Per: 
Name: Aruba Butt
Title: Director



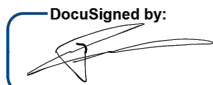
MULTIVILLE INC.

Per:  _____
35DC35288E3C4A4...
 Name: Ryan Molony
 Title: Director

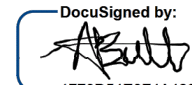
HAPPY GILMORE INC.

Per:  _____
35DC35288E3C4A4...
 Name: Ryan Molony
 Title: Director


INTERLUDE INC.

Per:  _____
369876E71BC24C0...
 Name: Dylan Suitor
 Title: Director

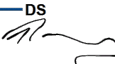
THE MULLIGAN INC.

Per:  _____
1770D54E0F4A488...
 Name: Aruba Butt
 Title: Director

NEAT NESTS INC.

Per:  _____
369876E71BC24C0...
 Name: Dylan Suitor
 Title: Director

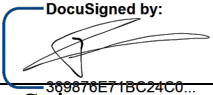
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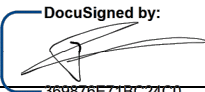
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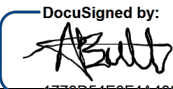
HOMETOWN HOUSING INC


Per: 
Name: Dylan Suitor
Title: Director

HORSES IN THE BACK INC.

Per: 
Name: Dylan Suitor
Title: Director

JOINT CAPTAIN REAL ESTATE INC.

Per: 
Name: Aruba Butt
Title: Director

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Schedule "A"

Balboa Inc.

DSPLN Inc.

Happy Gilmore Inc.

Hometown Housing Inc.

Horses in the Back Inc.

Interlude Inc.

Joint Captain Real Estate Inc.


Multiville Inc.

Neat Nests Inc.

The Mulligan Inc.

The Pink Flamingo Inc.

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Schedule "B"**Address**

39 Park Ave, Brantford, ON N3S 5H2 - SOLD NOV 1
 646 Brewster Haileybury ON, P0J 1K0
 13 Premier Ave W, Kirkland Lake ON P2N 2S5
 2 Station Rd S, Kirkland Lake ON P2N 3H3
 6 Alexander Ave, Kirkland Lake ON P2N 1C5
 67 Rand Ave, Kirkland Lake ON P2N 2T2
 26 King Street
 34 Duncan Avenue South
 61 Taylor Avenue
 10 Wilson Ave, Kirkland Lake ON P2N 1J7
 33 McKelvie Ave, Kirkland Lake ON P2N 2K3
 45 Woods St, Kirkland Lake ON P2N 3B7
 47 Queen St, Kirkland Lake ON P2N 2R2
 48 McCamus Ave, Kirkland Lake ON P2N 2J7
 6 Spruce St, Kirkland Lake ON P2N 2A5 & SCOTIA 1.0
 67 Government Rd E, Kirkland Lake ON P2N 1A4
 76 & 74 Prospect Ave, Kirkland Lake ON P2N 2W5
 92 Prospect Ave Kirkland Lake, ON P2N 2W8
 18 Rand Ave W, Kirkland Lake ON P2N 2S8
 40 Comfort Street, Kirkland Lake, ON, P2N 3B2
 557 Government Rd Coleman Township, ON P0J 1C0
 107 Government Rd, Kirkland Lake, ON P2N 1A0
 257 Ratter Lake Road, Markstay, Ontario P0M 2G0
 4299 Second Ave, Niagara Falls ON L2E 4G8 - SOLD NOV 1
 95 Birch Street, North Cobalt, Ontario P0J 1 CO
 12 Winfield Dr, Sault Ste Marie ON P6C 2N1
 156 St. George Ave E, Sault Ste. Marie, ON P6A 1X5
 182 Biggings Ave, Sault Ste Marie ON P6A 3T9
 258 St James St, Sault Ste Marie ON P6A 1P6
 353 Moody St, Sault Ste Marie ON P6C 3Z9
 359 Farwell Terr, Sault Ste. Marie ON P6C 4B6
 377 Wilson St, Sault Ste Marie ON P6B 2K7
 38 Birch St, Sault Ste Marie ON P6B 2J4
 4 Sheppard St, Sault Ste Marie ON P6A 3K7
 40 Algoma Ave. Sault Ste Marie, ON P6B 2P7
 400 Wallace Terrace, Sault Ste Marie, ON P6C 1L1
 108 Albert St, Sault Ste Marie, Ontario
 118 Grosvenor Ave, Sault Ste Marie ON P6B 2M1
 126 Tancred St, Sault Ste Marie ON P6A 2W3

