

**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**")**

**MOTION RECORD OF THE MONITOR  
(STAY EXTENSION, CONDUCT APPROVAL, AND SEALING)**

June 17, 2024

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**TO: SERVICE LIST**

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Applicants

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**TAB 1**

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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**NOTICE OF MOTION  
(Returnable June 24, 2024)**

KSV Restructuring Inc., in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants 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**"), will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Monday, June 24, 2024, at 9:00 a.m. (EST), or as soon after that time as the motion can be heard.

**THE PROPOSED METHOD OF HEARING:**

- 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.

Via Zoom link to be provided by the Court in advance of the motion.

**THE MOTION IS FOR:**

1. an order:
  - (a) if necessary, abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on June 24, 2024 and dispensing with further service thereof;
  - (b) provided that the Expanded Monitor Powers Order (as defined below) is granted by the Court, extending the Stay Period (as defined in the ARIIO) to and including July 31, 2024;
  - (c) terminating the stay of proceedings contained in paragraph 14 of the ARIIO (as defined below) in respect of the Additional Stay Parties (as defined below and in the ARIIO);
  - (d) extending the date by which the Monitor shall be required to serve and file any motion for advice and directions pursuant to section 21 of the Sale and Investment Solicitation Process (the “**SISP**”) approved pursuant to the SISP Approval Order granted by the Court on April 12, 2024 (the “**SISP Approval Order**”) to July 31, 2024;
  - (e) sealing Confidential Appendix “1” to the Fifth Report until further order of the Court;
  - (f) authorizing and directing the Monitor to serve on the Service List (as defined in the SARIO), post on the Monitor’s Website (as defined in the SARIO) and file with the Court the Unredacted Fourth Report (as defined below); and

- (g) approving the Fifth Report of the Monitor dated June 17, 2024 (the “**Fifth Report**”) and the activities of the Monitor referred to therein; and
- 2. such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

- 1. On January 23, 2024, the Applicants obtained an initial order (the “**Initial Order**”) under the CCAA.
- 2. Among other things, the Initial Order:
  - a. appointed KSV Restructuring Inc. as the Monitor in these *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) proceedings;
  - b. stayed, until February 2, 2024 (the “**Initial Stay Period**”), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' directors and officers, or affecting the Business or the Applicants' Property (as defined below), except with the prior written consent of the Applicants and the Monitor, or with leave of the Court (the “**Stay of Proceedings**”);
  - c. stayed, for the Initial Stay Period, all proceedings against or in respect of Aruba Butt (“**Ms. Butt**”), Dylan Suitor (“**Mr. Suitor**”) and/or Ryan Molony (“**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;

- d. appointed Chaitons LLP as representative counsel (in such capacity, the "**Lender Representative Counsel**") for all of the Applicants' Lenders in these proceedings, any proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or in any other proceeding respecting the insolvency of the Applicants that may be brought before the Court; and
  - e. granted the Administration Charge (as defined in the Initial Order) over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof.
3. On January 31, 2024, the Court adjourned the Applicants' comeback motion, in part, and granted an amended Initial Order, among other things:
- a. extending the Stay of Proceedings to and including February 16, 2024;
  - b. approving the Applicants' ability to borrow under a debtor-in-possession credit facility pursuant to a DIP Agreement dated January 26, 2024 between the Applicants and Harbour Mortgage Corp. or its permitted assignee; and
  - c. granting a charge over the Applicants' Property up to the maximum amount of \$4,000,000 in favour of the DIP Lender to secure all amounts advanced by the DIP Lender under the DIP Facility, together with all obligations, fees, expenses and

other amounts payable by the Applicants under the DIP Agreement and the DIP Facility.

4. On February 15, 2024, the Court granted an amended and restated Initial Order (the "**ARIO**"), which, among other things:

- a. extended the Stay of Proceedings to and including March 28, 2024;
- b. increased the Applicants' maximum borrowings under the DIP Facility from \$4,000,000 to \$12,000,000, and granted a corresponding increase to the DIP Lender's Charge;
- c. narrowed the scope of the Lender Representative Counsel's mandate to the Applicants' secured Lenders; and
- d. granted the Monitor certain enhanced powers and oversight, including:
  - i. requiring the prior written consent of the Monitor for all payments to be made, and liabilities to be incurred, by the Applicants to the prior written consent of the Monitor; and
  - ii. directing and empowering the Monitor to (A) conduct an investigation into the use of funds borrowed by the Applicants, pre-filing transactions conducted by the Applicants and/or their principals and affiliates, and such other matters as may be requested by the Lender Representatives (as defined in the ARIO) and agreed by the Monitor, in each case, to the extent such investigation relates to the Applicants' Property, the Business or such other matters as may be relevant to these CCAA proceedings as determined by

the Monitor (the "**Investigation**"), and (B) report to the Lender Representatives and the Court on the findings of the Investigation as the Monitor deems necessary and appropriate.

5. On March 28, 2024, the Court granted the SARIO, which, among other things:
  - a. extended the Stay of Proceedings to and including April 30, 2024; and
  - b. appointed Goldman Sloan Nash & Harber LLP as representative counsel (in such capacity, the "**Unsecured Lender Representative Counsel**") for all of the unsecured lenders of the Applicants other than (i) The Lion's Share Group Inc. and (ii) any other unsecured lenders directly or indirectly controlled by, or under common control or otherwise affiliated with, Lion's Share or its principal, Claire Drage.
  
6. On April 12, 2024, the Court granted the SISP Approval Order, which, among other things:
  - a. extended the Stay of Proceedings to and including June 24, 2024;
  - b. approved the Applicants' engagement of the SISP Advisors (as defined in the SISP Approval Order); and
  - c. approved the SISP; and
  - d. approved (i) the Pre-Filing Report of the Monitor dated January 23, 2024, the First Report of the Monitor dated January 29, 2024, the Supplement to the First Report of the Monitor dated February 13, 2024, the Second Report of the Monitor dated March 26, 2024, the Third Report of the Monitor dated April 9, 2024 (the "Third

Report”) and the Monitor’s activities referred to therein and (ii) the fees of the Monitor and its counsel, Cassels, as set out in the Third Report.

7. The Lender Representative Counsel has brought a motion to the Court returnable on June 24, 2024 seeking an order (the “**Expanded Monitor Powers Order**”) expanding the powers of the Monitor in respect of the Applicants. The Monitor supports the granting of the Expanded Monitor Powers Order.

### **Status of the SISP**

8. Pursuant to the SISP, interested parties were required to submit any non-binding LOIs by 5:00 pm (Toronto Time) on June 10, 2024 (the “**LOI Deadline**”).

9. In Confidential Appendix “1” to the Fifth Report, the Monitor has provided the Court with a summary of the LOIs received by the LOI Deadline.

10. Pursuant to the SISP, following the LOI Deadline, the Monitor and the other Reviewing Parties (as defined in the SISP) are to discuss and, if possible, determine the next steps in the SISP. Section 21 of the SISP provides if such an agreement cannot be reached, the Monitor shall bring a motion to the Court for advice and directions which shall be served and filed within 14 days of the LOI Deadline, being June 24, 2024.

11. The Monitor and the applicable Reviewing Parties continue to consider and discuss the appropriate next steps for the SISP. Those discussions have been productive but are continuing, and accordingly, the Monitor recommends and requests that the Court extend the deadline for the Monitor to serve and file any motion for advice and directions (should such a motion be required) until July 31, 2024.

12. The Monitor also seeks an order sealing Confidential Appendix “1” to the Fifth Report until further order of the Court. Given that the SISP is ongoing, it would cause significant prejudice to the SISP should such information be publicly disclosed at this time.

