

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

THE HONOURABLE ) FRIDAY, THE 6<sup>TH</sup>  
 )  
JUSTICE OSBORNE ) DAY OF DECEMBER, 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")**

**ORDER**  
**(APPROVAL OF REPLACEMENT DIP FACILITY AND ANCILLARY MATTERS)**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

**ON READING** the Tenth Report of the Monitor dated November 29, 2024 (the "**Tenth Report**") and such other materials that were filed, and on hearing the submissions of counsel to the Monitor, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel, counsel to the Lion's Share Representative, counsel to Viscount Capital Inc., and such other counsel that were present, no else appearing although duly served as appears from the Affidavit of Service of Stephanie Fernandes dated November 29, 2024, December 2, 2024, December 4, 2024, and December 5, 2024, and the Affidavit of Service of Nathalie El-Zakhem dated December 3, 2024, filed;

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the manner and time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that terms used but not defined in this Order shall have the meaning given to them in the Tenth Report or the Second Amended and Restated Initial Order of this Court dated March 28, 2024 (the “SARIO”), as applicable.

## **EFFECTIVE TIME**

3. **THIS COURT ORDERS** that, for the purposes of this Order, “Effective Time” shall mean the date and time at which the Monitor serves on the Service List a certificate substantially in the form attached hereto at Schedule “A” (the “**Monitor’s Funding Certificate**”) certifying that the Monitor is in receipt of funds sufficient to repay in full all obligations of the Applicants owed to the DIP Lender under the DIP Agreement and the Definitive Documents in accordance with paragraph 12 of this Order.
4. **THIS COURT ORDERS** that all matters and actions that are authorized, directed or deemed under this Order to occur upon the Effective Time shall be deemed to occur simultaneously on the Effective Time irrespective of the actual time such matters or actions occurred.

## **STAY OF PROCEEDINGS**

5. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including February 28, 2025.

## **APPROVAL OF DIP ALLOCATION**

6. **THIS COURT ORDERS** that the DIP Allocation substantially in the form attached at Appendix “P” to the Tenth Report be and is hereby approved.

7. **THIS COURT ORDERS** that the Monitor shall hold each of the DIP Allocation amounts (the “**DIP Allocation Amounts**”) paid to the Monitor pursuant to Sale Agreements (as defined in the Omnibus Approval and Vesting Order of this Court dated December 6, 2024 (the “**Omnibus AVO**”)) in trust for the applicable Purchasers (as defined in the Omnibus AVO) who paid such DIP Allocation Amounts until payment in accordance with paragraph 12 of this Order.

#### **APPROVAL OF VISCOUNT DIP FACILITY**

8. **THIS COURT ORDERS** that the Term Sheet dated November 26, 2024 substantially in the form attached as Appendix “Q” to the Tenth Report (the “**Viscount DIP Term Sheet**”) be and is hereby approved and that the Monitor is hereby authorized and directed, *nunc pro tunc*, on behalf of the Applicants in accordance with the Order (Expansion of Monitor’s Powers) of this Court dated June 25, 2024 (the “**Expanded Powers Order**”), to enter into the Viscount DIP Term Sheet with such minor amendments as may be acceptable to the Monitor and to perform the Applicants’ obligations under the Viscount DIP Term Sheet with no personal or corporate liability of the Monitor in doing so.

9. **THIS COURT ORDERS** that the Monitor shall hold the Advance Amount (as defined in the Viscount DIP Term Sheet) in trust for Viscount Capital Inc. in accordance with the Viscount DIP Term Sheet until payment in accordance with paragraph 12 of this Order.

10. **THIS COURT ORDERS** that, effective upon and following the Effective Time, paragraphs 49 and 50 of the SARIO shall be deleted and replaced with:

49. **THIS COURT ORDERS** that the Applicants, by the Monitor on behalf of the Applicants in accordance with the Order (Expansion of Monitor’s Powers) of this Court dated June 25, 2024, are hereby authorized and empowered to obtain and borrow under a credit facility from Viscount Capital Inc. or its permitted assignee (the “**DIP Lender**”) provided that the borrowings under such credit facility shall not exceed \$4,850,000, plus interest, fees and expenses, unless permitted by further Order of this Court.

50. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the Term Sheet dated November 26, 2024 substantially in the form attached as Appendix “Q” to the Tenth Report of the Monitor dated November 29, 2024 (as may be amended and/or assigned from time to time, the "**DIP Agreement**").

11. **THIS COURT ORDERS** that, for greater certainty, for the purposes of this Order (including paragraph 12 of this Order), up to the Effective Time, all references to the DIP Lender, the DIP Agreement and the Definitive Documents shall continue to have the meanings given to those terms in the SARIO in effect as of the date of this Order.