District

Brantford
 Haileybury
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Kirkland
 Markstay
 Niagara Falls
 North Cobalt
 Sault Ste Marie
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128 Dennis St, Sault Ste Marie ON P6A 2X1	Sault Ste Marie
145 Biggings Ave, Sault Ste. Marie ON P6A 3T8	Sault Ste Marie
145 Carufel Ave, Sault Ste Marie ON P6C 4T5	Sault Ste Marie
1540 Wellington St E, Sault Ste Marie ON P6A 2R4	Sault Ste Marie
155 Wallace Terrace, Sault Ste Marie ON P6C 1K2	Sault Ste Marie
159 Wallace Terrace, Sault Ste Marie ON P6C 1K2	Sault Ste Marie
162 Spadina Ave, Sault Ste Marie ON P6C 5C7	Sault Ste Marie
168 Hudson St, Sault Ste Marie ON P6A 1T4	Sault Ste Marie
169 Andrew St, Sault Ste Marie ON P6A 1N2	Sault Ste Marie
174 Goulais Ave, Sault Ste Marie ON P6C 4Z6	Sault Ste Marie
176 March St, Sault Ste Marie ON P6A 2Z7	Sault Ste Marie
210 Cathcart St, Sault Ste Marie ON P6A 1E6	Sault Ste Marie
210 Glasgow Ave, Sault Ste Marie ON P6C 5G3	Sault Ste Marie
22 Pardee Ave. Sault Ste Marie ON P6B 1V8	Sault Ste Marie
237 Wellington St., Sault Ste Marie ON P6A 2L7	Sault Ste Marie
24 St. Andrews Ter, Sault Ste Marie ON P6C 1B1	Sault Ste Marie
254 Goulais Ave, Sault Ste Marie ON P6C 4Z9	Sault Ste Marie
282 Fourth Ave, Sault Ste Marie ON P6C 4L7	Sault Ste Marie
29 Alberta Ave, Sault Ste Marie, ON P6B 2N6	Sault Ste Marie
30 Melville Rd, Sault Ste Marie ON P6A 5J3	Sault Ste Marie
302 Franklin Street, Sault Ste Marie ON, P6C 4A8	Sault Ste Marie
31 Wellington Street W, Sault Ste Marie ON P6N 4G9	Sault Ste Marie
325 Alexandra St, Sault Ste Marie ON P6A 1J9	Sault Ste Marie
342 Sixth Ave, Sault Ste Marie ON P6C 4L1	Sault Ste Marie
352 Moody Street, Sault Ste Marie ON P6C 4A1	Sault Ste Marie
370 Pine Street, Sault Ste Marie ON P6B 3E5	Sault Ste Marie
376 Borden Ave Sault Ste Marie	Sault Ste Marie
405 Wellington St. E, Sault Ste Marie ON P6A 2M1	Sault Ste Marie
417 Dovercourt Road, Sault Ste Marie, ON, P6C 2A8	Sault Ste Marie
433 Woodcroft Ave, Sault Ste Marie ON P6C 2G3	Sault Ste Marie
456 Douglas Street, Sault Ste Marie ON P6C 1S9	Sault Ste Marie
488 Morin Street, Sault Ste Marie ON P6C 3E9	Sault Ste Marie
499 Second Line W, Sault Ste Marie ON P6C 2K3	Sault Ste Marie
502 John St, Sault Ste Marie ON P6C 3K3	Sault Ste Marie
51 Pardee Ave, Sault Ste Marie ON P6B 1V9	Sault Ste Marie
514 Wallace Terrace Sault Ste Marie	Sault Ste Marie
53 Wayne Crt, Sault Ste Marie ON P6A 4S5	Sault Ste Marie
538 Northland Road, Sault Ste Marie, Ontario P6C 3N0	Sault Ste Marie
567 Wellington Street W, Sault Ste Marie ON P6C 3T8	Sault Ste Marie
580 Morrison, Ave Sault Ste Marie ON P6B 3Z9	Sault Ste Marie
59 Trelawne Ave, Sault Ste Marie ON P6B 2M7	Sault Ste Marie
660 Wellington Street W, Sault Ste Marie, ON P6C 3T9	Sault Ste Marie

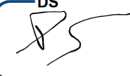
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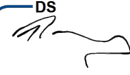

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278 Selby, Sault Ste Marie, ON, P6C 2P7	Sault Ste Marie
293 McNabb St, Sault Ste Marie, ON P6B 1Y7	Sault Ste Marie
299 Goulais Ave, Sault Ste Marie, ON, P6C 5A2	Sault Ste Marie
104 London Street, Sault Ste Marie ON P6A 2S4	Sault Ste Marie
223 Beverly St, Sault Ste Marie ON P6A 1S1	Sault Ste Marie
340 Korah Road, Sault Ste Marie ON P6C 4H3	Sault Ste Marie
561 John Street N Sault Ste. Marie	Sault Ste Marie
682 Wellington Street W, Sault Ste Marie ON, P6C 3V2	Sault Ste Marie
774 Bonney Street, Sault Ste Marie ON P6C 1A2	Sault Ste Marie
79 Kitchener Road, Sault Ste Marie ON P6B 4R1	Sault Ste Marie
20 Parkview Road St Catharines, ON L2M 5R9 & SCOTIA 1.0	St. Catherines
295 Van Horne, Sudbury ON P3B 1J1	Sudbury
390 Dell St, Sudbury ON P3B 2M1	Sudbury
521 Clinton Ave, Greater Sudbury ON P3B 2S8	Sudbury
721 Howey Dr, Sudbury ON P3B 1G9	Sudbury
93 Logan Ave, Greater Sudbury ON P3C 3E3	Sudbury
336 Eva Ave, Sudbury ON P3C 4N3	Sudbury
354 Antwerp Street, Sudbury ON P3C 4M7	Sudbury
431 Froot Rd, Sudbury ON P3C 4Z9	Sudbury
531 Tedman Ave Sudbury, ON P3C 5B1	Sudbury
740 Martindale Rd, Sudbury ON P3E 4H7	Sudbury
11 Pietro Street	Sudbury
117 Turner Avenue	Sudbury
127 Pine Street	Sudbury
204 Kathleen Street, Sudbury	Sudbury
340 Mabel Avenue	Sudbury
349 Burton Avenue	Sudbury
387 Morin Street	Sudbury
4 Ferguson Avenue	Sudbury
579 Elm Street	Sudbury
973 Lorne Street, Sudbury	Sudbury
118 Kathleen Street, Sudbury ON	Sudbury
332 Eva Avenue, Sudbury, ON	Sudbury
496 Whissel Street, Sudbury, ON	Sudbury
1244 Martindale Road, Sudbury ON P3E 4J5 - SOLD NOV 15	Sudbury
128 Dufferin St, Sudbury ON P3C 4W6 - DS - SOLD NOV 15	Sudbury
257 Jean St, Sudbury ON P3C 2S4	Sudbury
348 Poplar St, Sudbury ON P3C 2C3 & SCOTIA 1.0	Sudbury
369 Suffolk Lane, Sudbury ON P9C 4W8	Sudbury
374 Struthers St, Greater Sudbury ON P3E 1Y8	Sudbury
381 Eva Ave, Sudbury ON P3C 4N2 & SCOTIA 1.0	Sudbury
403 Lloyd St, Sudbury ON P3B 1P4	Sudbury