### **The Monitor’s Investigation**

13. On June 11, 2024, the Monitor served on the Service List and filed with the Court its Fourth Report dated June 11, 2024 (the “**Fourth Report**”) in connection with the Investigation in a form which redacted certain information which are subject to confidentiality claims made by the Applicants (the “**Redacted Fourth Report**”). The Monitor has also provided to certain counsel a unredacted version of the Fourth Report which only redacts certain limited personal information which the Monitor believes is appropriate to protect privacy concerns (the “**Unredacted Fourth Report**”).

14. For the reasons set out in the Fifth Report, the Monitor is of the view that it should be authorized to file publicly the Fourth Report with only such redactions that the Monitor considers appropriate, in its sole discretion, to protect personal privacy.

### **Extension of the Stay of Proceedings**

15. For the reasons set out in the Fifth Report, the Monitor is of the view that the Stay of Proceedings should only be extended in the event that existing management (including the Additional Stay Parties) no longer have decision-making or any control over the Applicants and that the Expanded Monitor Powers Order is granted by the Court.

16. Subject to the granting the Expanded Monitor Powers Orders, the Monitor requests and recommends that the Stay of Proceedings be extended to July 31, 2024.

17. For the reasons set out in the Fifth Report, the Monitor does not support the continuation of the Stay of Proceedings in relation to the Additional Stay Parties and believes that it is just and appropriate for such stay to be terminated.

### **Approval of the Monitor's Fifth Report and Activities**

18. The Monitor seeks approval of the Fifth Report and the activities of the Monitor described therein.

19. Given the nature of the Fourth Report, the Monitor is not seeking its approval at this time.

### **Other**

20. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.

21. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

22. 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:**

1. The Fourth Report;
2. The Fifth Report; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

June 17, 2024

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**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-00713245-00CL

**AND IN THE MATTER OF A PLAN OR 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.**

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

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**NOTICE OF MOTION  
(Returnable June 24, 2024)**

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**TAB 2**



June 17, 2024

**Fifth Report of  
KSV Restructuring Inc.  
as CCAA Monitor of Balboa Inc.,  
DSPLN Inc., Happy Gilmore Inc.,  
Interlude Inc., Multiville Inc.,  
The Pink Flamingo Inc.,  
Hometown Housing Inc.,  
The Mulligan Inc.,  
Horses In The Back Inc.,  
Neat Nests Inc. and  
Joint Captain Real Estate Inc.**

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

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

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

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

**FIFTH REPORT OF KSV RESTRUCTURING INC. AS  
MONITOR**

**JUNE 17, 2024**

## **1.0 Introduction**

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on January 23, 2024 (the "Initial Order"), 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") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and KSV Restructuring Inc. was appointed monitor of the Applicants (in such capacity, the "Monitor").
2. The Applicants together with certain non-Applicant related entities, including SIDRWC Inc. o/a SID Developments, SID Management Inc. and 2707793 Ontario Inc. o/a SID Renos (the "SID Companies"), are part of a group of companies (collectively, the "Company") involved in the acquisition, renovation and leasing of distressed residential real estate in undervalued markets throughout Ontario (the "Business").
3. In the Applicants' materials filed in support of the Initial Order, they provided that the principal purpose for commencing these CCAA proceedings was to create a stabilized environment to enable the Applicants to preserve and maximize value for their stakeholders and provide the stability and liquidity necessary to complete value accretive renovations to their portfolio of residential homes (the "Portfolio") by securing debtor-in-possession ("DIP") financing, pursue a comprehensive refinancing or restructuring transaction and implement a consensual plan of compromise or arrangement while continuing operations in the ordinary course of business.

4. Pursuant to the Initial Order, the Court, among other things:
  - a) granted a stay of proceedings until February 2, 2024 (the “Stay Period”) in respect of the Applicants, the Monitor, the Business and the Applicants’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “Applicants’ Property”) and three of the Applicants’ directors and officers, being Aruba Butt, Dylan Suitor and Ryan Molony (the “Additional Stay Parties”);
  - b) appointed Chaitons LLP as representative counsel (the “Secured Lender Representative Counsel”) to all of the Applicants’ secured creditors (the “Secured Lenders”) and unsecured promissory noteholders (the “Unsecured Lenders”) and approved a mechanism by which a committee of up to six parties would be formed to instruct Secured Lender Representative Counsel (the “Secured Lender Representatives”); and
  - c) granted a charge (the “Administration Charge”) in the amount of \$750,000 on the Applicants’ Property to secure the fees and disbursements of the Monitor and its legal counsel, Cassels Brock & Blackwell LLP, the Applicants’ legal counsel, Bennett Jones LLP, and Secured Lender Representative Counsel.
5. On January 31, 2024, the Court granted an amended Initial Order which, among other things:
  - a) extended the Stay Period to February 16, 2024;
  - b) approved the Applicants’ ability to borrow under a DIP credit facility (the “DIP Facility”) pursuant to a DIP Agreement dated January 26, 2024 (the “DIP Agreement”) between the Applicants and Harbour Mortgage Corp. (the “DIP Lender”) and granted a charge in favour of the DIP Lender in the maximum amount of \$4 million (plus interest, fees and expenses) to secure the Applicants’ obligations under the DIP Agreement and DIP Facility (the “DIP Lender’s Charge”);
  - c) increased the maximum amount of the Administration Charge from \$750,000 to \$1 million; and
  - d) authorized the Applicants to pay certain amounts owing to suppliers for goods and services supplied to the Applicants prior to the date of the Initial Order, subject to the consent of the Monitor.
6. Pursuant to an Amended and Restated Initial Order granted on February 15, 2024 (the “ARIO”), the Court, among other things:
  - a) extended the Stay Period to March 28, 2024;
  - b) increased the maximum amount of the Administration Charge to \$1.5 million;
  - c) increased the maximum amount of the DIP Facility and the DIP Lender’s Charge to \$12 million (plus interest, fees and costs);

- d) amended the scope of Secured Lender Representative Counsel's mandate by removing the Unsecured Lenders such that the group of creditors represented by Secured Lender Representative Counsel includes only the Secured Lenders; and
  - e) directed and empowered the Monitor to (i) conduct an investigation into the use of funds borrowed by the Applicants, pre-filing transactions conducted by the Applicants and/or their principals and affiliates, and such other matters as may be requested by the Lender Representatives and agreed by the Monitor, in each case, to the extent such investigation relates to the Applicants' Property, the Business or such other matters as may be relevant to the proceedings herein as determined by the Monitor (the "Investigation"), and (ii) report to the Secured Lender Representatives and the Court on the findings of such investigation as the Monitor deems necessary and appropriate.
7. Pursuant to a Second Amended and Restated Initial Order granted on March 28, 2024 (the "Second ARIO"), a copy of which is attached as Appendix "A", the Court, among other things:
- a) extended the Stay Period to April 30, 2024; and
  - b) appointed Goldman Sloan Nash & Harber LLP as representative counsel (the "Unsecured Lender Representative Counsel") to the Applicants' unsecured lenders other than (i) The Lion's Share Group Inc.<sup>1</sup> ("Lion's Share") and (ii) any other unsecured lenders directly or indirectly controlled by, or under common control or otherwise affiliated with, Lion's Share or its principal, Claire Drage.
8. On April 12, 2024, the Court granted an Order (the "SISP Approval Order"), which, among other things:
- a) extended the Stay Period to June 24, 2024;
  - b) approved the SISP; and
  - c) approved the Applicants' engagement of Howards Capital Corp. and CBRE Limited (jointly, the "SISP Advisors").
9. On June 11, 2024, the Monitor served on the Service List a redacted version of its Fourth Report to Court (the "Fourth Report"), which summarized the results of the Investigation. An unredacted version of the Fourth Report (redacted only for certain personal privacy information) was filed with the Court and delivered to the Applicants and their counsel, and subject to a confidentiality undertaking with the Monitor to Secured Lender Representative Counsel, Unsecured Lender Representative Counsel and to Fuller Landau and its counsel.

