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. (collectively the "**Applicants**", and each an "**Applicant**")

NOTICE OF MOTION
(Returnable December 6, 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 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 amended and restated, 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 December 6, 2024, 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 December 6, 2024 and dispensing with further service thereof;

   (b) approving the Credit Bid APAs (as defined in the Tenth Report of the Monitor dated November 29, 2024 (the "**Tenth Report**")) and authorizing and directing the Monitor, on behalf of the Applicants in accordance with the Expanded Powers Order, to execute the Credit Bid APAs;

   (c) vesting in the applicable person(s) or entity(ies) listed on Schedule "A" to the Credit Bid Vesting Order (each, a "**Purchaser**"), the applicable Applicant's right, title and interest in and to the applicable lands and premises described in Schedule "A" to 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 associated with the applicable Purchased Property;

2. an order substantially in the form attached at Tab 4 of the Motion Record (the "**Approval of Replacement DIP Facility and Ancillary Matters 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 December 6, 2024 and dispensing with further service thereof;

(b) extending the Stay Period (as defined in the SARIO) to and including February 28, 2025;

(c) approving the DIP Allocation (as defined in the Tenth Report) substantially in the form attached at Appendix "P" to the Tenth Report;

(d) approving the Term Sheet dated November 26, 2024 substantially in the form attached as Appendix "Q" to the Tenth Report (the "**Viscount DIP Term Sheet**") and authorizing and directing the Monitor, on behalf of the Applicants in accordance with the Expanded Powers Order, *nunc pro tunc*, to enter into the Viscount DIP Term Sheet with such minor amendments as may be acceptable to the Monitor and to perform the Applicants' obligations under the Viscount DIP Term Sheet with no personal or corporate liability of the Monitor in doing so;

(e) effective upon the Effective Time (as defined in the proposed Approval of Replacement DIP Facility and Ancillary Matters Order), authorizing and directing the Monitor, on behalf of the Applicants in accordance with the Expanded Powers Order, to repay the Existing DIP Facility (as defined in the Tenth Report) from: (i) cash on hand in the Applicants' bank accounts and/or the Monitor's trust account in respect of the Applicants; (ii) the DIP Allocation Amounts held by the Monitor; and (iii) the proceeds of the Viscount DIP Term Sheet;

(f) effective upon the Effective Time, making certain amendments to the SARIO and the Charges (as defined in the SARIO) as set out in the Tenth Report;

(g) assigning to the applicable Applicant, the applicable landlord's rights and obligations in and to the applicable Leases (as defined in the Tenth Report, but excluding "Assigned Leases" assigned, conveyed and transferred to a Purchaser pursuant to the Credit Bid Vesting Order);

(h) discharging Goldman Sloan Nash & Haber LLP ("**GSNH**") as the Unsecured Lender Representative Counsel (as defined in the SARIO) and directing that, upon payment of any accrued fees of GSNH incurred in its capacity as the Unsecured Lender Representative Counsel up to and including the date of the Order, the Unsecured Lender Representative Counsel (as defined in the SARIO) shall no longer have the benefit of, or right to, the Administration Charge (as defined in the SARIO) pursuant to paragraph 48 of the SARIO or any other Orders made in these proceedings;

(i) approving (i) the Seventh Report of the Monitor dated August 23, 2024 (the "**Seventh Report**") and the activities of the Monitor referred to therein, (ii) the Eighth Report of the Monitor dated October 23, 2024 (the "**Eighth Report**") and the activities of the Monitor referred to therein, (iii) the Ninth Report of the Monitor dated November 21, 2024 (the "**Ninth Report**") and the activities of the Monitor referred to therein, (iv) the Tenth Report and the activities of the Monitor referred to therein, and (v) the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**") as set out in the Tenth Report, the

Affidavit of Noah Goldstein sworn November 29, 2024 (the "**Goldstein Affidavit**") and the Affidavit of Ryan Jacobs sworn November 29, 2024 (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

4. On January 23, 2024, the Applicants obtained an initial order (the "**Initial Orde**r") 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 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 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:

(a) extended the Stay Period to and including October 31, 2024; and

(b) 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 November 26, 2024, the Court granted an order extending the Stay Period to December 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. 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 (as defined in the Tenth Report) and its counsel, the Monitor determined not to pursue any of the LOIs submitted in the SISP.