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432 Bessie Ave Sudbury, ON P3C 4H8	Sudbury
445 Bessie Avenue	Sudbury
452 Dupont St. Sudbury, ON P3C 2T6 & SCOTIA 1.0	Sudbury
454 Eva, Sudbury	Sudbury
455 Percy Ave, Sudbury ON P3A 1X5 & SCOTIA 1.0	Sudbury
464 Eva Avenue Sudbury ON P3C 4A4 & SCOTIA 1.0	Sudbury
536 Montague Ave Sudbury, ON P3C 4G8 & SCOTIA 1.0	Sudbury
6 Bloor St, Sudbury ON P3C 2K2	Sudbury
571 Lorne Street, Sudbury	Sudbury
70 Diorite Street, Sudbury	Sudbury
1621 Second St, Val Caron ON P3N 1K1	Sudbury
221 Dell St, Sudbury ON P3C 2Y5	Sudbury
296 Lloyd St, Sudbury ON P3B 1P1	Sudbury
81 Jean Street, Sudbury, ON, P3C 4W2	Sudbury
325 Montague Ave, Sudury, ON P3C 4G4	Sudbury
10 Stull Street, Capreol ON P0M 1H0	Sudbury
342 Donovan Street, Sudbury ON P3C 2Z5	Sudbury
5 Picard Street, Sudbury ON P3B 1K7	Sudbury
687 Cambrian Heights Drive, Sudbury ON P3C 5C3	Sudbury
697 St Clair Street, Sudbury ON P3E 4G9	Sudbury
108 Niagara Falls Road Thorold, ON L2V 1H4 & SCOTIA 1.0 - SOLD NOV 1	Thorold
101 Fourth Avenue, Timmins ON P4N 5E2	Timmins
156 Montgomery Ave, Timmins ON P4N 3G6	Timmins
164 Birch St N, Timmins ON P4N 6E2	Timmins
199 Cayuga Dr, Timmins ON P4N 7S9	Timmins
199 Oneil Ave, Timmins ON P4N 4K6	Timmins
219 Birch St N, Timmins ON P4N 6E4	Timmins
249 Malette Cres, Timmins ON P4P 1C4	Timmins
336 Mountjoy St S, Timmins ON P4N 1T9	Timmins
379 Elm St S, Timmins ON P4N 1X6	Timmins
38 Fourth Ave, Timmins ON P0N 1G0	Timmins
395 Tamarack St, Timmins ON P4N 6R5	Timmins
44 Elm St N, Timmins ON P4N 6A1	Timmins
47 Cecil Ave. Timmins, ON P0N 1H0	Timmins
470 Randall Dr, Timmins ON P4N 7V3	Timmins
6 Hollinger Lane, Timmins ON P0N 1G0	Timmins
6 Borden Ave, Timmin ON P4N 4E7	Timmins
100 Conley Street South, Timmins, ON P0N 1C0	Timmins
1026 Michener Blvd, Timmins ON P0N 1K0	Timmins
106 Commercial Ave., Timmins ON P4N 2X1	Timmins
106 Conley St S, Timmins ON P0N 1C0	Timmins

116 Main St, Timmins ON P0N 1H0	Timmins
129 Birch St. S, Timmins ON P4N 1G0	Timmins
136 Pine St N, Timmins ON P4N 6L1	Timmins
145-149 Fifth Ave, Timmins ON P4N 5K8	Timmins
147 Front St. Timmins, ON P0N 1H0	Timmins
147 Maple St. S Timmins, ON P4N 1Y8	Timmins
148 Elm St N, Timmins ON P4N 6A7	Timmins
148 Pine St N, Timmins, Ontario P4N 6L1	Timmins
152 Elm Street N, Timmins ON P4N 6A7	Timmins
156 Warner St, Timmins ON P0N 1H0	Timmins
157 Maple Street N, Timmins, ON P4N 6B7	Timmins
169 Balsam Street N, Timmins ON P4N 6G8	Timmins
180 Tamarack St, Timmins ON P4N 6B8	Timmins
187 Moore St, Timmins ON P0N 1H0	Timmins
210 Commercial Avenue, Timmins ON, P4N 2X4	Timmins
211 Middleton Ave, Timmins	Timmins
26 Avenue Rd, Timmins ON P4N 5C7	Timmins
273 Birch St. N Timmins, ON P4N 6E7	Timmins
277-279 Patricia Blvd, Timmins ON P6N 6Y3	Timmins
290 Sixth Ave Timmins, ON P4N 5N1	Timmins
306 Birch St North, Timmins ON P4N 6E6	Timmins
335 Spruce Street, Timmins ON P4N 2N2	Timmins
34 Carlin Ave, Timmins ON P4N 4K7	Timmins
351 Balsam Street S, Timmins, ON P4N 2E6	Timmins
375 Lonergan Blvd, Timmins ON P4P 1E2	Timmins
38 Laurier Ave. Timmins, ON P4N 4G8	Timmins
41 & 43 Way Ave., Timmins ON P4N 3C4	Timmins
44 Crescent Ave, Timmins ON P4N 4H8	Timmins
45 Maple St N, Timmins ON P4N 6B3	Timmins
468 Toke St, Timmins ON P4N 6V8	Timmins
485 Pine St S, Timmins ON P4N 2L5	Timmins
52 Broadway Ave, Timmins ON P0N 1H0	Timmins
54 Jubilee Avenue East	Timmins
55 Crescent Ave, Timmins, ON P4N 4H9	Timmins
55 Preston St, Timmins ON	Timmins
597 Spooner Dr, Timmins, ON P4N 4R6	Timmins
60 Montgomery Ave, Timmins ON P4N 3G2	Timmins
63 Jubilee Ave W, Timmins ON P4N 4M7	Timmins
680 Lillian Ave, Timmins ON P4N 3X3	Timmins
69 Way ave, Timmins ON P4N 3C4	Timmins
80 Elm St N, Timmins ON P4N 6A5	Timmins
84 Tamarack St, Timmins ON P4N 6P6	Timmins


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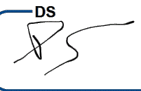

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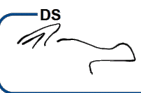