---

<sup>1</sup> On March 16, 2024, Lion's Share filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*. The Fuller Landau Group Inc. ("Fuller Landau") was appointed as proposal trustee. On April 3, 2024, Lion's Share was placed into receivership and bankruptcy proceedings. Fuller Landau is the receiver and licensed insolvency trustee administering Lion's Share's receivership and bankruptcy proceedings.

## 1.1 Purposes of this Report

1. The purposes of this report (“Report”) are to:
  - a) provide background information and summarize recent developments in these proceedings, including a motion filed by the Secured Lender Representative Counsel for an order, *inter alia*, expanding the Monitor’s powers in these proceedings (the “Expanded Monitor Powers Order”);
  - b) provide an update on the SISP, including a summary of the non-binding letters of intent (“LOI”) submitted on or prior to June 10, 2024 (the “LOI Summary”) and the need to seek an extension to July 31, 2024 of the deadline to determine next steps in the SISP;
  - c) provide the basis for the Monitor’s request to seal the LOI Summary pending further Court Order;
  - d) provide the basis for the Monitor’s request that it be authorized to file publicly an unredacted version of the Fourth Report with only such limited redactions that the Monitor considers appropriate, in its sole discretion, to protect personal privacy;
  - e) provide the basis for the Monitor’s recommendation that the stay of proceedings in favour of the Additional Stay Parties be terminated;
  - f) summarize the Applicants’ cash flow forecast (the “Cash Flow Forecast”) for the period June 17, 2024 to July 31, 2024 (the “Forecast Period”);
  - g) recommend that the Court issue orders, among other things:
    - enhancing the Monitor’s powers as contemplated in the proposed Expanded Monitor Powers Order;
    - approving an extension of the deadline by which the Monitor must serve and file any motion for advice and direction on the next steps in the SISP, if such a motion is required, subject to agreement by the Reviewing Parties or further order of the Court;
    - authorizing the Monitor to file publicly the Fourth Report on the basis detailed herein;
    - extending the Stay Period from June 24, 2024 to July 31, 2024 and terminating the stay of proceedings in favour of the Additional Stay Parties;
    - temporarily sealing the Confidential Appendix to this Report, being the LOI Summary; and
    - approving this Report and the Monitor’s activities summarized herein.

## 1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the unaudited financial information of the Applicants, the Applicants' books and records and discussions with representatives of the Applicants and their legal counsel.
2. KSV has not audited, or otherwise attempted to verify, the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, KSV expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

## 1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

## 2.0 Background

1. The Applicants are Canadian privately-held corporations that are the principal owners of the Company's rental units and the residential properties on which they are situated.
2. The Applicants have disclosed ownership in 406 residential properties (collectively, the "Properties") containing 631 rental units, of which 456 are tenanted, as well as a non-operating golf course. The Properties are located in tertiary markets in Ontario, including Timmins, Sault Ste. Marie, Sudbury, Kirkland Lake, Capreol, Temiskaming Shores and Val Caron. A summary of the Properties disclosed by the Applicants is provided below.

Location	Number of Occupied Units	Number of Unoccupied Units	Total
Timmins	220	70	290
Sault Ste Marie	135	65	200
Sudbury	66	12	78
Other	35	28	63
Total	456	175	631



3. The Applicants' principal stakeholders are their first and second mortgagees, which are owed approximately \$81.5 million and \$8.6 million, respectively. The Applicants have advised the Monitor that they believe the amount owing to the Unsecured Lenders is significantly less than the amount initially provided by Ms. Drage, being approximately \$54.2 million. The Applicants' creditor listings reflect obligations owing to Lion's Share totalling approximately \$39.2 million. Subject to Court approval at a subsequent hearing before the Court, a claims process may be required to ultimately determine the quantum of the Applicants' secured and unsecured obligations.
4. Court materials filed in these proceedings, including the Affidavits of Robert Clark and the Monitor's reports, set out detailed information with respect to the Applicants' Business, property and creditor composition. All Court materials are available on the Monitor's website at the following link: <https://www.ksvadvisory.com/experience/case/sid> (the "Case Website").

### 3.0 Expanded Monitor Powers Order

1. The Monitor has reviewed the Motion Record filed by Secured Lender Representative Counsel for the Expanded Monitor Powers Order and has discussed it with Unsecured Lender Representative Counsel, the Lion's Share Representative and its counsel.
2. The Monitor supports the relief sought by Secured Lender Representative Counsel for the following reasons:
  - a) the results of the Monitor's Investigation, as detailed in the Fourth Report, cause the Monitor to be seriously concerned about the Applicants' principals' continued involvement in the Business and the related impact that this would have on these proceedings and the Applicants' ability to maximize value for their stakeholders;
  - b) the Monitor has been advised by Secured Lender Representative Counsel, Unsecured Lender Representative Counsel and the Lion's Share Representative that their constituencies have all lost any confidence in the Applicants and they support the requested relief. These Court-appointed representatives represent the economic interests of virtually all of the Applicants' stakeholders. Notably, no LOI received in the SISP provides any equity value (i.e. value over and above the debt owing by the Applicants);
  - c) the Monitor has been contacted on an unsolicited basis by representatives of various cities/municipalities in which the Applicants' properties are located, complaining about the Applicants' lack of responsiveness and overall incompetency, to the detriment of their lenders; and
  - d) many of the sale and refinancing LOIs submitted in the SISP are expressly conditional on a change of management. Accordingly, the Applicants are not required to assist the Monitor to complete the SISP and/or may serve as an obstacle to maximizing value through a transaction resulting from the SISP, or otherwise.

3. Based on the foregoing, the Monitor believes the Expanded Monitor Powers Order is reasonable, appropriate and necessary in the circumstances. The Monitor requested that the proposed Order include a provision requiring the SID Companies to assist in any transition of property management services the Monitor considers appropriate. The Monitor believes this provision is critical to ensure an orderly transition of the property management function, including rent collections and general upkeep of the properties, which will take some time to implement given the number of properties and locations involved. During the interim transition period, the Monitor contemplates that the SID Companies would be compensated for services provided to the Applicants in accordance with the existing agreements between the Applicants and the SID Companies (i.e. on the same basis and arrangements that have been in place since the CCAA filing).

