

**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")**

**NOTICE OF MOTION  
(Returnable February 27, 2025)**

KSV Restructuring Inc., in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants, pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2024, as subsequently amended and restated by Orders dated February 15, 2024 and March 28, 2024 (as further amended from time to time, including by Order dated December 6, 2024, the "**SARIO**") and pursuant to the Order (Expansion of Monitor's Powers) of the Court dated June 25, 2024 (the "**Expanded Powers Order**"), will make a motion before Justice Osborne of the Court on February 27, 2025, at 10:00 a.m., 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;

[X] By video conference.

At the following: Video conference link to be provided by Court office.

**THE MOTION IS FOR:**

1. an order substantially in the form attached at Tab 3 of the Motion Record (the “**Credit Bid Vesting Order**”), among other things:

- (a) abridging the manner and time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on February 27, 2025 and dispensing with further service thereof;
- (b) approving the sale transactions (collectively, the “**Transactions**” and each a “**Transaction**”) contemplated by agreements of purchase and sale (collectively, the “**Sale Agreements**” and each a “**Sale Agreement**”) between, in each case, an Applicant, as seller, and a Purchaser (as defined in the Credit Bid Vesting Order), as buyer, dated as of various dates and in each case substantially in the form of Sale Agreement appended to the Tenth Report of the Monitor dated November 29, 2024 (the “**Tenth Report**”);
- (c) vesting in the applicable person(s) or entity(ies) listed on Schedule “A” of the Credit Bid Vesting Order (each, a “**Purchaser**”), the applicable Applicant’s right, title and interest in and to the applicable lands and premises legally described in Schedule “A” of the Credit Bid Vesting Order (collectively, the “**Purchased Properties**” and each a “**Purchased Property**”); and

- (d) assigning to the applicable Purchaser, the applicable landlord's rights and obligations in and to the applicable tenant leases in respect of the applicable Purchased Property (collectively, the "**Assigned Leases**" and each an "**Assigned Lease**");
2. an order substantially in the form attached at Tab 4 of the Motion Record (the "**Credit Bid/Liquidation Process Order**"), among other things:
- (a) abridging the manner and time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on February 27, 2025 and dispensing with further service thereof;
  - (b) approving and authorizing the Secondary Credit Bid Process (as defined and described in the Eleventh Report of the Monitor dated February 20, 2025 (the "**Eleventh Report**")) providing mortgagees of the Applicants' Remaining Properties (as defined in the Eleventh Report) with a final option to submit credit bids in respect of such Remaining Properties;
  - (c) approving and authorizing the Orderly Liquidation Plan (as defined and described in the Eleventh Report), including approving listing agreements to list for sale any Remaining Properties that are not subject to credit bids under the Secondary Credit Bid Process;
  - (d) extending the Stay Period (as defined in the SARIO) to and including May 31, 2025; and

- (e) approving (i) the Eleventh Report and the activities of the Monitor referred to therein and (ii) the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), from November 1, 2024 to and including January 31, 2025, as set out in the Eleventh Report, the Affidavit of Noah Goldstein sworn February 20, 2025 (the “**Goldstein Affidavit**”) and the Affidavit of Ryan Jacobs sworn February 18, 2025 (the “**Jacobs Affidavit**”); and

3. such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background<sup>1</sup>**

4. On January 23, 2024, the Applicants obtained an initial order (the “**Initial Order**”) under the CCAA, which among other things, appointed KSV Restructuring Inc. as the Monitor in these CCAA proceedings. The Initial Order was subsequently amended and restated and further amended from time to time, ultimately resulting in the SARIO.

5. On June 25, 2024, the Court granted the Expanded Powers Order, which, among other things:

- (a) authorized and empowered the Monitor to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicants to cause

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<sup>1</sup> Terms used but not defined in this Notice of Motion shall have the meaning given to them in the Eleventh Report.

the Applicants to take various actions or steps as set out in paragraph 3 of the Expanded Powers Order;

- (b) provided for a process for the Monitor to transition the Applicants' property and other management service providers from the SID Companies (as defined in the Expanded Powers Order) as determined necessary by the Monitor; and
- (c) granted various additional and ancillary relief to facilitate the foregoing.