96 Commercial Ave, Timmins ON P4N 2X1	Timmins
99-101 Kent Ave, Timmins, ON P4N 2B9	Timmins
103 Dome Avenue	Timmins
103 Rea Street North, Timmins	Timmins
124 Balsam Street North, Timmins	Timmins
139-141 Balsam Street South	Timmins
140 Shamrock Avenue	Timmins
141 Elm Street North, Timmins	Timmins
142 Kent Avenue	Timmins
144 Evans Street, Timmins	Timmins
145 Elm Street North	Timmins
146 Birch Street South	Timmins
16 Laurier Avenue	Timmins
178 Cedar Street North	Timmins
187 Pine Street North	Timmins
203 Maple Street North, Timmins	Timmins
244 Hemlock Street	Timmins
248 Windsor Avenue	Timmins
250 Middleton Avenue	Timmins
254 Ross Avenue east	Timmins
280 Maclean Drive, Timmins	Timmins
285 Balsam Street North	Timmins
290 Cedar Street South	Timmins
309 Cedar Street North	Timmins
354 Diane Crescent	Timmins
386 Borden Avenue	Timmins
389 Tamarack Street	Timmins
4 Boundary Lane	Timmins
410 Maple Street South, Timmins	Timmins
462 Burke Street, Timmins	Timmins
478 Pine Street South	Timmins
49 Belanger Avenue, Timmins	Timmins
515 Cedar Street South	Timmins
549 Spooner Road, Timmins	Timmins
63 Dunn Avenue	Timmins
70 Powell Avenue	Timmins
78 Birch Street	Timmins
89 Wende Avenue	Timmins
95 Tamarack Street, Timmins	Timmins
98 Way Avenue	Timmins
259 Legion Drive	Timmins
668 Lillian Ave Timminis, ON P4N 3X3	Timmins



101 Dixon St, Timmins, ON P0N 1C0 & SCOTIA 1.0	Timmins
106 Toke St , Timmins, ON P4N 6T9	Timmins
129 Kent Ave, Timmins ON P4N 3B9	Timmins
13 Bloor Ave Timmins, ON P0N 1H0 & SCOTIA 1.0	Timmins
137 Rea St. N, Timmins ON P4N 4Z6 & SCOTIA 1.0	Timmins
150 Maple St. N, Timmins ON P4N 6B8 & SCOTIA 1.0	Timmins
156 Cameron Street N, Timmins ON P4N 5B7	Timmins
166 Maple St. S, Timmins ON P4N 1Y9	Timmins
170 Kent Ave, Timmins ON P4N 3C1	Timmins
179 Montgomery Ave, Timmins ON P4N 3G5	Timmins
221 Balsam St. S, Timmins ON P4N 2E3	Timmins
222 Maple Street South Timmins, ON P4N 1Z2	Timmins
225 Waterloo Rd, Timmins ON P4N 4X3	Timmins
231 Middleton Ave, Timmins ON P4N 3A4	Timmins
236 Birch Street N Timmins, ON P4N 6E5	Timmins
240 Elm St N, Timmins ON P4N 6A9	Timmins
261 Kimberly Ave, Timmins ON P4N 1L8	Timmins
264 Tamarack St, Timmins, ON P4N 6R2 & SCOTIA 1.0	Timmins
269 Kimberley Avenue, Timmins ON P4N 1L7 & SCOTIA 1.0	Timmins
276-280 Mountjoy St, Timmins ON P4N 1T6 & SCOTIA 1.06	Timmins
31 Windsor Ave, Timmins ON P4N 3A8	Timmins
337-345 Preston St, Timmins ON P4N 3P2 & SCOTIA 1.0	Timmins
344 Pine Street South, Timmins ON P4N 2L2	Timmins
348 Maple St S, Timmins ON P4N 1Z6	Timmins
360 Cedar St S, Timmins ON P4N 2H5 & SCOTIA 1.0	Timmins
382 Wilson Ave, Timmins ON P4N 2T8 & SCOTIA 1.0	Timmins
40 Crescent Ave, Timmins ON P4N 4H & SCOTIA 1.0	Timmins
427 Wilson Ave, Timmins ON P4N 2T9	Timmins
43 Crescent Ave, Timmins ON P4N 4H9	Timmins
430 Toke St, Timmins ON P4N 6V8 & SCOTIA 1.0	Timmins
463-465 Pine St South, Timmins ON P4N 2L5	Timmins
49 Dale Ave, Timmins ON P4N 1L9 & SCOTIA 1.0	Timmins
51 Laurier Ave, Timmins ON P4N 4G7	Timmins
550 Spooner Dr, Timmins ON P4N 4R5	Timmins
557-561 Norman St, Timmins ON P4N 1B3 & SCOTIA 1.0	Timmins
6128 King St, Timmins ON P0N 1C0	Timmins
62 Sterling Ave. W, Timmins ON P4N 3K3	Timmins
72 Wende Ave, Timmins ON P3N 3E2	Timmins
73 Croatia Ave, Timmins ON P0N 1G0	Timmins
735 Denise St, Timmins ON P4N 7M5	Timmins
86 Way Ave, Timmins, ON P4N 3C7	Timmins
9 Prospectors St, Timmins ON P0N 1G0	Timmins

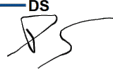
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94 Sixth Ave, Timmins ON P4N 5M2 & SCOTIA 1.0	Timmins
109 Bannerman	Timmins
141 Pine Street North, Timmins	Timmins
155 Cedar Street North	Timmins
157 Pine	Timmins
169-171 Rea	Timmins
227 Elm Street North, Timmins	Timmins
263 Kent Avenue	Timmins
290-292 Spruce, Timmins	Timmins
308 Belanger	Timmins
35 Taylor Ave, Timmins	Timmins
364 Cherry Street, Timmins	Timmins
378 Maple Street South, Timmins	Timmins
392 Maple Street South, Timmins	Timmins
402 Maclean Drive, Timmins	Timmins
432 Ann Avenue, Timmins	Timmins
576 Spruce Street South, Timmins	Timmins
582 Government Road Wst	Timmins
75 Elm Street	Timmins
87-89 Way Avenue	Timmins
90 Avenue Rd, Timmins	Timmins
122 Windsor Ave, Timmins ON P4N 3B2	Timmins
126 Crescent Ave, Timmins ON P4N 4J1	Timmins
156 Maple St S, Timmins ON P4N 1Y9	Timmins
227 Toke St, Timmins ON P4N 6V3	Timmins
228 Birch St N, Timmins ON P4N 6E5	Timmins
343 Maple Street s Timmins, ON P4N 7A6	Timmins
50 Cecil Ave, Timmins ON P0N 1H0	Timmins
106 Croatia Ave, Timmins ON P0N 1G0	Timmins
46 Charles Street, Timmins ON P4N 5C3	Timmins
65 Kirby Ave, Timmins ON P4N 1J3	Timmins
331 Spruce Street, Timmins ON, P4N 2N2	Timmins
54 Crownland Ave, Welland ON L3B 1W9	Welland

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

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ROBERT CLARK
(Sworn January 28, 2024)**

BENNETT JONES LLP

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Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) WEDNESDAY, THE 31ST
)
JUSTICE KIMMEL) DAY OF JANUARY, 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, and the First Report of KSV as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated January [●], 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), counsel to Howards Capital Corp. ("**HCC**"), 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:

- (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) with the consent of the Monitor, 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, 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.