## 4.0 The Investigation

1. On June 11, 2024, the Monitor served on the Service List and filed with the Court its Fourth Report which provided the results of its Investigation. On June 12, 2024, the Applicants' legal counsel sent a letter to the Service List stating that the Applicants vigorously dispute the Monitor's findings. A copy of the letter dated June 12, 2024 is attached as Appendix "B". The Monitor responded with a letter dated June 13, 2024, a copy of which is attached as Appendix "C", advising that the Monitor believes its Fourth Report reflects the facts, banking and other information obtained during the Monitor's Investigation.
2. The version of the Fourth Report made publicly available to-date redacted certain information that the Applicants have asserted is confidential. As noted earlier in this Report, the Monitor has also provided to certain counsel (subject to a confidentiality undertaking) an unredacted version of the Fourth Report which only redacts limited personal information which the Monitor believes is appropriate to protect privacy concerns.
3. Other than for privacy issues (i.e. bank account information, social insurance numbers and home addresses), the Monitor does not believe any of the information which the Applicants claim to be confidential meets the legal test for a sealing order (in *Sherman Estate v. Donovan*, 2021 SCC 25).
4. The Fourth Report provides a summary of the Monitor's findings based on the: (i) correspondence, accounting, banking and other information reviewed by the Monitor over the course of the Investigation; and (ii) interviews under oath conducted by the Monitor of Mr. Clark, the Additional Stay Parties (Aruba Butt, Dylan Suitor and Ryan Molony) and Ms. Drage. The Monitor believes the Applicants' stakeholders are entitled to review the contents of the Fourth Report, including the transcripts contemplated to be attached as exhibits to the Fourth Report.
5. The Monitor is of the view that this Court should authorize and direct it to serve on the Service List, post on the Case Website and file with the Court a copy of the Fourth Report, with only such redactions that the Monitor considers appropriate, in its sole discretion, or as directed by the Court, to protect personal privacy.

## 5.0 SISP

1. With the assistance of the SISP Advisors, the Monitor has carried out Phase 1 of the SISP in accordance with the SISP Approval Order. The following table provides a summary of key process milestones and dates under the SISP.

Milestone	Deadline
Potential Bidder List to be Submitted to the Monitor by the SISP Advisors	April 26, 2024
Virtual Data Room to be established by the Monitor	April 28, 2024
Launch of the SISP	April 29, 2024
Phase 1 Bid Deadline	June 10, 2024
Phase 2 Milestones	TBD

2. On or prior to June 10, 2024, the following LOIs were submitted to the Monitor:
  - a) eight LOIs for either a purchase of the entire Portfolio or a subset of the Portfolio;
  - b) four LOIs for a refinancing of a portion of the Applicants' mortgage debt; and
  - c) 452 LOIs which contemplate credit bids submitted by first and second mortgagees for their respective mortgaged properties.
3. Copies of the LOIs (excluding those which provide for credit bids for individual properties) were provided to the "Reviewing Parties" under the SISP, with the exception of the Applicants.
4. Pursuant to paragraph 14 of the SISP, "the Monitor may take protective measures to limit access to LOIs or the identity of [p]otential [b]idders to safeguard the integrity of the SISP." In the context of these proceedings, the Monitor determined not to provide the LOIs or the LOI Summary to the Applicants or their principals at this time.
5. The LOI Summary, a copy of which is attached as Confidential Appendix "1", provides an overview of the LOIs submitted on or prior to the Phase 1 LOI Deadline and provides the Court with sufficient information to understand which stakeholders have an economic interest in these proceedings. In the Monitor's view, sealing the LOI Summary at this time is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the SISP. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Monitor believes the proposed sealing of the LOI Summary is appropriate in the circumstances. The Monitor does not believe that any stakeholder will be prejudiced if the information is sealed.
6. The SISP provides that if the Reviewing Parties cannot agree on (i) whether the SISP should progress to Phase 2 or (ii) appropriate parameters for the submission and evaluation of binding offers in Phase 2, the Monitor shall forthwith bring a motion seeking the Court's advice and directions on same, which motion shall be served within 14 days following the LOI Deadline (being June 24, 2024).

7. The Monitor has had preliminary discussions about the LOIs and next steps in the SISP with Secured Lender Representative Counsel, Unsecured Lender Representative Counsel and the Lion's Share Representative and its counsel. As at the date of this Report, no definitive decisions have been made regarding next steps in the SISP. Accordingly, the Monitor is seeking an extension of the deadline for the Monitor to serve and file any motion for advice and directions (should such a motion be required) in connection with Phase 2 of the SISP or an alternative transaction. This extension is supported by each of the lender constituents and Lion's Share.

## 6.0 Cash Flow Forecast

1. As at the date of this Report, the Applicants have drawn approximately \$9.9 million of the \$12 million available under the DIP Facility. The Applicants were projected to have drawn approximately \$9.6 million to-date. The following table provides a summary of the uses of the DIP funding through June 14, 2024.

(unaudited; C\$000s)	
DIP funding	9,933
Disbursements	
Professional fees	3,500
Property taxes	2,946
Advances to Applicants' bank accounts	1,239
DIP interest reserve	745
Other	612
Insurance	251
Total Disbursements	9,293
Balance in Monitor's Trust Account	640

2. The Monitor's commentary on certain line items in the table above is as follows:
  - a) the purpose of the table is to reflect the Applicants' uses of the DIP funding advanced over the course of these proceedings. As all DIP funding is being advanced to the Monitor's trust account, activity in the Applicants' bank accounts is not reflected in the table above; however, the Monitor is reviewing the receipts and disbursements in those bank accounts on a daily basis. As at the date of this Report, there is approximately \$676,000 in the Applicants' bank accounts;
  - b) professional fees include the fees of the Applicants' counsel, the Monitor and its counsel, the DIP Lender's counsel, Secured Lender Representative Counsel, Unsecured Lender Representative Counsel and the SISP Advisors. These professional fees are paid through April 30, 2024; and
  - c) amounts reflected as advances to the Applicants' bank accounts have largely been used to fund renovations, utilities, repairs and maintenance and other operating expenses incurred over the course of these proceedings.
3. The Monitor has prepared the Cash Flow Forecast for the period June 17, 2024 to July 31, 2024. The Cash Flow Forecast is attached as Appendix "D".

4. Subject to the underlying assumptions, the Cash Flow Forecast reflects that there is sufficient funding available to the Applicants to continue to operate in these proceedings through to the proposed stay extension date of July 31, 2024. Based on the Monitor's review of the Cash Flow Forecast, the underlying assumptions appear reasonable. The Monitor's statutory report on the Cash Flow Forecast is attached as Appendix "E". The Monitor has not sought the statutory report on the Cash Flow Forecast to be executed by the Applicants given the proposed Expanded Monitor Powers Order and that any extension of these CCAA proceedings is subject to the granting of that Order.

## 7.0 Stay Extension

1. The Monitor's support for an extension of the Stay Period is subject to the granting of the Expanded Monitor Powers Order. As set out in the Motion Record filed by Secured Lender Representative Counsel, the Applicants' lenders have grave concerns about the conduct of the Applicants prior to and during these proceedings, including in respect of the condition of certain of the properties and compliance with orders and notices issued by certain cities/municipalities. They have lost all confidence in the Applicants and their principals' ability to manage the Business and act in the best interests of the Applicants and their creditors.
2. In respect of the Applicants' post-filing conduct, the Monitor does not believe that the good faith and due diligence standard has been met such that the Applicants should not be granted an extension of the stay of proceedings absent the granting of the Expanded Monitor Powers Order.
3. The Monitor's position arises from:
  - a) The issues identified by the Monitor over the course of the Investigation as set out in the Fourth Report. Without repeating all of those significant issues, the Fourth Report concludes by stating: "*On an overall basis, the Monitor finds that the Applicants' Business and the Investors' funds were mismanaged, with the effect that the true beneficiaries of the Business were the Principals and their corporations.*"
  - b) Direct feedback received from the City of Timmins in respect of one of the Applicants' properties located at 269 Kimberly (the "Kimberly Property"). For example, on May 2, 2024, the Monitor received an email<sup>2</sup> from a representative of the City of Timmins in respect of the Kimberly Property, an excerpt of which is as follows:

*We have been trying to engage the property owners for months. In all honesty the time to engage would have been back in January when the first order was issued, or maybe once again in February when the second order was issued, or quite possible in March when the final order was issued. Unfortunately they waited until the week before the order expired on April 30 to try and rush in at the last minute.*

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<sup>2</sup> This email correspondence is also referenced in, and attached to, an affidavit filed by the first mortgagee of the Kimberly Property in support of the motion filed by Secured Lender Representative Counsel for the Expanded Monitor Powers Order.