6. On August 30, 2024, the Court granted an Order, which, among other things, approved the restructuring term sheet (the "**Restructuring Term Sheet**"), and authorized and directed the Monitor to carry out its obligations under the Restructuring Term Sheet, including, without limitation, facilitating the negotiation and settlement of the transactions contemplated therein and finalizing all documentation reasonably necessary to carry out such transactions, but provided that nothing in such order approved any specific transaction or agreement contemplated by the Restructuring Term Sheet, all of which remained subject to further approval by the Court.

7. On December 6, 2024, the Court granted an order, which, among other things (the "**Omnibus Credit Bid Vesting Order**"):

- (a) extended the Stay Period to February 28, 2025;
- (b) approved the Credit Bid APAs and authorized the Monitor to execute each of the Credit Bid APAs on behalf of each applicable Applicant in its capacity as "super" monitor of the Applicants pursuant to the Expanded Powers Order;

- (c) approved credit bid transactions in respect of 323 of the Applicants' properties, including assigning tenant leases for the properties subject to the Omnibus Credit Bid Vesting Order to the respective purchasers, and separate from the Omnibus Credit Bid Vesting Order, assigned all tenant leases applicable to the Remaining Portfolio from the SID Companies to the applicable Applicant;
- (d) approved the DIP Allocation;
- (e) approved a replacement DIP Term Sheet with Viscount Capital Inc. ("**Viscount**") (the "**Viscount DIP Term Sheet**") and authorized the Monitor to execute the Viscount DIP Term Sheet on behalf of the Applicants in its capacity as "super" monitor of the Applicants pursuant to the Expanded Powers Order;
- (f) authorized the Monitor, on behalf of the Applicants in its capacity as "super" monitor of the Applicants pursuant to the Expanded Powers Order, to repay the Harbour DIP Facility from: (i) cash on hand in the Applicants' bank accounts and/or the Monitor's trust account in respect of the Applicants; (ii) the DIP Allocations paid on closing of each Credit Bid APA; and (iii) the proceeds of the Viscount DIP Term Sheet;
- (g) approved the amendments to the Court-ordered charges in these proceedings, being a decrease in the Administration Charge from \$1.5 million to \$500,000, and a decrease to the DIP Lender's Charge from \$15 million (plus interest and costs) to \$4.85 million (plus interest, fees and costs); and

- (h) approved the fees and disbursements of the Monitor and its counsel through October 31, 2024.

## **SISP**

8. On April 12, 2024, the Court granted an order (the “**SISP Approval Order**”) that, among other things, approved the SISP.

9. The SISP generated 12 letters of intent (“**LOIs**”) that contemplated third-party sales or refinancing transactions, none of which were sufficient to pay in full the Applicants’ DIP and first mortgage obligations. In accordance with the SISP, copies of the LOIs were provided to the applicable “**Reviewing Parties**” under the SISP. After extensive consultation with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion’s Share Representative (each as defined in the Eleventh Report) and its counsel, the Monitor determined not to pursue any of the LOIs submitted in the SISP.

10. Following the conclusion of the SISP, the Monitor worked with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel, the Lion’s Share Representative and its counsel to negotiate the Restructuring Term Sheet. The principal purposes of the Restructuring Term Sheet were to: (a) provide for a process for mortgagees to submit credit bids; and (b) for properties not subject to credit bids, outline a framework for (i) a process to complete the sale and/or liquidation of the Portfolio; and (ii) a distribution mechanism for Secured and Unsecured Lenders in accordance with their respective priorities and entitlements.

11. The Restructuring Term Sheet was approved by the Court on August 30, 2024, provided that such order did not constitute approval of any specific transaction or agreement contemplated by the Restructuring Term Sheet, all of which remained subject to further order of the Court.