10. Throughout the SISP, the Applicants' principals conveyed to stakeholders an estimated Portfolio (as defined in the Tenth Report) value of approximately $140 million. This estimated value was based on a Comparative Market Analysis (the "**CMA**") obtained by the Applicants in May 2024 from a representative of Keller Williams Edge Realty, with whom Mr. Suitor is affiliated. Upon review of the CMA, the Monitor identified significant overstatements and errors in the CMA's underlying assumptions and comparable properties used for this analysis. Both SISP Advisors (as defined in the SISP Approval Order) did not find the CMA credible and refused to include the CMA in their data rooms. Accordingly, the Monitor deemed the CMA unreliable. In the Monitor's view, the Principals' (as defined in the Tenth Report) continuous references to the CMA has contributed to an expectation gap and misperceptions among stakeholders about anticipated recoveries in these proceedings.

11. 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) outline a framework for (i) a process to complete the sale and/or liquidation of the Portfolio and (ii) a distribution mechanism for Secured Lenders and Unsecured Lenders (each as defined in the Tenth Report) in accordance with their respective priorities and entitlements.

12. 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.

The Proposed Credit Bid Vesting Order

13. 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 (as defined in the Tenth Report). In total, the Monitor received 323 credit bids representing approximately 79% of the Properties. Each credit bid was accompanied by the required deposit (which funds are being held in the Monitor's trust account). 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.

Credit Bid APAs

14. The form of purchase agreement documenting the credit bid transactions (the "**Credit Bid APA**") was developed by the Secured Lender Representative Counsel, in consultation with the Monitor and its counsel, and was made available to the Secured Lenders by the Monitor in the days following Court approval of the Restructuring Term Sheet on August 30, 2024.

15. Credit Bid APAs (with the required deposits thereunder) were submitted by 323 mortgages, including two second mortgagees.

16. Since the deadlines for submitting credit bids, the Monitor has worked with the mortgagees who submitted credit bids to seek clarification or supporting documentation on their submission, including in respect of their Mortgage Indebtedness Amount, before accepting the Credit Bid APAs. The Monitor also cross-referenced the name of the mortgagee listed on the Credit Bid APA to the registered mortgagee of the applicable Property. Given the funding constraints, the Monitor

did not obtain an independent legal opinion on the validity of the 323 mortgages subject to the Credit Bid APAs.

17. For the reasons set out in the Tenth Report, the Monitor recommends that the Court approve the Credit Bid APAs and grant the Credit Bid Vesting Order.

Assignment and Assumption of Leases

18. The Credit Bid APAs require that each Purchaser assume any tenant leases on closing. Based on the information available to the Monitor from the Applicants' records, of the 323 properties subject to the Credit Bid Vesting Order, 253 are tenanted.

19. The forms of tenant leases do not contain any restraint on the right of the landlord to assign the lease. However, the Monitor believes it is important to provide both purchasers and tenants with certainty as to the state of the leases, but that it will be impractical to obtain executed consents or acknowledgments from hundreds of tenants under the leases and that doing so will create a risk to completing the simultaneous closing of all credit bid transactions on an expedited timeframe as contemplated by the Credit Bid APAs.

20. In addition, the Monitor recently identified that the leases are between the applicable tenant and SID Management (as defined in the Tenth Report), rather than the Applicant entity owner of the applicable property. SID Management has advised the Monitor that the leases are in the name of SID Management as agent for the applicable Applicant property owner and that SID Management agrees that the leases should be assigned to the applicable Purchasers on closing of the credit bid transactions.

21. Accordingly, the Monitor is seeking an assignment of the leases from the SID Companies to the applicable Purchaser, as well as an assignment of the tenant leases in respect of the remaining properties to the applicable Applicant.