#### **REPAYMENT OF EXISTING DIP AGREEMENT**

12. **THIS COURT ORDERS** that, upon the Effective Time, the Monitor, on behalf of the Applicants in accordance with the Expanded Powers Order, is hereby authorized and directed to repay all obligations outstanding to the DIP Lender under the DIP Agreement and the Definitive Documents from (i) cash on hand in the Applicants’ bank accounts and/or the Monitor’s trust account in respect of the Applicants (ii) the DIP Allocation Amounts held by the Monitor and (iii) amounts advanced pursuant to the Viscount DIP Term Sheet, in full and final satisfaction of all obligation of the Applicants owed to the DIP Lender under the DIP Agreement and the Definitive Documents.

#### **AMENDMENT TO CHARGES**

13. **THIS COURT ORDERS** that, effective upon and following the Effective Time:

- (a) the Administration Charge shall be reduced from \$1,500,000 to \$500,000;
- (b) the DIP Lender’s Charge shall be reduced from \$15,000,000 to \$4,850,000;
- (c) paragraph 55 of the SARIO shall be deleted and replaced with the following:

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

First – Administration Charge (to the maximum amount of \$250,000);

Second – DIP Lender's Charge (to the maximum amount of \$4,850,000, plus interest, fees and expenses); and

Third – the Administration Charge (to the maximum amount of \$250,000).

#### **ASSIGNMENT OF TENANT LEASES**

14. **THIS COURT ORDERS** that, effective upon and following the Effective Time, all of the applicable landlord's rights and obligations under Leases (as defined in the Tenth Report, but excluding "Assigned Leases" assigned, conveyed and transferred to a "Purchaser" pursuant to the Omnibus AVO) shall be assigned, conveyed and transferred to, and assumed by, the applicable Applicant which owns the Property to which such Lease relates pursuant to section 11.3 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and such assignment, conveyance and transfer shall be binding upon such Applicant and the tenant(s) under such Lease.

#### **APPROVAL OF MONITOR'S REPORTS, ACTIVITIES AND FEES**

15. **THIS COURT ORDERS** that each of the Seventh Report of the Monitor dated August 23, 2024, the Eighth Report of the Monitor dated October 23, 2024, the Ninth Report of the Monitor dated November 21, 2024 and the Tenth Report, and in each case the actions, conduct and activities of the Monitor as set out therein, are hereby approved; provided, however, in each case, that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approvals.

16. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP, as set out in the Tenth Report, the Affidavit of Noah Goldstein

sworn November 29, 2024 and the Affidavit of Ryan Jacobs sworn November 29, 2024 are hereby approved.

**GENERAL**

17. **THIS COURT ORDERS** that the Monitor, its counsel and other agents are hereby authorized to take all necessary steps and actions to effect each of the payments and distributions in accordance with the provisions of this Order from time to time, and shall not incur any liability as a result of making any such payments or distributions.

18. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the SARIO or any other Orders made in these proceedings; and (ii) all charges, security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property or real property registry system.

19. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any motions or applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Applicants,

any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that has or may be appointed in respect of any of the

Applicants and shall not be void or voidable by creditors of such entity, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

21. **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.

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**Schedule A – Form of Monitor’s Funding Certificate**

Court File No. CV-00713245-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY  
GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE  
PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE  
MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS  
INC. AND JOINT CAPTAIN REAL ESTATE INC. (collectively the  
“Applicants”, and each an “Applicant”)**

**MONITOR’S FUNDING CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Kimmel of the Ontario Superior Court of Justice (the "**Court**") dated March 28, 2024, KSV Restructuring Inc. was appointed as the monitor (the "**Monitor**") of the Applicants.

B. On March 28, 2024, the Court granted the Second Amended and Restated Initial Order of this Court (the "**SARIO**").

C. Pursuant to an Order dated December 6, 2024 (the "**DIP Repayment Order**"), the Court, among other things, authorized and directed the Monitor, on behalf of the Applicants in accordance with the Order (Expansion of Monitor’s Powers) of this Court dated June 25, 2024 (the "**Expanded Powers Order**"), to repay all obligations outstanding to the DIP Lender (as defined in the SARIO as of the date of the DIP Repayment Order) under the DIP Agreement and the Definitive Documents (each as defined in the SARIO as of the date of the DIP Repayment Order) in full and final satisfaction of all obligation of the Applicants owed to the DIP Lender under the DIP Agreement and the Definitive Documents.



THE MONITOR CERTIFIES the following:

1. The Monitor is in receipt of funds sufficient to repay in full all obligations of the Applicants owed to the DIP Lender under the DIP Agreement and the Definitive Documents in accordance with paragraph 12 of the DIP Repayment Order;

This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV RESTRUCTURING INC., in its  
capacity as Court-appointed Monitor of the  
Applicants and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the monitor.

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.

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

**ONTARIO  
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PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
APPROVAL OF REPLACEMENT DIP FACILITY AND  
ANCILLARY MATTERS)**

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