Critically, the Monitor was never advised by the Applicants in January, February or March when the orders referenced above were issued (all of which were post-filing). The Kimberly Property may be demolished as a result of the Applicants' inaction and failure to comply with these orders and/or advise the Monitor thereof. The Monitor is gravely concerned about what other critical information the Applicants may not have brought to its attention during the post-filing period.

- c) Failure of the Applicants, the Additional Stay Parties and Mr. Clark to comply with several reasonable requests for basic information from the Monitor in a timely manner, or at all. A complete list of the 80 outstanding requests to date are noted at Tab 34 to the Document Brief that accompanied the Monitor's Fourth Report, and is attached as Appendix "F". The Monitor notes that the Applicants have advised that further responses may be forthcoming; however, the interviews were completed six weeks ago (on May 6, 2024).

For example, the Applicants and their Principals have, to date, declined to produce bank statements from either SID Renos or SID Management, two entities that are linked to the Applicants and which have received and made many payments from and to the Applicants. SID Renos' bank statements are important because that entity was receiving vendor rebates from certain contractors that were paid by the Applicants. Without those bank statements, the Monitor is unable to determine the extent of such vendor rebates. SID Management's bank statements are also important as all rent revenue is received by SID Management, as property manager.

Another example is Mr. Clark's failure to respond to the Monitor's specific request for "a list of all of the companies that [he] has an interest in currently or had an interest in during the currency of the [A]pplicants' operations, and for each one, to advise if they received funds from the [A]pplicants" (request #53 in Appendix "F" to this Report).

- d) Advice received by the Monitor from all of the Applicants' lender constituents, secured and unsecured, that they have lost all faith in the Applicants and their principals' ability to manage the Business, and that they will not support an extension of the Stay Period without an expansion of the Monitor's powers to protect their interests.
4. The Stay Period currently expires on June 24, 2024. Subject to the granting of the Expanded Monitor Powers Order, the Monitor supports an extension of the Stay Period to July 31, 2024 for the following reasons:
- a) based on the Cash Flow Forecast, there is funding available under the DIP Facility to fund operations and the costs of these proceedings during the extension period;
  - b) an extension of the Stay Period will provide the time necessary for the Monitor to work with the Reviewing Parties to advance the SISP or an alternative transaction; and
  - c) all of the Applicants' stakeholder groups (i.e. Secured Lenders and Unsecured Lenders) have consented to the proposed stay extension subject to the granting of the Expanded Monitor Powers Order. Those stakeholders would not consent to an extension absent the granting of the Expanded Monitor Powers Order.

5. Given the results of the Investigation (as set out in the Fourth Report) and the proposed Expanded Monitor Powers Order, the Monitor does not believe there is any basis on which the stay of proceedings over the Additional Stay Parties should continue. Accordingly, the proposed Order terminates the stay of proceedings as it relates to the Additional Stay Parties.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Court make the Orders set out in Section 1.1(1)(g) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS MONITOR  
OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC.,  
MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE  
MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC.  
AND JOINT CAPTAIN REAL ESTATE INC. AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**



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

THE HONOURABLE ) THURSDAY, THE 28<sup>TH</sup>  
 )  
JUSTICE KIMMEL ) DAY OF MARCH, 2024  
 )

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

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

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

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

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

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

### **SERVICE AND DEFINITIONS**

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

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

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

### **APPLICATION**

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

### **PLAN OF ARRANGEMENT**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

## **RESTRUCTURING**

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

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

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

**NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY**

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

14. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Aruba Butt, Dylan Suitor and/or Ryan Molony (collectively, the "**Additional Stay Parties**"), or against or in respect of any of the Additional Stay Parties' current or future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, and including all proceeds thereof (collectively, the "**Additional Stay Parties' Property**") with respect to any guarantee, contribution or indemnity obligation, liability or claim in respect of or that relates to any agreement involving any of the Applicants or the obligations, liabilities and claims of and against any of the Applicants (collectively, the "**Related Claims**"), except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Applicants and the Monitor.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Additional Stay Parties or the Additional

Stay Parties' Property in respect of the Related Claims that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

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

any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Applicants or exercising any other remedy provided under the agreements or arrangements, and that each of the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the applicable Applicant in accordance with the normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **NO PRE-FILING VERSUS POST-FILING SET-OFF**

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

#### **APPOINTMENT OF SECURED LENDER REPRESENTATIVE COUNSEL**

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



Applicants (collectively, the "**Secured Lenders**"), including, without limitation, all of the Secured Lenders that have RRSPs or other registered accounts administered by Olympia Trust Company, in these proceedings, any proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") or in any other proceeding respecting the insolvency of the Applicants that may be brought before this Court (collectively, the "**Insolvency Proceedings**"), for any issues affecting the Secured Lenders in the Insolvency Proceedings, including, without limitation, with respect to the settlement or compromise of any rights, entitlements or claims of the Secured Lenders.

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

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

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

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

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

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

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

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

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

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

#### **APPOINTMENT OF UNSECURED LENDER REPRESENTATIVE COUNSEL**

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

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

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

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

33. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Applicants and the Monitor, the Applicants, The Windrose Group Inc. and The Lion's Share Group Inc. shall provide the following information to the Unsecured Lender Representative Counsel (collectively, the "**Unsecured Lender Information**"), in each case, without charge: (i) the names, last known address, last known email addresses (if any) and entitlements of all of the Unsecured Lenders (excluding any Unsecured Opt-Out Lender that has delivered an Unsecured Opt-Out Notice (as defined below) prior to the delivery of the Unsecured Lender Information), in

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

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

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

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

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

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

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

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

## **APPOINTMENT OF MONITOR**

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

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

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

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

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



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

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

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

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

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

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

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

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

#### **DIP FINANCING**

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

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

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

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

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

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

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

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

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

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

#### **VALIDITY AND PRIORITY OF THE CHARGES CREATED BY THIS ORDER**

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

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

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

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

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

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

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

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which any Applicant is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

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

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

### **SERVICE AND NOTICE**

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

62. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "**Rules of Civil Procedure**"). Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/sid> (the "**Monitor's Website**").

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

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

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

#### **GENERAL**

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

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

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


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

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

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



71. **THIS COURT ORDERS** that the Initial Order, as amended and restated on February 15, 2024, is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

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

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

To: Chaitons LLP, in its capacity as  
Court-appointed Lender  
Representative Counsel  
5000 Yonge Street, 10<sup>th</sup> Floor  
North York, ON M2N 7E9  
Attention: George Benchetrit  
Email: [george@chaitons.com](mailto: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](mailto: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](mailto:fosterj@bennettjones.com)

with a copy to:

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

I, in my individual capacity or in my capacity as an authorized representative of the undersigned, as applicable (in either capacity, the "**Opt-Out Lender**"), hereby provide written notice that the Opt-Out Lender does not wish to be represented by Chaitons LLP, representative counsel (the "**Lender Representative Counsel**") for all of the secured lenders of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc. and Joint Captain Real Estate Inc. (collectively, the "**Applicants**") in any proceeding respecting the insolvency of the Applicants (the "**Insolvency Proceedings**"). By opting out of this representation, the Opt-Out Lender hereby acknowledges and understands that if it wishes to take part in the Insolvency Proceedings, then it must do so as an independent party. Further, the Opt-Out Lender hereby acknowledges and understands that it is responsible for its own legal representation or for retaining its own legal counsel should it choose to do so, and that it would be personally liable for the costs of its own legal representation.