DIP Allocation

22. Pursuant to the Restructuring Term Sheet, the approximately $15 million owing under the Existing DIP Facility has been allocated by the Monitor on the following basis:

(a) property specific costs, such as renovations and property taxes, to the applicable Property; and

(b) general costs, such as professional fees associated with these CCAA proceedings, over the Portfolio in proportion to the acquisition cost of each Property,

all as more particularly set out in the Tenth Report.

23. For the reasons set out in the Tenth Report, the Monitor is requesting Court approval of the DIP Allocation.

Proposed Viscount DIP Facility

24. The Monitor negotiated the Viscount DIP Facility (as defined in the Tenth Report) with Viscount, which provides for a maximum principal amount of $4.85 million.

25. Immediate funding is necessary to repay the Existing DIP Facility, finalize transactions under the Credit Bid APAs and support an orderly liquidation of the 84 properties that will remain in the Portfolio (the "**Remaining Portfolio**"). Without access to the Viscount DIP Facility, none

of those critical steps can be achieved, which has the potential of resulting in an enforcement and/or forced liquidation process of the entire Portfolio, which would impair recoveries for all stakeholders.

26. For the reasons set out in the Tenth Report, the Monitor believes the terms and conditions of the Viscount DIP Facility are commercially reasonable and in the best interests of the stakeholders.

Discharge of the Unsecured Lender Representative Counsel

27. The Monitor does not believe that there is any reasonable prospect of material recovery, if any, for the Unsecured Lenders.

28. Accordingly, particularly given the limited cash flow and funding available and the critical need to reduce the costs of these proceedings, the Monitor believes it is no longer appropriate for the Applicants to fund the fees incurred by the Unsecured Lender Representative Counsel.

29. The Monitor is therefore requesting an order discharging GSNH as the Unsecured Lender Representative Counsel.

Amendment to Court-Ordered Charges

30. Subject to Court approval, the Monitor is seeking to have the:

(a) Administration Charge reduced from $1.5 million to $500,000, of which $250,000 is to rank in priority to and $250,000 of which is to rank subordinate to the DIP

Lender's Charge (as defined in the SARIO), respectively, to become effective upon the filing of the Monitor's Certificate under the Credit Bid Vesting Order;

(b) DIP Lender's Charge reduced from $15 million (plus interest, fees and costs) to $4.85 million (plus interest, fees and costs), being the amount of the Viscount DIP Facility, and providing that Viscount shall be the beneficiary of the DIP Lender's Charge, all to become effective upon the filing of the Monitor's Funding Certificate; and

(c) Unsecured Lender Representative Counsel removed from the professionals covered under the Administration Charge, subject to paying any fees owing to the Unsecured Lender Representative Counsel through the date of the proposed Order.

Approval of the Monitor's Reports, Activities and Fees

31. The Monitor seeks approval of the Seventh Report, the Eighth Report, the Ninth Report and the Tenth 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 Tenth Report, the Goldstein Affidavit and the Jacobs Affidavit.

32. 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 SARIO, carrying out the SISP, performing the Investigation (as defined in the Tenth Report), 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 Advisory Services Inc. and dealing with all aspects of the Credit Bid APAs in order to prepare for the closing of those transactions, subject to Court approval.

Extension of the Stay of Proceedings

33. For the reasons set out in the Tenth Report, the Monitor is of the view that the Stay Period should be extended to February 28, 2025 to provide the time necessary for the Monitor to close the transactions contemplated under the Credit Bid Vesting Order (subject to Court approval) and proceed to consult with the applicable stakeholders to formulate and implement an orderly liquidation plan for the Remaining Portfolio.

34. 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.

35. Based on the Cash Flow Forecast (as defined in the Tenth Report), subject to approval of the Viscount DIP Facility, 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

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

37. 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.

38. 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:

39. the Seventh Report;

40. the Eighth Report;

41. the Ninth Report;

42. the Tenth Report;

43. the Goldstein Affidavit and the exhibits thereto;

44. the Jacobs Affidavit and the exhibits thereto; and

45. such further and other material as counsel may advise and this Honourable Court may permit.

November 29, 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

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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PROCEEDING COMMENCED AT
TORONTO

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