

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

- and -

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE  
INC. and PAVILION AQUATIC CLUB INC.**

**Respondents**

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF  
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**MOTION RECORD  
DUCA Financial Services Credit Union Ltd.  
(hearing scheduled April 17, 2015)**

April 13, 2015

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## INDEX

TAB	DOCUMENT	PAGE NOS.
1	Notice of Motion returnable April 17, 2015	1 – 11
2	Affidavit of Timothy R. Dunn sworn April 13, 2015 and the exhibits attached thereto	12 – 17
A	<b>Exhibit “A”</b> – Order of Mr. Justice Brown dated October 24, 2014 (“Monitor Order”)	18 – 29
B	<b>Exhibit “B”</b> – Report issued by CBTL as Monitor dated November 8, 2013 (without appendices)	30 – 43
C	<b>Exhibit “C”</b> – Report issued by CBTL as Monitor dated January 16, 2014 (without appendices)	44 – 51
D	<b>Exhibit “D”</b> – Report issued by CBTL as Monitor dated August 5, 2014 (without appendices)	52 – 75
E	<b>Exhibit “E”</b> – Order of Justice McEwen dated September 8, 2014 (“Receivership Order”)	76 – 91
F	<b>Exhibit “F”</b> – Consent of Pollard & Associates Inc. to act as substitute Receiver dated April 9, 2015	92 – 93
3	Draft Order	94 - 96

# TAB 1

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

**- and -**

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC. and  
PAVILION AQUATIC CLUB INC.**

**Respondents**

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**NOTICE OF MOTION**

**DUCA FINANCIAL SERVICES CREDIT UNION LTD. ("DUCA")** will make  
a motion to a judge sitting on the Commercial List on Friday, the 17<sup>th</sup> day of April, 2015  
at 10:00 a.m. or as soon after that time as the motion can be heard at the court house,  
330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order abridging the time for service of this notice of motion;

2. An order substituting Collins Barrow Toronto Limited ("CBTL") with Pollard & Associates Inc. ("Pollard") as court appointed receiver and manager of the Respondents and Forza Fitness Ltd., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Pavilion Clubs Inc. (collectively, the "Debtors");
3. An Order setting a schedule for all matters associated with the discharge and approval of the of the activities and fees of CBTL and its counsel, Pallett Valo LLP; and
4. Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. DUCA is a secured creditor of each of the Respondents, which collectively carried on business in Vaughan, Ontario as a recreational facility known as "The Pavilion".
2. By Order of Mr. Justice Brown dated October 24, 2014, CBTL was appointed as Monitor of each of the Respondents (the "Monitor Order"), on application brought by Business Development Bank of Canada ("BDC").
3. By Order of Mr. Justice McEwen dated September 8, 2014, CBTL was appointed as receiver and manager of the assets, property and undertaking of each of the Respondents as well as Pavilion Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd. (the "Receivership Order").
4. At the time of the Monitor Order and Receivership Order, there were three principal secured creditors of the Respondents, namely, DUCA, BDC and Return On



Innovation Capital Ltd. ("ROI"). The indebtedness owing to these creditors was approximately \$9,700,000, \$6,700,000 and \$3,000,000 respectively.

5. Following its appointment as Receiver, CBTL engaged DHR Ventures Inc. to be the general manager of the Pavilion. As a consequences of this engagement, the Pavilion is now largely self-operating.

6. Pursuant to the Receivership Order, the Receiver undertook a marketing process for the sale of the property and assets of the Respondents (the "Property"). Through this process, the Receiver retained Colliers MacAulay Nicolls (Ontario) Inc. ("Colliers") to list the property for sale.

7. The marketing process conducted by the Receiver, through Colliers, did not result in any offers for the Property which were satisfactory to DUCA. The process terminated in December 2014 and the listing agreement with Colliers expired in mid-February 2015.

8. As at January 12, 2015, DUCA purchased the indebtedness owing to BDC and took an assignment of all security held by BDC to secure such indebtedness.

9. DUCA has also directly paid \$1,379,782.13 in realty tax arrears and ongoing realty taxes, as well as incurring other costs and disbursements, including professional fees.