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

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Witness

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Signature of Opt-Out Lender or its  
authorized representative

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

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

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Address:

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Telephone:

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

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

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

with a copy to:

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

with a copy to:

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

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

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Opt-Out Lender or its  
authorized representative

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

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

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Address:

---

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Telephone:

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

**SECOND AMENDED AND RESTATED  
INITIAL ORDER**

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

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

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

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Lawyers for the Applicants

## **Appendix “B”**



Bennett Jones

Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130  
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**Alex Payne**

**Partner**

Direct Line: 416.777.5512

e-mail: paynea@bennettjones.com

June 12, 2024

**Sent Via E-Mail**

Cassels Brock & Blackwell LLP  
Suite 3200, Bay Adelaide Centre  
40 Temperance Street  
Toronto, ON M5H 0B4

**Attention: Colin Pendrith**

**Re: 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. et al.  
(Court File No.: CV-24-00713245-00CL)**

As you know, we are the lawyers for Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "**Applicants**") in the above-captioned proceedings (the "**CCAA Proceedings**"). We write in connection with the Fourth Report of KSV Restructuring Inc., in its capacity as the Court-appointed monitor in the CCAA Proceedings (in such capacity, the "**Monitor**"), dated June 11, 2024 (the "**Report**").

The Applicants vigorously dispute the Monitor's findings in the Report, and have very serious concerns regarding both the contents of the Report, and the information omitted from the Report without explanation. Based upon the Applicants' preliminary review, it appears that the Monitor has either not reviewed, misunderstood, and/or ignored certain of the Applicants' responses, and certain of the thousands of documents provided in response to the Monitor's numerous requests. Instead, the Monitor appears to have reached certain conclusions contrary to or inconsistent with the documents and evidence available to the Monitor. Furthermore, the Report omits salient facts relevant to the commentary and conclusions reached therein, including to misattribute impugned conduct to the Applicants.

As the Report acknowledges, certain information requests remain outstanding, which if provided, may necessitate revision to the Report. The Applicants are preparing a comprehensive response to the Report, including to direct the Monitor's attention to information and documents that have already been provided to the Monitor. Furthermore, and as the Monitor is aware, the Applicants



continue to assemble documents and information in response to the Monitor's outstanding requests. The Applicants' expectation is that the Monitor will consider such documents and information and revise the Report accordingly.

The Applicants look forward to engaging with the Monitor to dispel the concerns raised in and correct certain of the content of the Report.

Yours truly,

**BENNETT JONES LLP**

*Alex Payne*

Alex Payne

cc: Sean Zweig, Joshua Foster and Thomas Gray (Bennett Jones LLP)  
The Service List

## **Appendix “C”**

# Cassels

June 13, 2024

**By Email**

cpendrith@cassels.com

tel: +1 416 860 6765

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

Attn: Alexander Payne

Dear Mr. Payne:

**Re: 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. et al. (Court File No.: CV-24-00713245-00CL)**

We confirm receipt of your letter of yesterday's date.

The Monitor believes its report accurately reflects the facts, banking and other information obtained during the Monitor's investigation. The Monitor continues to be available to address any questions your clients may have concerning the report or to receive any previously unprovided information in response to the Monitor's requests that were made over the past several months.

Yours truly,  
Cassels Brock & Blackwell LLP



Colin Pendrith  
Partner

cc: Sean Zweig, Joshua Foster and Thomas Gray (Bennett Jones)  
cc: Ryan Jacobs and Shayne Kukulowicz (Cassels)  
cc: Noah Goldstein and David Sieradzki (KSV)  
LEGAL\*65147377.2

## **Appendix “D”**

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.

**Projected Cash Flow Statement**

For the Period Ending July 31, 2024

(Unaudited; \$CAD in 000's)

	Note	Week Ending					9 day period		Total
		21-Jun-24	24-Jun-24	1-Jul-24	8-Jul-24	15-Jul-24	22-Jul-24	31-Jul-24	
<i>Receipts</i>									
Net rent collections	2	-	500	-	-	-	500	-	1,000
<b>Total Receipts</b>		<b>-</b>	<b>500</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>500</b>	<b>-</b>	<b>1,000</b>
<i>Disbursements</i>									
Property taxes		-	-	(143)	-	-	-	-	(143)
Repairs & Maintenance		(9)	(10)	(10)	(10)	(10)	(10)	(11)	(70)
Utilities		-	(22)	(21)	-	-	(20)	(20)	(83)
Insurance		(50)	-	-	-	-	(52)	-	(102)
Other	3	(20)	(20)	(10)	(10)	(10)	(10)	(10)	(90)
<b>Total Disbursements</b>		<b>(79)</b>	<b>(52)</b>	<b>(184)</b>	<b>(20)</b>	<b>(20)</b>	<b>(92)</b>	<b>(41)</b>	<b>(488)</b>
<i>Other Disbursements</i>									
Renovations	4	-	-	-	-	-	-	-	-
Professional fees	5	(250)	(250)	(250)	(250)	(250)	(250)	(250)	(1,750)
DIP Facility costs & interest		-	-	-	(1)	-	-	-	(1)
<b>Total Other Disbursements</b>		<b>(250)</b>	<b>(250)</b>	<b>(250)</b>	<b>(251)</b>	<b>(250)</b>	<b>(250)</b>	<b>(250)</b>	<b>(1,751)</b>
<b>Net Cash Flow</b>		<b>(329)</b>	<b>198</b>	<b>(434)</b>	<b>(271)</b>	<b>(270)</b>	<b>158</b>	<b>(291)</b>	<b>(1,238)</b>
<i>Opening Cash Balance</i>									
Opening Cash Balance		1,300	972	1,170	736	1,465	1,195	1,353	1,300
Net Cash Flow		(329)	198	(434)	(271)	(270)	158	(291)	(1,238)
DIP Funding	6	-	-	-	1,000	-	-	-	1,000
<b>Closing Cash Balance</b>		<b>972</b>	<b>1,170</b>	<b>736</b>	<b>1,465</b>	<b>1,195</b>	<b>1,353</b>	<b>1,062</b>	<b>1,062</b>
<i>DIP Facility balance</i>									
DIP Facility balance		9,933	9,933	9,933	10,933	10,933	10,933	10,933	10,933

**Projected Statement of Cash Flows**

For the Period Ending July 31, 2024

(Unaudited; \$CAD)

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**Purpose and General Assumptions**

1. The purpose of the projection is to present a cash flow forecast 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. (the "Applicants") for the period June 17, 2024 to July 31, 2024 (the "Period") in respect of the proceedings under the Companies' Creditors Arrangement Act ("CCAA").

The cash flow projection has been prepared based on hypothetical and most probable assumptions.

**Hypothetical**

2. Represents rents collected from tenants, net of property management fees payable to SID Management in the normal course.

**Most Probable**

3. Represents miscellaneous expenses, capital expenditures and tenant concessions for repairs.
4. Represents renovation costs for the Applicants' vacant units, which are subject to the Monitor's prior approval. The Monitor does not intend approving any additional renovation costs.
5. Represents accrued and projected fees and disbursements of the Applicants' legal counsel, Secured and Unsecured Lender Representative Counsel, the Monitor and its legal counsel and the DIP Lender's legal counsel.
6. Represents funding to be advanced under the DIP Facility.