### **Prior Credit Bid Transactions and Proposed Credit Bid Vesting Order**

12. The Restructuring Term Sheet established deadlines of September 20, 2024 for first mortgagees, and September 30, 2024 for second mortgagees, to submit credit bids for their respective Properties. In total, the Monitor received 323 credit bids representing approximately 79% of the Properties. Each credit bid was accompanied by the required deposit. All but two of the credit bids were made by first mortgagees and the remaining two were made by the second mortgagees on the applicable Properties.

13. 316 credit bid transactions closed on or around December 17, 2024. On that date, the amount owing to Harbour (approximately \$15 million) then secured by the DIP Lender's Charge was repaid in full from the cash consideration of the credit bids and the replacement DIP funding advanced by Viscount under the Viscount DIP Term Sheet.

14. Two of the credit bid transactions did not close as the mortgagees failed to pay their respective DIP Allocation. In accordance with the Credit Bid APA, the deposits paid by those two credit bidders were not refunded.

15. Five Properties that were subject to the Omnibus Credit Bid Vesting Order could not be completed for reasons set out in the Eleventh Report. Accordingly, for the reasons set out in the Eleventh Report, the Monitor is seeking the additional Credit Bid Vesting Order to permit credit bid transactions for those five Properties to close.



### **Proposed Secondary Credit Bid Process and Orderly Liquidation Plan**

16. The Monitor prepared an analysis comparing the Listing Agents' suggested list prices (as an indication of potential market value) to the mortgage and other secured debt on each of the Remaining Properties (the "**Remaining Portfolio Analysis**") to assist the Monitor in assessing the logical next steps, including whether and on what terms it would be appropriate, on an overall basis, to provide mortgagees with a further opportunity to submit a credit bid prior to listing the Remaining Properties for sale.

17. Based on the Remaining Portfolio Analysis:

- (a) the Remaining Properties as a whole are significantly impaired - the suggested list prices total approximately \$18.1 million in the aggregate, while the aggregate mortgage and other secured debt exceeds \$35 million (including the DIP Allocation);
- (b) there are nine unencumbered Remaining Properties with an aggregate suggested listing price of approximately \$2.9 million;
- (c) there are an additional seven Remaining Properties that appear to have some degree of equity - the suggested list price for these properties exceeds the mortgage and other secured debt on that property by approximately \$293,000 in the aggregate; and
- (d) for all other 70 Remaining Properties, the secured debt materially exceeds the suggested list price.

18. Based on the Remaining Portfolio Analysis, the Monitor believes it is appropriate to permit mortgagees of the Remaining Properties one further and final opportunity to credit bid for their Remaining Property and to thereafter publicly list and sell the balance of the Remaining Properties on an orderly basis.

*Proposed Secondary Credit Bid Process*

19. The Monitor is proposing for the Secondary Credit Bid Option mechanics to be substantially the same as those used in the initial credit bid process set out in the Restructuring Term Sheet and approved by this Court on August 30, 2024, subject to a one substantive change, being that purchasers must pay on closing an additional 25% reserve/escrow on the DIP Allocation as required under the Viscount DIP Term Sheet. The 25% premium will be held in escrow by the Monitor until further order of the Court or upon agreement of the Monitor, the DIP Lender and the applicable purchaser.

20. In this regard, the forms of the purchase agreements documenting the credit bid transactions (the “**Secondary Credit Bid APAs**”) are otherwise substantially the same as the forms of Credit Bid APAs approved by this Court under the Omnibus Credit Bid Vesting Order.

21. Consistent with the Credit Bid APA used in the initial process, first mortgagees must provide a \$10,000 non-refundable deposit to be paid on submission of a Secondary Credit Bid APA and second mortgagees must provide a non-refundable deposit of \$10,000 plus an additional amount equal to 10% of the applicable first mortgage debt on the applicable Remaining Property to be paid on submission of a Secondary Credit Bid APA. Second mortgagees are also required to

pay in full on closing all amounts owing under the prior ranking mortgage on the Remaining Property (other than a mortgage securing the obligations under the Viscount DIP Term Sheet).