10. The debt owing to Duca, including the debt acquired from BDC, is now in excess of \$19 million.

11. ROI has not to date challenged the senior position of the DUCA and BDC debt and associated security. ROI will be served with notice of this motion.
12. Through the direct efforts of DUCA, a purchaser of the Property was found on terms satisfactory to DUCA.
13. On or about March 3, 2015, the Receiver entered into an Agreement of Purchase and Sale with the purchaser, subject to a due diligence period expiring on April 15, 2015.
14. The purchaser has recently requested an extension of the due diligence period.
15. In the event that the purchase agreement goes firm, the closing date is scheduled for June 15, 2015, subject to court approval.
16. In the event that the purchase agreement does not go firm, DUCA has identified other potential purchasers for the Property.
17. Since acquiring the BDC debt in January, 2015, DUCA has effectively become the sole economic stakeholder in the outcome of the receivership.
18. DUCA wishes to substitute the Receiver.
19. Pollard is a licensed trustee in bankruptcy and experienced receiver.
20. Given the minimal role for the receiver in the operations of the Pavilion on a go-forward basis, DUCA's view is that the administration of this receivership can be handled on a more cost effective basis by Pollard, to the benefit of all stakeholders.

21. Angela Pollard, the principal of Pollard, is very familiar with the Pavilion and with the issues in the receivership. Angela Pollard is sensitive to DUCA's concerns about keeping down professional fees.

22. CBTL does not object to being substituted provided that certain substantive and logistical matters are adequately addressed to ensure a smooth transition to Pollard.

23. Pollard has consented to act; and

24. Such further and other grounds as counsel may advise and this Honourable Court accepts.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Affidavit of Timothy R. Dunn sworn April 13, 2015 and the exhibits attached thereto;

2. Such further and other evidence as counsel may advise and this Honourable Court permit.

April 13, 2015

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B E T W E E N

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents

Court File No. CV-13-10285-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**NOTICE OF MOTION**

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# TAB 2

Court File No. CV-13-10285-00CL

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SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

**- and -**

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC. and  
PAVILION AQUATIC CLUB INC.**

**Respondents**

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
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*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**AFFIDAVIT OF TIMOTHY R. DUNN  
(sworn April 13, 2015)**

I, **TIMOTHY R. DUNN**, of the Town of Erin, in the County of Wellington, in  
the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner in the law firm of Minden Gross LLP ("MG"). MG acts as  
counsel for DUCA Financial Services Credit Union Ltd. ("DUCA") in connection with this  
matter. I am the partner with carriage of this matter and, as such, I have personal  
knowledge of the matters to which I hereinafter depose. Where I do not have personal  
knowledge of the matters set out herein, I have stated the source of my information and,  
in all such cases, believe it to be true.

2. DUCA is a secured creditor of each of the Respondents, which collectively carried on business in Vaughan, Ontario as a recreational facility known as "The Pavilion".

3. By Order of Mr. Justice Brown dated October 24, 2014, Collins Barrow Toronto Limited ("CBTL") was appointed as Monitor of each of the Respondents (the "Monitor Order"), on application brought by Business Development Bank of Canada ("BDC"). Attached hereto and marked as **Exhibit "A"** to this my affidavit is a copy of the Monitor Order.

4. Attached hereto and marked as Exhibits "**B**", "**C**" and "**D**" to this my affidavit are copies of Reports issued by CBTL as Monitor dated November 8, 2013, January 16, 2014 and August 5, 2014 (without appendices) which set out the background information about the nature of the Respondents' operations and the events that occurred during the monitorship.

5. By Order of Justice McEwen dated September 8, 2014, CBTL was appointed as receiver and manager of the assets, property and undertaking of each of the Respondents as well as Pavilion Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd., which are related entities to the Respondents (the "Receivership Order"). Attached hereto and marked as Exhibit "**E**" to this my affidavit is a copy of the Receivership Order.

6. At the time of the Monitor Order and Receivership Order, there were three principal secured creditors of the Respondents, namely, DUCA, BDC and Return On Innovation Capital Ltd. ("**ROI**"). The indebtedness owing to these creditors was approximately \$9,700,000, \$6,700,000 and \$3,000,000 respectively.

7. Following its appointment as Receiver, CBTL engaged DHR Ventures Inc. to be the general manager of the Pavilion. As a consequences of this engagement, it is my understanding and belief that the Pavilion is now largely self-operating.

8. Pursuant to the Receivership Order, the Receiver undertook a marketing process for the sale of the property and assets of the Respondents (the "**Property**"). Through this process, the Receiver retained Colliers MacAulay Nicolls (Ontario) Inc. ("**Colliers**") to list the property for sale.