RESTRUCTURING

11. **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; 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 (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY

12. **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.

13. **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.

14. **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

15. **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

16. **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

17. **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

18. **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

19. **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

20. **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.

21. **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.

22. **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.

23. **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.

24. **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 23 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).

25. **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.

26. **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.

27. **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.

28. **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

29. **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

30. **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.

31. **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) liaise and consult with the Applicants and the Lender Representative Counsel, 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;
- (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; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel, the Lender Representative Counsel and HCC, in its capacity as financial advisor to the Applicants under the Financial Advisor Engagement Agreement (as defined below) (the "**Financial Advisor**") (up to the maximum amount of \$150,000 and solely in respect of the Monthly Fees, Expenses and Consultant Expenses (each as defined in the Financial Advisor Engagement Agreement)) 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 advisors, both before and after the making of this Order; provided, for greater certainty, that any Completion Fee (as defined in the Financial Advisor Engagement Agreement) earned by the Financial Advisor shall not be secured by the Administration Charge. The Administration Charge shall have the priority set out in paragraphs 50 and 52 hereof.

APPROVAL OF FINANCIAL ADVISOR ENGAGEMENT AGREEMENT

39. **THIS COURT ORDERS** that the financial advisor engagement agreement dated as of January 24, 2024 between the Applicants and HCC and attached as Exhibit "E" to the Clark Affidavit (the "**Financial Advisor Engagement Agreement**"), and the retention of the Financial Advisor under the terms thereof, are hereby ratified and approved and the Applicants are authorized and directed to make the payments contemplated under the Financial Advisor Engagement Agreement when earned and payable in accordance with its terms and conditions.

40. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**Financial Advisor Charge**") on the Property as security for (i) the Completion Fee and (ii) any of the Applicants' obligations under the "Indemnity Provisions" attached as Schedule "B" to the Financial Advisor Engagement Agreement, which charge shall not exceed an aggregate amount of \$1,500,000. The Financial Advisor Charge shall have the priority set out in paragraphs 50 and 52 hereof.

41. **THIS COURT ORDERS** that the Financial Advisor and its controlling person, Howard Steinberg, 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 engagement by the Applicants as Financial Advisor or any matter referred to in the Financial Advisor Engagement Agreement, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Financial Advisor or its controlling person, Howard Steinberg, in performing their obligations under the Financial Advisor Engagement Agreement.

42. **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 Financial Advisor and its controlling person, Howard Steinberg, 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 Financial Advisor, or with leave of this Court on notice to the Applicants, the Monitor and the Financial Advisor. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Financial Advisor at least seven (7) days prior to the return date of any such motion for leave.

43. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the Financial Advisor, the Financial Advisor 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 Financial Advisor Engagement Agreement.

DIP FINANCING

44. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Harbour Mortgage Corp. (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.

45. **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 from time to time, the "**DIP Agreement**").

46. **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.

47. **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 50 and 52 hereof.

48. **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.

49. **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

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

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

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

Third – Financial Advisor Charge (to the maximum amount of \$1,500,000).

51. **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.

52. **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.

53. **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.

54. **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.

55. **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

56. **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.

57. **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**").

58. **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.

59. **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).

60. **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

61. **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 50 and 52 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

62. **THIS COURT ORDERS** that, notwithstanding paragraph 61 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.

63. **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.

64. **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.

65. **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.

66. **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.

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.**

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

**AMENDED AND RESTATED INITIAL
ORDER**

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

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Tel: (416) 777-7924
Email: grayt@bennettjones.com

Lawyers for the Applicants

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) ~~TU~~ WEDNESDAY, THE ~~23RD~~ 31ST
JUSTICE KIMMEL) DAY OF JAN~~R~~UARY, 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 ~~APPLICATION~~ 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, and **the First Report of KSV as the Court-appointed monitor of the Applicants (in such capacity, the "Monitor") dated January [●], 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 ~~KSV~~ **the Monitor**, the ~~proposed~~ Lender Representative Counsel (as defined below), **counsel to the DIP Lender (as defined below), counsel to Howards Capital Corp. ("HCC")**, 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~~ ~~(in such capacity, the "Monitor")~~ Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~ Motion and the ~~Application~~ 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. ~~2.~~ 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. ~~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.

7. ~~4.~~ **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:

(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) with the consent of the Monitor, 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) ~~(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.

8. ~~5.~~ **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, 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. ~~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.

10. ~~7.~~ **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.

RESTRUCTURING

11. ~~8.~~ **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 ~~\$50,000~~ 500,000 in any one transaction or ~~\$100,000~~ 1,500,000 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 (the "Restructuring").

NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY

12. ~~9.~~ **THIS COURT ORDERS** that until and including ~~February 2~~ 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.

13. ~~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.

14. **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

15. ~~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

16. ~~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

17. ~~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

18. ~~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.

NO PRE-FILING VERSUS POST-FILING SET-OFF

19. **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

20. ~~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.

21. ~~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.

22. ~~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.

23. ~~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.

24. ~~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~~23 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).

25. ~~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.

26. ~~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.

27. ~~22.~~ **THIS COURT ORDERS** that no action or ~~p~~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.

28. ~~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

29. ~~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~~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

30. ~~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.