## **Appendix “E”**

**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.**

**MONITOR'S REPORT ON CASH FLOW STATEMENT**

(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow 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") as of the 17<sup>th</sup> day June, 2024, consisting of a weekly projected cash flow statement for the period June 17, 2024 to July 31, 2024 ("Cash Flow") has been prepared by the management of the Applicants for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the management and employees of the Applicants. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.



The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 17<sup>th</sup> day of June, 2024.

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS MONITOR  
OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC.,  
INTERLUDE INC., MULTIVILLE INC.,  
THE PINK FLAMINGO INC., HOMETOWN HOUSING INC.,  
THE MULLIGAN INC., HORSES IN THE BACK INC.,  
NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “F”**

**Outstanding Requests and Responses from Interview of Robert Clark, held April 25, 2024**

No.	Question	Answer
2.	To produce the records reflecting the rent paid by the applicants to Paradisal Bliss in respect of 394 Appleby Line, Burlington.	
4.	To provide copies of the Applicants' records regarding the promissory notes and the records provided by Windrose showing more significant liability.	
14.	To produce SID Management's bank account statements.	
15.	To produce the monthly statements that SID Management sends to the applicants (and later KSV) stating what SID Management has received from their tenants in aggregate, what their fees are, and what the difference is that goes to the applicants.	
16.	To produce the materials that were provided to various potential syndicated lenders pursued throughout 2023 (i.e., not individual lenders through Claire Drage) to inform them about SID Management. In particular, to produce the package sent to the syndicated larger opportunity lenders that were pursued throughout 2023.	
22.	To advise why money was transferred to Lawn Care Alert from the Applicants' business, and in particular, to provide an explanation as to why it would be appropriate to pay \$600,000 to Lawn Care Alert.	
25.	To provide the documents that show where funds deposited via transfer by the applicants to the email address <a href="mailto:upgradehousing@gmail.com">upgradehousing@gmail.com</a> were deposited.	
27.	To produce Robert Clark's statements for the bank account where funds were received from and paid into the Applicants' banks. To the extent that there are different bank accounts, to provide statements for the accounts. In particular, all the payments regarding the PDF excerpt from the applicants' general ledgers marked as Exhibit A.	
28.	To provide the statements for Robert Clark's personal Amex card for 2020 onwards.	
29.	To review the document marked as Exhibit A and identify where the funds to Robert Clark were deposited and the basis for each of the transfers for an amount over \$1000.	
30.	To review the document marked as Exhibit B (payments to and from RWC) and to identify the basis for those payments.	

No.	Question	Answer
31.	To produce the statements showing where the vendor rebate is deducted, and the bank statements for the account where SID Renos is paid the vendor rebates.	
32.	To investigate and confirm whether or not every payment over \$1000 in the document marked as Exhibit C (payments to and from SID Renos) are on account of vendor rebates or something else.	
33.	For each payment over \$1000 in the document marked as Exhibit C, to provide any supporting documents that clarify why these payments to SID Renos were made and what the payments were on account of.	
34.	To produce the work product that Apex Agency provided to the applicants.	
35.	To produce the contract or contracts, if there is more than one, with the Apex Agency.	
37.	To produce a copy of a monthly trial balance or such other existing document(s) that would show how solvent Joint Captain was at the time that \$800,000 of dividends were paid to shareholders post-Core closing.	
38.	If there is any work product associated with the engagement of EK Global Management, and if there is a contract with EK Global Management, to produce that work product and contract.	
39.	If there is any work product associated with the engagement of Highkey Enterprises, and if there is a contract with Highkey Enterprises, to produce that work product and contract.	
45.	With reference to Exhibit G, to provide the details of the credit card associated with the transfers described as "CC payment for bro".	
46.	With reference to Exhibit G, to provide the details of the credit card associated with the other transfers described therein.	
47.	To produce any email authorizations of expenses that exist where there has been a request for a reimbursement of an expense and an email that corresponds to that.	
50.	In reference to payments made in respect of Elite Pacific Properties to film promotional materials, to provide a copy of the promotional materials.	
51.	To provide the contract with Uncommon Entertainment.	

<b>No.</b>	<b>Question</b>	<b>Answer</b>
52.	<p>To provide the identity of the individual who took the private jet with Robert Clark and [Name - Unknown Individual] in January 2022.</p> <p>If refused on the basis of an NDA, to produce a copy of the NDA redacting the name of the individual whose identity cannot be disclosed.</p>	
53.	<p>To provide a list of all of the companies that Robert Clark has an interest in currently or had an interest in during the currency of the applicants' operations, and for each one, to advise if they received funds from the applicants.</p>	

**Outstanding Requests and Responses from Interview of Aruba Butt, held April 26, 2024**

No.	Specific Question	Answer
4.	To produce and explain the reconciliation process that the Applicants' bookkeepers and accountants performed regarding the Additional Stay Parties' business expenses on their credit cards.	
5.	To identify all of the credit card charges that Aruba Butt says are business expenses of the Applicants on her credit card statements.	
11.	To provide explanations for the transfers between the Applicants and Paradisal Bliss in <b>Exhibit "C"</b> , and to produce any documents that would explain these transfers.	
12.	To provide copies of any invoices issued by Paradisal Bliss that correspond to the payments between the Applicants and Paradisal Bliss in <b>Exhibit "C"</b> .	
13.	To produce bank statements for Paradisal Bliss' account [REDACTED] Paradisal Bliss - Account # [REDACTED], listed in <b>Exhibit "C"</b> , from 2020 onwards.	
14.	To the extent that it is not already encompassed in prior requests, to itemize which credit card charges on Aruba Butt's personal credit card were incurred on behalf of the Applicants.	
17.	To advise who owns account [REDACTED] DSPLN - Account # [REDACTED] and, if it is within Aruba Butt's control, to provide the bank statements for that account.	
20.	To advise why a \$10,000.00 transfer was made from The Pink Flamingo to Chubby Assets Inc., as indicated in <b>Exhibit "J"</b> .	
21.	To advise the purpose of the \$20,000.00 paid from the Applicants to Cobalt Prospects as shown in <b>Exhibit "K"</b> , and to produce any documentation that would shed light on that purpose.	
35.	To confirm who owns account [REDACTED] DSPLN - Account # [REDACTED]	
36.	To provide documentation demonstrating the basis and rationale for the payment to SID Management of \$210,000.00 on May 25, 2023, as noted in <b>Exhibit "P"</b> .	
37.	To confirm if SID Renos was profitable in each of 2020, 2021, 2022, and 2023.	
39.	To provide the bank account statements for SID Renos.	
43.	To provide the list of accounts in Aruba Butt's possession.	

No.	Specific Question	Answer
44.	In respect of every account listed in response to request #43, to advise whether the Applicants transferred any funds into those accounts.	
51.	If it is not self-evident from the bank statements for Prospect and SID Renos, to advise which account the e-transfers noted in <b>Exhibit "V"</b> to <b>Aruba's Email Address</b> were deposited into.	