9. The marketing process conducted by the Receiver, through Colliers, did not result in any offers for the Property which were satisfactory to DUCA. The process terminated in December 2014 and the listing agreement with Colliers expired in mid-February 2015.

10. As at January 12, 2015, DUCA purchased the indebtedness owing to BDC and took an assignment of all security held by BDC to secure such indebtedness.

11. DUCA has also directly paid \$1,379,782.13 in realty tax arrears and ongoing realty taxes, as well as incurring other costs and disbursements, including professional fees.

12. I am advised by Chris Stadelmann of DUCA and believe that the debt owing to Duca, including the debt acquired from BDC, is now in excess of \$19 million.

13. ROI has not challenged the senior position of the DUCA debt and associated security.

14. Through the direct efforts of DUCA, a purchaser of the Property was found on terms satisfactory to DUCA.

15. On or about March 3, 2015, the Receiver entered into an Agreement of Purchase and Sale with the purchaser, subject to a due diligence period expiring on April 15, 2015. The purchaser has recently asked for an extension of the due diligence period.

16. In the event that the purchase agreement goes firm, the closing date is scheduled for June 15, 2015, subject to court approval.

17. If the purchase agreement does not go firm, DUCA has identified other potential purchasers for the Property.

18. Since acquiring the BDC debt in January, 2015 and having become effectively the only stakeholder with an economic interest in the outcome of the receivership, DUCA wishes to substitute the Receiver.

19. Pollard & Associates Inc. ("Pollard") is a licensed trustee in bankruptcy and experienced receiver.

20. Angela Pollard, the principal of Pollard, was a long-time independent member of DUCA's board of directors. She recently decided to step down from this position. I am advised by Ms. Pollard and believe that her term as director officially expires on April 14, 2015.

21. I am aware from discussions with Ms. Pollard that, as a result of her position as an independent director of DUCA, she is very familiar with the operations of the

Pavilion and the issues in the receivership. Angela Pollard is also very sensitive to DUCA's concerns about keeping down professional fees in order to maximize recovery of its loans.

22. Given the minimal role for the receiver in the operations of the Pavilion on a go-forward basis, DUCA's view is that the administration of the receivership can be handled on a more cost effective basis by Pollard than CBTL.

23. In the event that the current sale does not go firm, DUCA's view is that Pollard will be able to run a further sales process on a more cost effective basis than CBTL, thus maximizing the potential recovery available to DUCA.

24. CBTL does not object to being substituted provided that certain substantive and logistical matters are adequately addressed to ensure a smooth transition to Pollard.

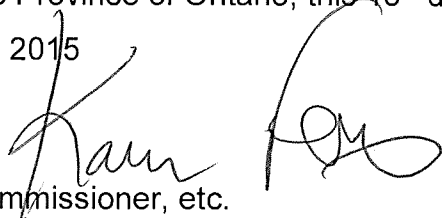
25. Attached hereto and marked as Exhibit "F" to this my affidavit is a copy of the Consent of Pollard to act as substitute Receiver.

26. I am not aware of any prejudice to any party from the substitution of the Receiver.

27. I make this Affidavit in support of a motion to substitute CBTL with Pollard as court appointed receiver of the assets, property and undertaking of the Respondents.

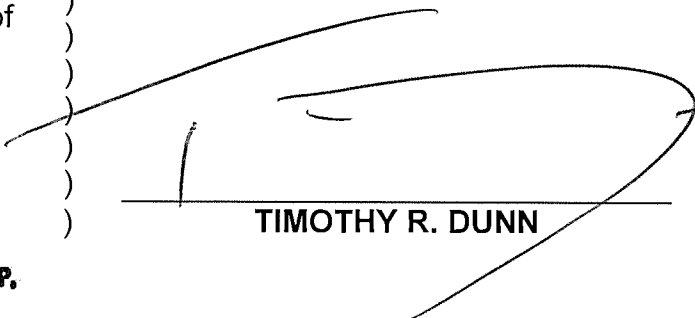
SWORN before me at the City of Toronto, )  
in the Province of Ontario, this 13<sup>th</sup> day of )  
April, 2015 )

A Commissioner, etc.



#2341947 | 4084746

~~Karen Anne Fox, a Commissioner, etc.~~  
Province of Ontario, for Minden Gross LLP,  
Barristers and Solicitors.  
Expires November 28, 2017.