31. ~~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) liaise and consult with the Applicants and the Lender Representative Counsel, 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) ~~(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) ~~(d)~~ monitor all payments, obligations and transfers as between the Applicants;
- (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) ~~(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;
- (j) ~~(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
- (k) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time to time.

32. ~~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.

33. ~~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.

34. ~~29.~~ **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.

35. ~~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.

36. ~~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.

37. ~~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.

38. ~~33.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel ~~and~~, the Lender Representative Counsel and HCC, in its capacity as financial advisor to the Applicants under the Financial Advisor Engagement Agreement (as defined below) (the "Financial Advisor") (up to the maximum amount of \$150,000 and solely in respect of the Monthly Fees, Expenses and Consultant Expenses (each as defined in the Financial Advisor Engagement Agreement)) 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~~ 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~~ advisors, both before and after the making of this Order; provided, for greater certainty, that any Completion Fee (as defined in the Financial Advisor Engagement Agreement) earned by the Financial Advisor shall not be secured by the Administration Charge. The Administration Charge shall have the priority set out in ~~paragraph 35~~ paragraphs 50 and 52 hereof.

APPROVAL OF FINANCIAL ADVISOR ENGAGEMENT AGREEMENT

39. **THIS COURT ORDERS** that the financial advisor engagement agreement dated as of January 24, 2024 between the Applicants and HCC and attached as Exhibit "E" to the Clark Affidavit (the "Financial Advisor Engagement Agreement"), and the retention of the Financial Advisor under the terms thereof, are hereby ratified and approved and the Applicants are authorized and directed to make the payments contemplated under the Financial Advisor Engagement Agreement when earned and payable in accordance with its terms and conditions.

40. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor Charge") on the Property as security for (i) the Completion Fee and (ii) any of the Applicants' obligations under the "Indemnity Provisions" attached as Schedule "B" to the Financial Advisor Engagement Agreement, which charge shall not exceed an aggregate amount of \$1,500,000. The Financial Advisor Charge shall have the priority set out in paragraphs 50 and 52 hereof.

41. THIS COURT ORDERS that the Financial Advisor and its controlling person, Howard Steinberg, 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 engagement by the Applicants as Financial Advisor or any matter referred to in the Financial Advisor Engagement Agreement, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Financial Advisor or its controlling person, Howard Steinberg, in performing their obligations under the Financial Advisor Engagement Agreement.

42. 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 Financial Advisor and its controlling person, Howard Steinberg, 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 Financial Advisor, or with leave of this Court on notice to the Applicants, the Monitor and the Financial Advisor. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Financial Advisor at least seven (7) days prior to the return date of any such motion for leave.

43. THIS COURT ORDERS AND DECLARES that, unless agreed to by the Financial Advisor, the Financial Advisor 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 Financial Advisor Engagement Agreement.

DIP FINANCING

44. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Harbour Mortgage Corp. (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.

45. 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 from time to time, the "DIP Agreement").

46. 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.

47. 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 50 and 52 hereof.

48. 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.

49. 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

50. THIS COURT ORDERS that the priorities of the Administration Charge, the DIP Lender's Charge and the Financial Advisor Charge (collectively, the "Charges"), as among them, shall be as follows:

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

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

Third – Financial Advisor Charge (to the maximum amount of \$1,500,000).

51. ~~34. THIS COURT ORDERS~~ THIS COURT ORDERS that the filing, registration or perfection of the ~~Administration Charge~~ Charges shall not be required, and that the ~~Administration Charge~~ 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

~~Administration Charge~~ Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

52. ~~35.~~ **THIS COURT ORDERS** that each of the ~~Administration Charge~~ Charges (as constituted and defined herein) shall constitute a charge on the Property and such ~~Administration Charge~~ 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; ~~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.~~

53. ~~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, any of the ~~Administration Charge~~ Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Administration Charge~~ Charges, or further Order of this Court.

54. ~~37.~~ **THIS COURT ORDERS** that the ~~Administration Charge~~ 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 ~~Administration Charge~~ 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 ~~Administration Charge~~ Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents 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 Applicants entering into the DIP Agreement, the creation of the Administration Charge 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.

55. ~~38.~~ **THIS COURT ORDERS** that ~~the Administration~~ 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

56. ~~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.

57. ~~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**").

58. ~~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.

59. ~~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

60. ~~43.~~ **THIS COURT ORDERS** that ~~the comeback~~ any interested party wishing to object to the relief sought in a motion brought by the Applicants or the Monitor in these proceedings shall ~~be heard on January 31, 2024 at 9:30 a.m. (Eastern Time) (the "Comeback Hearing")~~, 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

61. ~~44.~~ **THIS COURT ORDERS** that any interested party ~~(including the Applicants) may apply to this Court~~ that wishes to amend or vary this Order ~~at the Comeback Hearings shall be entitled to appear or bring a motion before this Court~~ on not less than ~~two~~ seven (27) business days' notice to the ~~service list in these proceedings~~ Service List and any other ~~Persons~~ 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 ~~Administration Charge~~ Charges and priorities set forth in ~~paragraph 35~~ paragraphs 50 and 52 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

62. ~~45.~~ **THIS COURT ORDERS** that, notwithstanding paragraph ~~44~~ 61 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.

63. ~~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.

64. ~~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.

65. ~~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.

66. ~~49.~~ **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.

SCHEDULE "A"
FORM OF OPT-OUT NOTICE

To	Chaitons LLP, in its capacity as : Court-appointed Lender Representative Counsel 5000 Yonge Street, 10 th 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
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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.

