

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

THE HONOURABLE ) TUESDAY, THE 25<sup>TH</sup>  
 )  
JUSTICE OSBORNE ) DAY OF JUNE, 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  
(Expansion of Monitor’s Powers)**

**THIS MOTION**, made by the secured lenders of the Applicants, by their representative counsel, Chaitons LLP (“**Secured Lender Representative Counsel**”), appointed pursuant to the Initial Order of this Court dated January 23, 2024, as subsequently amended and restated by Orders dated February 15, 2024 and March 28, 2024 (as amended and restated, the “**SARIO**”), for an order expanding the powers of KSV Restructuring Inc., in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”) and related relief, was heard this day by judicial videoconference via Zoom.

**ON READING** the Fourth Report of the Monitor dated June 11, 2024, the Fifth Report of the Monitor dated June 17, 2024, the Supplement to the Fifth Report of the Monitor dated June 23, 2024, the Affidavit of Robert Clark sworn June 20, 2024, the Affidavit of Sofia Pino sworn June 14, 2024, the Affidavit of Paul Searle sworn June 14, 2024, the Affidavit of Andrew Adams sworn June 14, 2024, the Ancillary Order of this Court dated June 25, 2024, and such other materials that

were filed, and on being advised that each of the affected parties consents to the granting of this Order, and on hearing the submissions of Secured Lender Representative Counsel, counsel to the Applicants, Unsecured Lender Representative Counsel, counsel to the Monitor, counsel to The Fuller Landau Group Inc. in its capacity as court-appointed receiver and trustee in bankruptcy of The Lion's Share Group Inc., counsel to the DIP Lender, and such other counsel that were present, no one else appearing although duly served as appears from the affidavits of service, filed,

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used in this Order and not defined herein shall have the meanings ascribed to them in the SARIO.

### **EXPANSION OF MONITOR'S POWERS**

3. THIS COURT ORDERS that in addition to the powers and duties of the Monitor set out in the SARIO, any other Order of this Court granted in this CCAA Proceeding, the CCAA and applicable law, and without altering in any way the obligations of the Applicants in this CCAA Proceeding, the Monitor is hereby empowered and authorized, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicants to cause the Applicants, to, including without limitation:

- (a) exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories, and the placement of such insurance coverage as may be necessary or desirable;

- (c) manage, operate, and carry on the business of the Applicants, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Applicants, including, subject to paragraph 5 hereof, terminating any and all agreements between the Applicants and any of the SID Companies (as defined below) on twenty-one (21) days' written notice by the Monitor to the applicable SID Companies;
- (d) instruct consultants, appraisers, agents, experts, auditors, accountants, managers, property managers, counsel and any other advisors currently engaged or retained by the Applicants;
- (e) engage any other consultants, appraisers, agents, experts, auditors, accountants, managers, property managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- (f) receive and collect all monies and accounts now owed or hereafter owing to the Applicants and to exercise all remedies of the Applicants in collecting such monies;
- (g) settle, extend or compromise any indebtedness owing to the Applicants, including determining whether a court-ordered claims process is required;
- (h) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, in the name and on behalf of the Applicants;
- (i) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants and/or the Property, and to settle or compromise any such proceedings;
- (j) market any or all of the Property or pursue other alternative transactions in respect of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof, negotiating such terms and conditions of sale or other

transactions as the Monitor in its discretion may deem appropriate, including, but not limited to transactions in connection with the Sale and Investment Solicitation Process approved pursuant to the SISP Approval Order issued in this proceeding on April 12, 2024, as deemed appropriate by the Monitor;

- (k) report to, meet with and discuss with such affected Persons as the Monitor deems appropriate on all matters relating to the Property and this proceeding, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
- (l) apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof;
- (m) exercise any shareholder, partnership, joint venture or other rights which the Applicants may have; and
- (n) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so on behalf of the Applicants, to the exclusion of all other Persons, including the Applicants' directors, officers, employees and/or other representatives (including but not limited to Aruba Butt, Ryan Molony, Robert Clark and Dylan Suitor), and without interference from any other Person.

4. THIS COURT ORDERS that notwithstanding the SARIO, Bennett Jones LLP ("**Bennett Jones**") shall not be entitled to payment of any legal fees by the Applicants in connection with any services provided to, or for the benefit of, the Applicants or the principals of the Applicants (including any Additional Stay Parties) following the date of this Order, nor shall such fees be subject to the Administration Charge.