TIMOTHY R. DUNN

BETWEEN

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial list**

Proceeding commenced at Toronto

**AFFIDAVIT OF TIMOTHY R. DUNN  
(sworn April 13, 2015)**

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Lawyers for DUCA Financial Services Credit Union Ltd.





collectively, the “**Debtors**”) acquired for, or used in relation to any business carried on by any of the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Margaret Bernat sworn October 7, 2013 and the exhibits thereto (the “**Bernat Affidavit**”) and the consent of CBTL to act as the Monitor, and on hearing the submissions of counsel for BDC, counsel for DUCA Financial Services Credit Union Ltd. (“**DUCA**”), counsel for the Debtors and counsel for Return on Innovation Capital Ltd., no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Eunice Baltkois sworn October 9, 2013, filed,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that the application for the appointment of CBTL as receiver and manager, without security, of all of the assets, undertakings and properties of the Debtors, is hereby adjourned on consent of the parties to November 12, 2013 (the “**Return Date**”).

3. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, CBTL is hereby appointed Monitor, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to any business carried on by any of the Debtors, including all proceeds thereof (collectively, the “**Property**”).

#### **MONITOR'S POWERS**

4. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- 3 -

- (a) to monitor any of the Debtors' receipts and disbursements whether by cash, cheque or any other method, including, without limitation, the right to access all information relating to the Debtors' accounts at any financial institution, and the Monitor shall have immediate, continuous and unrestricted access to the premises municipally known as 130 Racco Parkway, Thornhill, Ontario (the "**Premises**") to carry out the foregoing;
- (b) to monitor such other accounting information of the Debtors and 1688902 Ontario Inc. ("**168**") as the Monitor deems necessary or appropriate;
- (c) to access, investigate and monitor any lease and sub-lease of the Premises, including, without limitation, any lease documents, agreements, payment history and to meet with and discuss the same with any tenant or subtenant of the Premises;
- (d) to access any and all computer systems and servers, wherever located, related to the business and affairs of any of the Debtors;
- (e) to engage counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including, without limitation, those conferred by this Order;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and
- (g) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

5. **THIS COURT ORDERS** that the Debtors shall continue to carry on business in the ordinary course and shall not make any payments outside of the ordinary course of business or to any related parties with the exception of current employees and parties under contract with any of the Debtors for services rendered.

6. **THIS COURT ORDERS** that, commencing on the date of this Order, the Debtors shall make all scheduled interest payments to BDC in accordance with the terms of the BDC Credit Agreement (as such term is defined in the Bernat Affidavit).

7. **THIS COURT ORDERS** that, commencing on the date of this Order, the Debtors shall make all scheduled interest payments to DUCA in accordance with the terms of the DUCA Credit Agreement (as such term is defined in the Bernat Affidavit).

8. **THIS COURT ORDERS** that the Debtors shall provide the Monitor with the information listed in **Schedule "A"** attached hereto by no later than the dates indicated therein.

9. **THIS COURT ORDERS** that if any of the Debtors fails to:

- (a) satisfy any of their respective obligations under this Order or any other Order or Endorsement of this Court;
- (b) make the payments required under paragraphs 6 and 7 of this Order; or
- (c) deliver the information to the Monitor required under paragraph 8 of this Order,

BDC may, on one (1) business days' notice to the Debtors, return to this Court at a 9:30 a.m. appointment to obtain a receivership Order substantially in the form filed in this application.

10. **THIS COURT ORDERS** that, subject to paragraph 9 of this Order, if the Debtors' indebtedness to each of BDC and DUCA are not indefeasibly repaid by 5:00 p.m. (Toronto Time) on January 15, 2014, BDC may, on one (1) business days' notice to the Debtors, return to this Court at a 9:30 a.m. appointment to obtain a receivership Order substantially in the form filed in this application.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR**

11. **THIS COURT ORDERS** that: (i) the Debtors and 168; (ii) all tenants and subtenants of the Premises; (iii) all of the Debtors' and 168's respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control.

12. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Debtors, and any computer programs, computer tapes, computer disks, servers, electronic backups, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided, however, that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate

access to the information in the Records as the Monitor may in its discretion require, including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE MONITOR**

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

15. **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Monitor or with leave of this Court and any and all Proceedings currently under way against or in respect of any of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

16. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided, however, that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower any of the Debtors to carry on any business which the Debtors, as applicable, are not lawfully entitled to carry on; (ii) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment; (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 THE DEBTORS**

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtors, without written consent of the Monitor or leave of this Court.

### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, centralized reservation systems, credit card processors, payroll services, insurance, transportation services, utility or other services to any of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current 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 Debtors in accordance with normal payment practices of the applicable Debtors or as may be ordered by this Court.