**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

**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
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Joshua Foster (LSO# 79447K)
Tel: (416) 777-7906
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Thomas Gray (LSO# 82473H)
Tel: (416) 777-7924
Email: grayt@bennettjones.com

Lawyers for the Applicants

Document comparison by Workshare 10.0 on Saturday, January 27, 2024 10:43:30 PM

Input:	
Document 1 ID	file:///C:/Users/fosterj/AppData/Local/Temp/Workshare/wmtemp1ceb8/DRAFT - Initial Order.DOC
Description	DRAFT - Initial Order
Document 2 ID	file:///C:/Users/fosterj/AppData/Local/Temp/Workshare/wmtemp1ceb8/DRAFT - ARIO.DOC
Description	DRAFT - ARIO
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	194
Deletions	99
Moved from	3
Moved to	3
Style changes	0
Format changes	0
Total changes	299

TAB 5

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) ~~WEEKDAY~~WEDNESDAY, THE #
JUSTICE —KIMMEL) 31ST
) DAY OF ~~MONTH~~JANUARY,
20YR2024

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 ~~[APPLICANT'S NAME]~~ (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 ~~APPLICATION~~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 ~~at 330 University Avenue, Toronto, Ontario~~ **by judicial videoconference via Zoom.**

ON READING the affidavits of ~~[NAME]~~Robert Clark sworn ~~[DATE]~~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, and the First Report of KSV as the Court-appointed monitor of the Applicants (in such capacity, the "Monitor") dated January [●], 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 ~~for [NAMES]~~ **to the**

Applicants, counsel to the Monitor, the Lender Representative Counsel (as defined below), counsel to the DIP Lender (as defined below), counsel to Howards Capital Corp. ("HCC"), and such other counsel that were present, no ~~one else~~ appearing ~~for~~ ~~[NAME]~~⁺ although duly served as appears from the affidavits of service of ~~[NAME]~~ sworn ~~[DATE]~~ Joshua Foster, filed, and on reading the consent of ~~[MONITOR'S NAME]~~ KSV to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~ Motion and the ~~Application~~ Motion Record is hereby abridged and validated² 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. ~~2.~~ THIS COURT ORDERS AND DECLARES that each of the Applicants is a company to which the CCAA applies.

⁺~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

²~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

6. ~~4.~~ THIS COURT ORDERS that the Applicants shall remain in possession and control of ~~its~~ 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 ~~its~~ their business (the "Business") and the Property. The Applicants ~~is~~ 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 ~~it~~ them, with liberty to retain such further Assistants as ~~it~~ they deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

~~5. — [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation~~

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

~~applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]~~

7. ~~6.~~ THIS COURT ORDERS that, subject to the Applicant 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:

- (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) with the consent of the Monitor, 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) ~~(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.

8. ~~7.~~ 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, 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 ~~to the Applicant~~ or to be supplied to any of the Applicants on or following the date of this Order.

9. ~~8.~~ **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) ~~Quebec Pension Plan, and (iv)~~ 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 ~~the Applicant.~~

~~9. THIS COURT ORDERS that until a real property lease is disclaimed [or resiliated]⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid~~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 ~~is~~ are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of ~~its~~their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **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 ~~(as hereinafter defined)~~, have the right to:

⁴~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

- (a) ~~permanently or temporarily cease, downsize or shut down any of its business or operations, [and to] dispose of redundant or non-material assets not exceeding \$•500,000 in any one transaction or \$•1,500,000 in the aggregate]~~⁵
- ~~(b) [terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate]; and~~
- (b) ~~(e)~~ pursue all avenues of refinancing ~~of~~, 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 (the "**Restructuring**").

~~12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims [or resiliates] the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer [or resiliation] of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

⁵Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

~~13. — THIS COURT ORDERS that if a notice of disclaimer [or resiliation] is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer [or resiliation], the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer [or resiliation], the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~APPLICANTS, THE BUSINESS OR THE PROPERTY

12. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~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 Applicant~~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.

13. **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.

14. 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

15. **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 ~~the~~any Applicant to carry on any business which ~~the~~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 ~~S~~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

16. **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

17. **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 ~~Applicant~~ 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 ~~each of~~ the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **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.⁶

~~⁶This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example,~~

NO PRE-FILING VERSUS POST-FILING SET-OFF

19. 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

20. 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* of Canada (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.

21. 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

~~number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

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.

22. 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.

23. 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.

24. 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 23 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).

25. 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.

26. 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.

27. 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.

28. 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

29. ~~19.~~ 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~~ 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.

~~DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE~~

~~20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any~~

~~⁷The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.~~

~~22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.~~

APPOINTMENT OF MONITOR

30. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~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~~s~~ with the powers and obligations set out in the CCAA or set forth herein and that the Applicants~~s~~ and ~~its~~their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants~~s~~ 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.

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

~~⁸Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

- (a) monitor the Applicants's 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) liaise and consult with the Applicants and the Lender Representative Counsel, 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) ~~(e)~~ assist the Applicants, to the extent required by the Applicants, in ~~its~~their dissemination, to the DIP Lender and its counsel ~~on a [TIME INTERVAL] basis~~ 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 ~~to be~~as agreed with the DIP Lender;
- (e) ~~(d)~~ advise the Applicants in ~~its~~their preparation of the ~~Applicant's~~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, ~~but not less than [TIME INTERVAL], or as otherwise~~ agreed ~~to by~~with the DIP Lender;
- (f) monitor all payments, obligations and transfers as between the Applicants;
- (g) ~~(e)~~ advise the Applicants in ~~its~~their development of the Plan (if any) and any amendments to the Plan;
- (h) ~~(f)~~ assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' ~~or shareholders'~~ meetings for voting on the Plan;
- (i) ~~(g)~~ 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 ~~Applicant's~~

~~business~~Business and financial affairs or to perform its duties arising under this Order;

(j) ~~(h)~~ 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

(k) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

32. ~~25.~~ **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.

33. ~~26.~~ **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 (~~the~~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.

34. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the ~~Applicant and~~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.

35. ~~28.~~ **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 ~~no~~ any liability or obligation as a result of ~~its~~ 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.

36. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~ 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 ~~is~~ are hereby authorized and directed to pay the accounts of the Monitor, counsel ~~for~~ to the Monitor and counsel ~~for~~ to the ~~Applicant~~ Applicants in these proceedings on a ~~[TIME INTERVAL]~~ bi-weekly basis or pursuant to such other arrangements agreed to between the Applicants and such parties and, in addition, the ~~Applicant is hereby authorized to pay to the Monitor, counsel to the~~ Monitor, and counsel to the ~~Applicant,~~ Applicants are hereby authorized to maintain their respective retainers ~~in, if any,~~ provided by the ~~amount[s]~~ Applicants prior to the commencement of \$● ~~[these proceedings, respectively,]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. ~~30.~~ **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.

38. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any, and~~ the ~~Applicant's~~ Applicants' counsel, the Lender Representative Counsel and HCC, in its capacity as financial advisor to the Applicants under the Financial Advisor Engagement Agreement (as defined below) (the "Financial Advisor") (up to the maximum amount of \$150,000 and solely in respect of the Monthly Fees, Expenses and Consultant Expenses (each as defined in the Financial Advisor Engagement Agreement)) 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~~ advisors, both before and after the making of this Order ~~in respect of these proceedings;~~ provided, for greater certainty, that any Completion Fee (as defined in the Financial Advisor Engagement Agreement) earned by the Financial Advisor shall not be secured by the Administration Charge. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~50 and ~~{40}~~52 hereof.

APPROVAL OF FINANCIAL ADVISOR ENGAGEMENT AGREEMENT

39. **THIS COURT ORDERS** that the financial advisor engagement agreement dated as of January 24, 2024 between the Applicants and HCC and attached as Exhibit "E" to the Clark Affidavit (the "**Financial Advisor Engagement Agreement**"), and the retention of the Financial Advisor under the terms thereof, are hereby ratified and approved and the Applicants are authorized and directed to make the payments contemplated under the Financial Advisor Engagement Agreement when earned and payable in accordance with its terms and conditions.

40. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**Financial Advisor Charge**") on the Property as security for (i) the Completion Fee and (ii) any of the Applicants' obligations under the "**Indemnity Provisions**" attached as Schedule "B" to the Financial Advisor Engagement Agreement, which charge shall not exceed an aggregate amount of \$1,500,000. The Financial Advisor Charge shall have the priority set out in paragraphs ~~{38}~~ and ~~{40}~~ herein. 50 and 52 hereof.

41. THIS COURT ORDERS that the Financial Advisor and its controlling person, Howard Steinberg, 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 engagement by the Applicants as Financial Advisor or any matter referred to in the Financial Advisor Engagement Agreement, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Financial Advisor or its controlling person, Howard Steinberg, in performing their obligations under the Financial Advisor Engagement Agreement.

42. 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 Financial Advisor and its controlling person, Howard Steinberg, 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 Financial Advisor, or with leave of this Court on notice to the Applicants, the Monitor and the Financial Advisor. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Financial Advisor at least seven (7) days prior to the return date of any such motion for leave.

43. THIS COURT ORDERS AND DECLARES that, unless agreed to by the Financial Advisor, the Financial Advisor 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 Financial Advisor Engagement Agreement.

DIP FINANCING

44. ~~32.~~ THIS COURT ORDERS that the Applicants ~~is~~ are hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ Harbour Mortgage Corp. (the "DIP Lender") in order to finance the Applicants's 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.

45. ~~33.~~ **THIS COURT ORDERS THAT** that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ DIP agreement between the Applicants and the DIP Lender dated as of ~~[DATE]~~ (the "Commitment Letter January 26, 2024 and attached to the Clark Affidavit as Exhibit "F" (as may be amended from time to time, the "DIP Agreement")), ~~filed~~.

46. ~~34.~~ **THIS COURT ORDERS** that the Applicants ~~is~~ 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 ~~Commitment Letter~~ DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants ~~is~~ are hereby authorized and directed to pay and perform all of ~~its~~ their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~ 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.

47. ~~35.~~ **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 ~~{38}~~ 50 and ~~{40}~~ 52 hereof.

48. ~~36.~~ **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 ~~Commitment Letter~~ 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 ~~Commitment Letter~~ 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.

49. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any ~~plan of arrangement or compromise~~ Plan filed by any of the Applicants under the CCAA, or any proposal filed by any of the Applicants under the ~~Bankruptcy and Insolvency Act of Canada (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

50. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the Administration Charge and~~, the DIP Lender's Charge and the Financial Advisor Charge (collectively, the "Charges"), as among them, shall be as follows⁹:

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

⁹~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

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

Third – Directors' Financial Advisor Charge (to the maximum amount of \$~~1,500,000~~).

51. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, 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.

52. ~~40.~~ **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge Charges (all 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.

53. ~~41.~~ **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 Directors' Charge, the Administration Charge or the DIP Lender's Charge Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge Charges, or further Order of this Court.

54. ~~42.~~ **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Commitment Letter, Charges and the Definitive Documents ~~and the DIP Lender's Charge~~ 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: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c)

the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (~~div~~) the provisions of any federal or provincial statutes; or (~~ey~~) 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 ~~Commitment Letter~~ 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 ~~it~~ 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 ~~Commitment Letter~~ 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 ~~Commitment Letter~~ DIP Agreement or the Definitive Documents, and the granting of the ~~Charges~~ 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.

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

SERVICE AND NOTICE

56. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in ~~[newspapers specified by the Court]~~ the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, ~~(the "CCAA Notice")~~; and (ii) within ~~five~~ 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 \$~~1000~~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 ~~S~~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.

57. ~~45.~~ **THIS COURT ORDERS** that ~~the E-Service Protocol of the~~The Guide Concerning Commercial List E-Service (the "~~Protocol~~"Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at: ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~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 ~~21~~13 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~'@':~~ https://www.ksvadvisory.com/experience/case/sid (the "Monitor's Website").

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

59. 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).

60. 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

61. 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 50 and 52 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

62. ~~47.~~ THIS COURT ORDERS that, notwithstanding paragraph 61 of this Order, each of the ~~Applicant or 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 ~~its~~their powers and duties hereunder or in the interpretation of this Order.

63. ~~48.~~ **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.

64. ~~49.~~ **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.

65. ~~50.~~ **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and ~~is~~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.

~~51. — THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.~~

66. ~~52.~~ **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 ~~Standard/Daylight~~ Time) on the date of this Order without the need for entry or filing.

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.co
m

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.

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

AMENDED AND RESTATED INITIAL
ORDER

BENNETT JONES LLP
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Lawyers for the Applicants

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Moved cell	
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Padding cell	

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	Count
Insertions	534
Deletions	275
Moved from	6
Moved to	6
Style changes	0
Format changes	0
Total changes	821

**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

MOTION RECORD
(Returnable January 31, 2024)

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