5. THIS COURT ORDERS that, without limiting the foregoing or the SARIO, each of SIDRWC Inc. o/a SID Developments, SID Management Inc. and 2707793 Ontario Inc. o/a SID Renos (collectively, the "**SID Companies**") shall, for a minimum period to be agreed upon

between the Monitor and the SID Companies, each acting reasonably, until the effective date of the termination by the Monitor of the applicable agreements between the Applicants and the SID Companies, or until further Order of this Court (the earlier of such periods being hereinafter the “**Transition Period**”):

- (a) continue to perform the services provided by them to the Applicants notwithstanding the transition of such services, in whole or in part to one or more alternative service providers, and continue to be remunerated, in accordance with their existing contracts, agreements and/or arrangements described in paragraphs 46-49 of the Affidavit of Robert Clark sworn January 23, 2024, with the Applicants, as may be required by the Monitor and in doing so shall exclusively report to and take direction from the Monitor on behalf of the Applicants, provided that the SID Companies shall not be required to pay for any costs or expenses whatsoever on the Applicants’ behalf without reimbursement;
- (b) forthwith remit any monies collected by them on behalf of the Applicants to the Monitor, including without limitation all rent collected on behalf of the Applicants, provided that the SID Companies shall not be required to pay for any costs or expenses whatsoever on the Applicants’ behalf without reimbursement;
- (c) subject to paragraph 7, as may be requested by the Monitor, cooperate with the Monitor in the provision of the transition services set out in Schedule “A” hereto and any other transition services as may be agreed to in writing by the Monitor and the SID Companies (collectively, the “**Transition Services**”) provided by the SID Companies to alternative service providers determined by the Monitor; and
- (d) refrain from incurring any obligations, or making any commitments, on behalf of any of the Applicants, including with respect to any ongoing or future renovations of the Applicants’ Property, without the prior written consent of the Monitor.

6. THIS COURT ORDERS that the Monitor shall serve on the Service List and the SID Companies, and post on the Monitor’s Website a certificate confirming the end of the Transition Period (the “**Monitor’s Transition Period Termination Certificate**”).

7. THIS COURT ORDERS that, during the Transition Period, the SID Companies shall be paid their reasonable fees and disbursements, in each case, at rates to be agreed to in writing by the Monitor and the SID Companies, each acting reasonably, in connection with the provision of the Transition Services. The Applicants are hereby authorized and directed to pay the accounts of the SID Companies in connection with the Transition Services on a monthly basis or pursuant to such other arrangements agreed to between the Monitor and the SID Companies.

8. THIS COURT ORDERS that the SID Companies, the Monitor and their respective Assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing the Transition Services requested by the Monitor, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the SID Companies or the Monitor, as applicable, as determined by this Court in a final order that is not subject to appeal or review.

9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the SID Companies and each of their respective Assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons are hereby authorized and permitted to disclose and transfer personal information of identifiable individuals to the Monitor but only to the extent desirable or required to negotiate or attempt to complete the Transition Services.

10. THIS COURT ORDERS that the banks and/or financial institutions which maintain each of the Applicants' bank accounts are directed to recognize and permit the Monitor and its representatives to complete any and all transactions on behalf of the Applicants and for such purpose, the Monitor and its representatives are empowered and shall be permitted to execute documents for, or on behalf of and in the name of the Applicants, and shall be empowered and permitted to add and remove persons having signing authority with respect to the accounts of the Applicants. The financial institutions maintaining such accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor for and on behalf of the

Applicants, and/or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person.

11. THIS COURT ORDERS that, notwithstanding anything contained in this Order, the Monitor is not, and shall not be or be deemed to be, a director, officer or employee of any of the Applicants.

12. THIS COURT ORDERS that, without limiting the provisions of the SARIO, the Applicants shall remain in possession and control of their respective Property and the Monitor shall not take, or be deemed to have taken, possession or control of such Property, or any part thereof.

13. THIS COURT ORDERS that the Monitor shall not be liable for any employee-related liabilities of the Applicants, if any, other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

14. THIS COURT ORDERS that: (i) in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the SARIO and any other Order of this Court, and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in carrying out of the provisions of this Order and exercising any powers granted to it hereunder; and (ii) the Monitor shall incur no liability or obligation as a result of exercising any powers granted to it hereunder, save and except for any gross negligence or wilful misconduct on its part.

15. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicants within the meaning of any relevant

legislation and that any distributions to creditors of the Applicants by the Monitor will be deemed to have been made by the Applicants.

16. THIS COURT ORDERS that the powers and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants with respect to such matters and, in the event of a conflict between the terms of this Order and those of the SARIO or any other Order of this Court, the provisions of this Order shall govern.

17. THIS COURT ORDERS that nothing contained in this Order or in the Ancillary Order shall affect the claims for costs against any Person in respect of this Order and the Ancillary Order, including, without limitation the claims against the Principals described in the Factum of the Secured Lenders. Any such claims shall be determined via a schedule to be fixed at a case conference to be convened as soon as reasonably practicable among any such Persons and their respective counsel.

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## **SCHEDULE "A"**

### **TRANSITION SERVICES**

- (a) The keys to each of the units, labelled by unit, shall be provided to the Monitor.
- (b) Copies of all available existing lease agreements shall be provided to the Monitor.
- (c) The Applicants' tenants' names, email addresses, phone numbers, and identification, to the extent available, shall be provided to the Monitor.
- (d) A list of all of the Applicants' tenants' methods of payment, including all pre-authorized payment methods, shall be provided to the Monitor.
- (e) Information concerning and the details of all government assistance programs directly deposited on behalf of the Applicants' tenants shall be provided to the Monitor, which shall include, to the extent available, the name of each tenant, the name of each case worker, the name of the applicable assistance program, and the amount of monthly program assistance.
- (f) All current ledgers shall be provided to the Monitor, including 12-month historical tenant ledgers and tenant outstanding balances for both the Applicants' former and current tenants.
- (g) A list of all issued N1s and N2s, if applicable, shall be provided to the Monitor.
- (h) All current LTB Filing Numbers (tenant and landlord) shall be provided to the Monitor, including the contact information for each issuing law firm or paralegal, a list of all N4s and the applicable maturity dates, copies of all LTB notices of hearings and copies of all LTB judgements (including, eviction orders, payment plans, and section 78 orders).
- (i) The account numbers and bills per property owned by the Applicants for all utility providers shall be provided to the Monitor.
- (j) A list of all rented equipment per property owned by the Applicants shall be provided to the Monitor, including the unit address, item, term and applicable service provider.
- (k) All tax roll information per property owned by the Applicants shall be provided to the Monitor.
- (l) All outstanding minimum (or property) standards orders issued by local municipalities in respect of the Applicants' properties shall be provided to the Monitor.
- (m) Copies of all open contracts or work orders with vendors in respect of the Applicants' properties shall be provided to the Monitor.

- (n) Access to any key lockboxes on unit premises owned by the Applicants shall be provided to the Monitor.
- (o) All unit inspection reports in respect of the Applicants' properties shall be provided to the Monitor, including fire safety inspections, where applicable, for all units.
- (p) Copies of all active service agreements in respect of the Applicants' properties shall be provided to the Monitor.
- (q) All information pertaining to the Applicants' properties contained on property management software utilized by SID Management or SID Renos will be transferred to the Monitor.
- (r) All tenant application information in respect of the Applicants' properties shall be provided to the Monitor.
- (s) All former lease agreements for any of the Applicants' tenants in unresolved LTB hearings shall be provided to the Monitor, including all such former tenant names, email addresses, phone numbers, and copies of identification.
- (t) All of the Applicants' corporate and mailing addresses shall be changed to an address designated by the Monitor, including in respect of insurance and property taxes.
- (u) All of the Applicants' tenants that have been sent to collections (current and former) and the applicable collection agency shall be identified for the Monitor.
- (v) All marketing material for the Applicants' existing units shall be provided to the Monitor.
- (w) All existing outstanding workorders from the Applicants' tenants shall be provided to the Monitor.
- (x) Copies of all building permits and residential permits in respect of the Applicants and/or their properties shall be provided to the Monitor.
- (y) A list of all trades that performed work in the last year that remain under warranty shall be provided to the Monitor, including the name of the applicable vendors, the work performed, and a copy of the applicable warranties.
- (z) Any surveys in respect of the Applicants' properties shall be provided to the Monitor.
- (aa) All insurance certificates in respect of the Applicants' properties and an insurance loss run shall be provided to the Monitor.