### **LIMITATION ON THE MONITOR'S LIABILITY**

19. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

### **MONITOR'S ACCOUNTS**

20. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "**Monitor's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person. To the extent that the

Monitor and/or its counsel's accounts are paid by BDC and/or DUCA, such amounts paid shall be added to the Debtors' indebtedness to BDC and/or DUCA, as applicable.

21. **THIS COURT ORDERS** that, if requested by the Debtors, 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.

#### **GENERAL**

22. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

23. **THIS COURT ORDERS** that the Confidential Document Brief dated October 23, 2013 be kept confidential, sealed and not form part of the public record in these proceedings until the Sales Process (as defined in the Debtors' Notice of Motion) is complete or further order of this Court.

24. **THIS COURT ORDERS** that the Debtors, the Monitor, DUCA, ~~and~~ BDC to keep all information received regarding the Sales Process confidential. If the Monitor wishes to disclose this confidential information to this Court, it shall seek a sealing order for such information.

*B.*  
and Return on  
Innovation Capital Ltd.

25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, receiver, receiver and manager or trustee in bankruptcy of any of the Debtors or 168.

26. **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 Monitor and its 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.



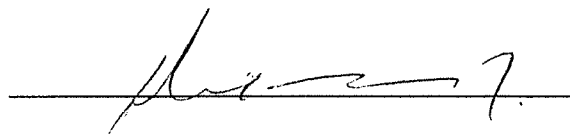
27. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized 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.

28. **THIS COURT ORDERS** that BDC and DUCA shall have their respective costs of this application, up to and including entry and service of this Order, provided for by the terms of their respective security or, if not so provided by their respective security, then on a substantial indemnity basis to be paid by the Debtors on a joint and several basis.

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

30. **THIS COURT ORDERS** that paragraphs 4(a), 4(b), 4(c), 4(d), 4(f), 11, 12 and 13 of this Order shall only become operative if the Debtors fail to provide the information listed at **Schedule "A"** hereto (as per paragraph 8 of this Order) or the Debtors are not, in the Monitor's sole and unfettered discretion, promptly satisfying all follow up information requests of the Monitor. If the Monitor requires any direction from this Court in this regard, the Monitor may appear at a 9:30 am appointment on one (1) business days' notice to the Debtors, seeking such advice and direction.

31. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Monitor shall have the power to meet and discuss with CBRE Limited and the Debtors' insurance broker(s) all matters relating to the Debtors, 168 and the Property.

A handwritten signature in black ink, appearing to be "Shawn 7", written over a horizontal line.

OCT 24 2013  
MB

- 10 -

**SCHEDULE "A"**  
**LIST OF INFORMATION REQUIRED**

<b>Item #</b>	<b>Description</b>	<b>Delivery Date (no later than)</b>
1.	Copies of all current insurance policies of the Debtors and details as to the status of premiums due and/or outstanding	October 28, 2013
2.	Summary of claims history for the last five years in respect of insurance claims against any of the Debtors	October 31, 2013
3.	Copies of signed leases for third party tenants and subtenants, and for all furniture and equipment leased by the Debtors or 168	October 31, 2013
4.	Copies of Certificates of Insurance provided by third party tenants/subtenants	October 31, 2013
5.	Copies of signed rental agreements/reservations for Pavilion Sports Ice Inc. and status of payments received on account of such rentals/reservations	October 31, 2013
6.	Schedule of confirmed rentals (other than for Pavilion Sports Ice Inc.) for the next six months and status of customer deposits regarding same	October 31, 2013
7.	Schedule of prepaid membership fees	October 31, 2013
8.	Copies of most recent financial statements for each of the Debtors and 168	October 31, 2013
9.	Copies of offers received with respect to the sale of the Premises	October 31, 2013
10.	Copies of most recent notices of assessment, statements or correspondence received from Canada Revenue Agency	October 31, 2013
11.	Copies of most recent property tax assessments received from City of Vaughan	October 31, 2013
12.	Copies of Statements of Claim, if any, against each of the Debtors and 168	November 6, 2013
13.	Sample of agreement(s) between a Debtor and/or 168 and individual(s) working at the Premises setting out services to be provided	October 31, 2013
14.	List of management of the facility including roles and responsibilities	October 31, 2013
15.	Bank reconciliations as at September 30, 2013 for each bank account maintained by each of the Debtors and 168	November 6, 2013
16.	Details of amounts owing to Canada Revenue Agency and Ministry of Finance as at September 30, 2013 for each of the Debtors and 168	November 6, 2013

*Weekly reporting to be delivered by Tuesday of the following week for the prior week's activities*

For each of the Debtors and 168:

1. List of cash receipts;

- 11 -

2. List of weekly disbursements with supporting documentation for expenses over \$5,000;
3. Copies of notices, statements or other correspondence received from Canada Revenue Agency;
4. Copies of notices, statements or other correspondence received from City of Vaughan; and
5. Printouts of online bank statements for each of the Debtors and 168.