**Outstanding Requests and Responses from Interview of Ryan Molony, held May 1, 2024**

No.	Specific Question	Answer
6.	To provide a list of the non- Applicant companies that form the approximate 30% of the work that SID Renos and Sid Management does outside of work with the Applicants.	
8.	To check if an analysis was done, at any point in time, to determine if the Applicants' business, as a whole, was profitable or not. If there was such analysis, to provide the same.	
9.	To provide the analyses conducted as to what interest rate was needed to make the stabilized portion of the portfolio cash flow positive.	
12.	To provide information provided by the office manager before reimbursements were issued.	
14.	To provide the written end-of- week reports from 2021 onwards.	
18.	To provide a copy of appraisals done to obtain the properties' post-renovation value, to the extent that they were provided to Windrose.	
22.	To produce documents that show how the proceeds of the mortgage loan in <b>Exhibit "C"</b> were used.	
23.	To identify the credit card transactions and any transactions that were not credit card transactions that form the \$479,346.39 reflected in the excerpt from the general ledger contained in the document marked as <b>Exhibit "D"</b> .	
24.	To identify and explain which charges on Ryan Molony's credit card are being claimed as business vs. personal expenses.	
25.	To check Ryan Molony's personal accounts and confirm which of the e-transfers over \$1000 noted in the document marked as <b>Exhibit "D"</b> were deposited into his personal accounts. If the e-transfers were deposited, to provide the account statements.	
27.	To advise if there were any flights or accommodations that were not paid for by the Applicants in respect of Ryan Molony's spouse on company retreats.	
28.	To provide the booking information for the company retreats relating to payments made to Stay Awhile Villas.	
29.	To confirm whether email transfers from the Applicants were deposited into Ryan Molony's RBC account. If so, to produce the bank account statements for that account.	



**Outstanding Requests and Responses from Interview of Dylan Suitor, held May 6, 2024**

No.	Specific Question	Answer
4.	To provide and if required create and produce a list of all properties the Applicants transferred to related parties.	
5.	To produce records that show the commission that Elevation Real Estate has received in respect of the sale or purchase of Applicant properties.	
7.	If there is any supplemental information concerning the holdings under Elv8 Inc., be it directly or indirectly, to provide particulars of those holdings.	
9.	To the extent it is not subsumed by a prior request, to provide details of all properties sold by the Applicants since 2021.	
12.	To produce bank statements and the general ledgers for any of the non-Applicant entities that Dylan Suitor has an interest in.	
14.	To make inquiries and advise if anything other than the roughly \$2.9 million of profits from the Core Sale could lead to a gain on sale of equipment and leasehold improvements as categorized on the statement of earnings.	
16.	To provide the documents that the Applicants provided to Scotiabank when Dylan Suitor and Robert Clark were seeking re-financing prior to the Core Sale. In particular, any diligence materials sent to the bank explaining the Applicants' business, properties and how much income the Applicants had.	
18.	To produce all information SID has that was provided to Claire Drage or Windrose or Lion's Share setting out what the properties of the Applicants were and any other due diligence-type materials that may have been provided to inform the lenders.	
20.	To make inquiries and advise if there are similar statements for the Applicants to the Interlude Owner Statement January 2024 marked as Exhibit "E", and if these exist to produce same.	
21.	To make inquiries and provide any package provided to Dylan Suitor informing him of the assets and liabilities of the Applicants' properties.	
22.	To confirm what the wire transfers from Nekzai Law to the Applicants listed in the document marked as Exhibit "F" were on account of.	

No.	Specific Question	Answer
23.	To confirm the basis of wire payments to the Applicants that appear to be loan proceeds from individual lenders listed in the document marked as Exhibit "G", if it is in fact on account of promissory note lending or if it's something else.	
24.	To produce documentation that effected the transfer from Interlude to Old Thing Back noted in the parcel register marked as Exhibit "H".	
31.	To identify charges incurred on behalf of the Applicants on the credit cards for Old Thing Back and Upgrade Housing.	
34.	To clarify the basis for the aggregate of payments listed in the document marked as Exhibit "T". If the reason given is that these payments are reimbursements for spending on credit cards, then to produce the credit card statements that is correlated with the reimbursements. If there is any other reason for the payments, to provide particulars of those reasons.	
36.	To make inquiries and advise what the deposit of \$338,155.65 at BR [REDACTED] made on November 23, 2021 and listed on the November 2021 Interlude bank statement marked as Exhibit "U" is from.	
37.	To make inquiries as to why it appears most of the proceeds from the \$338,000.00 deposit (referenced above) go to Old Thing Back. If the deposit did not go to Old Thing Back, to advise where it went.	
38.	To advise why the deposit of \$75,000.00 made on November 26, 2021 listed on the November 2021 Interlude bank statement marked as Exhibit "U" went to Old Thing Back.	
39.	To make inquiries and advise if the \$304,000.00 deposit listed on the July 2023 Hometown Housing Bank Statement marked as Exhibit "V" was the proceeds of either a mortgage loan or promissory note.	
42.	To the extent that there is anything other than the housing loan identified by the general ledger in the bank statements for Horses in the Back, to advise and provide particulars.	
43.	To the extent that the \$35,000.00 transfer on November 1, 2021 in the bank statements for Horses in the Back marked as Exhibit "X" was not paid to Old Thing Back, to advise and provide any information to the contrary.	
44.	To provide information as to why it would be appropriate to transfer \$10,000.00 to each of Old Thing Back and/or Upgrade Housing as shown on the November bank statements for Horses in the Back marked as Exhibit "X".	

<b>No.</b>	<b>Specific Question</b>	<b>Answer</b>
45.	To provide additional explanation(s) for the transfers of \$35,000.00, \$30,000.00, \$10,000.00 and \$10,000.00 as shown on the bank statements for Horses in the Back marked as Exhibit "X".	
46.	To particularize what the \$247,000.00 deposit on October 11, 2022 as shown in the Neat Nests bank statements marked as Exhibit "Y" is from.	
48.	To make inquiries and advise if Applicant money was ever specifically used to pay the interest on borrowing by Applicant and non-Applicant companies.	

**TAB 3**

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

THE HONOURABLE ) FRIDAY, THE 24<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**

**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 at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fourth Report of the Monitor dated June 11, 2024 (the "**Fourth Report**"), the Fifth Report of the Monitor dated June 17, 2024 (the "**Fifth Report**") and such other materials that were filed, and on hearing the submissions of counsel to the Applicants, counsel to the Monitor, the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel, counsel to the Lion's Share Representative, counsel to the DIP Lender, and such other counsel that were present, no else appearing although duly served as appears from the affidavit of service of William Onyeaju dated June ●, 2024, sworn and 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 terms used but not defined in this Order shall have the meaning given to them in the Fifth Report;

## **STAY OF PROCEEDINGS**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including July 31, 2024.
4. **THIS COURT ORDERS** that the stay of proceedings in respect of the Additional Stay Parties pursuant to paragraph 14 of the Second Amended and Restated Initial Order dated March 28, 2024 (the “**ARIO**”) be and is hereby terminated.

## **SISP**

5. **THIS COURT ORDERS** that the date by which the Monitor shall be required to serve and file any motion for advice and directions pursuant to section 21 of the Sale and Investment Solicitation Process (the “**SISP**”) approved pursuant to the SISP Approval Order granted by the Court on April 12, 2024 (the “**SISP Approval Order**”) be and is hereby extended to July 31, 2024.
6. **THIS COURT ORDERS** that Confidential Appendix “1” to the Fifth Report is hereby sealed and shall not form part of the Court record, subject to further order of this Court.

## **MONITOR’S FOURTH REPORT**

7. **THIS COURT ORDERS** that the Monitor is authorized and directed to serve on the Service List, post on the Monitor’s Website and file with the Court a copy of the Fourth Report, with only such redactions that the Monitor considers appropriate, in its sole discretion, to protect personal privacy.

**APPROVAL OF MONITOR'S FIFTH REPORT AND ACTIVITIES**

8. **THIS COURT ORDERS** that the Fifth Report and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**GENERAL**

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

10. **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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**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.**

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

Proceeding commenced at Toronto

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**ORDER**

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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-00713245-00CL

**AND IN THE MATTER OF A PLAN OR 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.**

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

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**MOTION RECORD**  
**(Returnable June 24, 2024)**

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