22. Consistent with the Restructuring Term Sheet: (i) any credit bid purchaser shall not have a deficiency claim in connection with the liquidation of the Remaining Portfolio after completion of a transaction under its Credit Bid APA, without prejudice to any or all other rights and remedies it may have, including against any personal guarantors of its debt or any non-Applicant parties or other recovery procedures; and (ii) there will be no purchase price adjustments, including in respect of any deposits, rental arrears under leases and/or unpaid property taxes, utilities or other expenses that may be outstanding on the closing date.

23. For Remaining Properties designated as Equity Properties, a credit bid purchaser shall be required to pay the imputed equity value in the Remaining Property, which shall be determined on a further motion before the Court seeking approval of any secondary credit bid transactions submitted.

*Proposed Orderly Liquidation Plan*

24. For the Remaining Properties that do not get acquired under the proposed Secondary Credit Bid Process, the Monitor has worked with CBRE Limited, in its capacity as an existing SISP Advisor in these proceedings, to formulate an orderly liquidation strategy.

25. Subject to Court approval, the Monitor proposes to take the following steps to implement the Orderly Liquidation Plan:

- (a) enter into listing agreements with the Listing Agents, being five reputable local realtors in their respective markets recommended by CBRE;
- (b) work with CBRE and the Listing Agents to determine the sequencing of listing the Remaining Properties, which will consider, among other things, the markets, cash flow being generated by each property (if any) and their condition (i.e. many of the Remaining Properties are in a state of disrepair and/or boarded up);
- (c) list the Remaining Properties using MLS and other traditional marketing efforts to canvass the market and identify potential purchasers for each property. Based on the advice of CBRE and the Listing Agents, in order to prevent a flooding of the market, only four or five properties will be listed concurrently in each market; and
- (d) the properties will initially be listed for sale at the suggested list prices provided by the Listing Agents as set out in the Remaining Portfolio Analysis, provided that the Monitor shall be entitled, on behalf of the applicable Applicant in accordance with the Expanded Powers Order, from time to time as it considers necessary or appropriate, to increase or reduce the list price for any property and/or to accept an offer to purchase any property at a price greater or less than the applicable list price for such property, provided that, unless the Monitor obtains the prior consent of the DIP Lender, the Monitor shall not accept an offer that would result in net proceeds (after deduction of reasonable sale commissions and property specific legal costs) that would be less than 125% of the DIP Allocation in respect of such property,

which is a condition of property sales set out in Section 11(a) of the Viscount DIP Term Sheet.

### **Approval of the Monitor's Reports, Activities and Fees**

26. The Monitor seeks approval of the Eleventh Report and the activities of the Monitor described therein, as well as approval of the fees and disbursements of the Monitor and Cassels referred to in the Eleventh Report, the Goldstein Affidavit and the Jacobs Affidavit.

27. The Monitor and Cassels have been required to undertake an extensive amount of work in this CCAA proceeding to-date, which has included enhanced cash flow and operational oversight mandated by the Second ARIO, taking control over the Applicants in accordance with the Expanded Powers Order, coordinating the transition of the property management function from the SID Companies to Richmond and dealing with all aspects of the Credit Bid APAs in order to prepare for the closing of those 316 transactions.

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

28. For the reasons set out in the Eleventh Report, the Monitor is of the view that the Stay Period should be extended to May 31, 2025 to, if approved by the Court: (i) conduct the Secondary Credit Bid Process; (ii) return to Court for approval of Secondary Credit Bids (as defined in the Eleventh Report), if any; and (iii) commence the process contemplated by the Orderly Liquidation Plan to list the Remaining Properties for sale.

29. The Monitor is of the view that it is discharging its duties and obligations under the CCAA, the Expanded Powers Order and other orders made in these CCAA proceedings in good faith and with due diligence.

30. Based on the Cash Flow Forecast provided in the Eleventh Report, there is projected to be funding available to fund operations and the costs of these proceedings during the extension period, and no creditor will be prejudiced if the extension is granted.

**Other**

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

32. 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.

33. 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:**

- (a) the Eleventh Report;
- (b) the Goldstein Affidavit and the exhibits thereto;
- (c) the Jacobs Affidavit and the exhibits thereto; and

- (d) such further and other material as counsel may advise and this Honourable Court may permit.

February 20, 2025

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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**

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

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

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PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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