**BUSINESS DEVELOPMENT BANK OF CANADA**

- and -

**AVENTURA II PROPERTIES INC., et al.**

Applicant

Respondents

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**ORDER**

**AIRD & BERLIS LLP**  
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*Lawyers for Business Development Bank of Canada*

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC.  
and PAVILION AQUATIC CLUB INC.**

Respondents

**FIRST REPORT OF THE MONITOR**

**November 8, 2013**

*r*  
*B<sup>v</sup>*  
This is Exhibit.....referred to in the  
affidavit of.....*Timothy R. Dunn*  
sworn before me, this.....*13<sup>th</sup>*  
day of.....*April*.....20.....*15*  
.....*Karen Fox*  
.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Karen Anne Fox, a Commissioner, etc.,  
Province of Ontario, for Minden Gross LLP,  
Barristers and Solicitors.  
Expires November 28, 2017.**

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## Table of Contents

I.	INTRODUCTION .....	1
II.	BACKGROUND .....	2
III.	APPOINTMENT OF THE MONITOR .....	4
IV.	MONITOR'S ACTIVITIES TO DATE .....	5
	OPERATIONS .....	6
	INSURANCE .....	7
	WEEKLY RECEIPTS AND DISBURSEMENTS .....	8
	TENANTS .....	9
	PRIORITY CREDITORS .....	9
V.	SALES PROCESS .....	10
VI.	POSSIBLE RECEIVERSHIP OF THE DEBTORS .....	10
VII.	CONCLUSION .....	12

### Appendices

Monitor Order.....	A
Endorsement .....	B
Organizational Chart.....	C

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## I. INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated October 24, 2013 (the "**Monitor Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed Monitor (the "**Monitor**"), without security, of all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to any business carried on by any of the Respondents (collectively, the "**Debtors**"), including all proceeds thereof (the "**Property**"), pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* and Section 101 of the *Courts of Justice Act*. A copy of the Monitor Order is attached hereto as Appendix "**A**".
2. Pursuant to the Endorsement of the Honourable Mr. Justice Brown of the Court dated October 24, 2013 (the "**Endorsement**"), the balance of the application was adjourned to November 12, 2013. A copy of the Endorsement is attached hereto as Appendix "**B**".

### **Purpose of First Report**

3. The purpose of this first report of the Monitor (the "**First Report**") is to:
  - i) inform the Court as to the status of matters since its appointment;
  - ii) recommend that this Honourable Court issue an Order approving the First Report and the Monitor's conduct and activities described therein;
  - iii) recommend that this Honourable Court amend the Monitor Order deleting paragraph 30 from the Monitor Order, or, in the alternative, deleting from paragraph 30 of the Monitor Order any reference to paragraph 4(f) of the Monitor Order;
  - iv) recommend that this Honourable Court amend paragraph 4(a) of the Monitor Order to provide the Monitor with "...the right to access all information relating to the Debtors' accounts, *or the Property*, at any financial institution..."
  - v) recommend that this Honourable Court amend paragraph 4(b) of the Monitor Order to include 1887722 Ontario Ltd. as one of the companies the Monitor is to monitor; and
  - vi) recommend that this Honourable Court issue an Order sealing the Supplemental Report (defined below) until conclusion of the Sales Process (defined below).

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### Terms of Monitor Order

4. The Monitor Order requires that the Debtors provide to the Monitor the information set out in Schedule "A" to the Monitor Order, in accordance with the dates prescribed therein. The Debtors have provided to the Monitor substantially all of the information set out in #1 to #16 of Schedule "A" to the Monitor Order (to the extent that it was available) and made arrangements with the Monitor to deliver the information that the Debtors did not provide by the dates specified. With respect to the weekly reporting set out in Schedule "A", the information provided to the Monitor on the Debtors' weekly receipts and disbursements has been incomplete for the weeks commencing October 21, 2013 and October 28, 2013 and has necessitated the Monitor to seek clarification and further information from the Debtors.
5. In addition, the Debtors have provided the Monitor with additional information that the Monitor requested and have granted the Monitor access to the electronic data room that CBRE Limited ("**CBRE**") established for prospective purchasers.
6. The Monitor also had one discussion with the Debtors' insurance broker regarding matters relating to the Debtors.

### Terms of Reference

7. In preparing this First Report and making the comments herein, the Monitor has relied upon unaudited or draft internal financial statements and financial information prepared by the Debtors, discussions with management, and information from other third-party sources (collectively, the "**Information**"). As the Information included in this First Report has been provided by the Debtors or other parties, or obtained from documents filed with the Court in this matter, the Monitor has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.

## II. BACKGROUND

### a) The Debtors

8. The Debtors are:
  - (a) Aventura II Properties Inc. ("**Aventura**");
  - (b) Pavilion Sports Clubs Inc. ("**PSCI**");



- (c) Pavilion Sports Ice Inc. ("**PSII**");
- (d) Pavilion Sports Food and Beverage Inc. ("**PSFB**"); and
- (e) Pavilion Aquatic Club Inc. ("**PACI**").

Attached hereto as Appendix "**C**" is an organizational chart describing the relationships between and among the Debtors.

9. Aventura is an Ontario corporation incorporated in 2003. Aventura is the registered owner of the land and building situated at 130 Racco Parkway, Vaughan, Ontario (the "**Premises**" or the "**Pavilion**"). The building is commonly known as "The Pavilion". Aventura's sole officer and director is Johny Druckmann ("**Druckmann**").
10. PSCI is an Ontario corporation incorporated in 2003. PSCI operates a fitness club at the Premises. Its sole officer and director is Druckmann.
11. PSII is an Ontario corporation incorporated in 2004. PSII is a wholly-owned subsidiary of PSCI and operates two ice rinks located at the Premises. Its sole officer and director is Druckmann.
12. PSFB is an Ontario corporation incorporated in 2004. PSFB is a wholly-owned subsidiary of PSCI and provides food and beverage services at the Premises. Its sole officer and director is Druckmann.
13. PACI is an Ontario corporation incorporated in 2006. Its directors are Druckmann and Roman Erlikh. Druckmann is the president, secretary, and treasurer of PACI. PACI's registered office is at the Premises. As a result of the cancellation of its Certificate of Incorporation in November 2010, PACI was wound up into PSCI.
14. Details of the operations of the Debtors are set out in this First Report.

**b) The Premises**

15. The Premises are a 145,000 square foot recreation facility that was constructed in 2006 on a 7.66 acre site at the intersection of Dufferin Street and Highway 407 in Vaughan, Ontario. The multi-purpose recreation facility contains a swimming pool, a boxing facility, two ice rinks, squash courts, indoor climbing wall, gymnasium/fitness studio and a full-service restaurant.
16. The Debtors operate collectively as "*The Pavilion Fitness Club*" from the Premises and provide recreational and sport facilities and services to patrons thereof.
17. In addition, the Premises include retail space that Aventura leases to third party tenants. The Monitor understands that the current tenants include two private

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schools, a swimming school, a juice bar, and a physiotherapy clinic. At least three of the available retail spaces are currently vacant as the previous tenants (*i.e.*, a full service restaurant, karate school and health food store) have vacated the Premises.

**c) Secured Lenders**

18. Business Development Bank of Canada ("**BDC**") is a secured creditor and lender to the Debtors. As at the close of business on October 7, 2013, the Debtors were indebted to BDC in the amount of \$6,688,844.22.
19. DUCA Financial Services Credit Union Ltd. ("**DUCA**") is a secured creditor and lender to the Debtors. As at the close of business on September 13, 2013, the Debtors were indebted to DUCA in the amount of \$9,702,470.06.
20. Return on Innovation Capital Ltd., as agent ("**RICL**"), is a secured creditor and lender to the Debtors. The Monitor understands that RICL is owed approximately \$3,000,000 by the Debtors.
21. In addition to BDC, DUCA and RICL, secured creditors of the Debtors (individually or collectively) include Her Majesty the Queen in Right of Ontario and Ford Credit Canada Leasing.
22. The Monitor has not yet received a security opinion from its legal counsel. Accordingly, no opinion is expressed at this time regarding the validity and enforceability of any of the secured lenders' loan and security documents.

**III. APPOINTMENT OF THE MONITOR**

23. The Debtors defaulted on their obligations to BDC and DUCA. On October 9, 2013, BDC made an application for the appointment of CBTL as receiver and manager of the Debtors. The application was returnable on October 24, 2013.
24. On October 24, 2013, the Court, with the consent of the Debtors, appointed CBTL as Monitor, and adjourned the application for the appointment of a receiver and manager to November 12, 2013.
25. Pursuant to the Monitor Order, certain of the powers granted to the Monitor thereunder took effect immediately, while others will not take effect unless and until the Debtors fail to fulfill certain obligations prescribed therein. The powers of the Monitor which were effective upon granting of the Monitor Order include the following:
  - To engage counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties;

- 
- To require delivery by the Debtors of the information and weekly reporting requested as set out on Schedule "A" attached to the Monitor Order; and
  - To meet and discuss with CBRE and the Debtors' insurance broker(s) all matters relating to the Debtors and the Property.
26. Pursuant to the Monitor Order, certain powers of the Monitor only become operative if the Debtors fail to provide the information listed on Schedule "A" to the Monitor Order or if the Debtors are not, in the Monitor's sole and unfettered discretion, promptly satisfying all follow up information requests of the Monitor. These reserved powers include the following (among other powers described in the Monitor Order):
- To monitor any of the Debtors' receipts and disbursements including, without limitation, the right to access all information relating to the Debtors' accounts at any financial institution<sup>1</sup>;
  - To access any and all computer systems and servers, wherever located, related to the business and affairs of any of the Debtors<sup>2</sup>; and
  - To report to, meet with and discuss with such affected Persons (which term includes tenants, employees, and all others having notice of the Monitor Order) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable<sup>3</sup>.
27. The Debtors have substantially provided the information set out in Schedule "A", as well as additional information that has been requested by the Monitor. However, as is set out below, the Monitor is concerned with the nature and timing of delivery of certain of the disclosures and, therefore, believes that the Monitor requires the reserved powers referred to above.

#### IV. MONITOR'S ACTIVITIES TO DATE

28. Upon its appointment on October 24, 2013, the Monitor attended at the Premises and met with Druckmann to discuss the terms of the Monitor's appointment and to tour the Pavilion. In addition, the Monitor attended at the Premises on November 6, 2013 to meet with Jennifer Bitton ("**Bitton**"), who was Druckmann's designated contact person and conduit for the Monitor's information requests.

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<sup>1</sup> Monitor Order, paragraph 4(a)

<sup>2</sup> Monitor Order, paragraph 4(d)

<sup>3</sup> Monitor Order, paragraph 4(f)

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Druckmann is the General Manager and Maintenance Manager, and Bitton is the Contracts, Collection and Reception Manager. The Monitor has had several discussions with, and engaged in numerous e-mail communications with, Druckmann and Bitton, and has made various requests for information. The Monitor notes that the Debtors have provided information to the Monitor in addition to the information required pursuant to Schedule "A" to the Monitor Order.

29. Set out below is a summary of the Monitor's findings to date.

### OPERATIONS

30. PSCI operates the fitness club which currently has approximately 3,000 members. Members sign an annual contract and pay membership fees on a monthly basis or prepay membership fees for the year in advance. As of October 31, 2013, there were 163 prepaid memberships. Alternatively, members can choose to pay a higher monthly fee without signing an annual contract. Monthly membership fees are typically processed via credit card payments or electronic funds transfer on the first (1<sup>st</sup>) or fifteenth (15<sup>th</sup>) day of the month. On November 1, 2013, approximately \$121,000 was billed of which approximately \$49,000 was "declined". On October 15, 2013, approximately \$33,000 was billed of which approximately \$10,000 was "declined".
31. PSII operates the two ice rinks at the Pavilion and has currently entered into 39 rental contracts. The contracts usually require a 15% deposit with the balance of the rental fee being paid monthly during the term of the contract. The contracts are expected to generate monthly income of approximately \$95,000 during the peak period from October 2013 to March 2014. As of October 30, 2013, payments on 2 of the 39 contracts are in arrears.
32. PSFB operates the onsite restaurant "Tap's Bar and Grill" which primarily services the rink clientele. The restaurant is open weekdays from 4 p.m. to approximately midnight or 1 a.m. and on weekends when the rinks are being rented. The liquor license for the restaurant is in the name of PSFB.
33. The people working at the Pavilion consist of salaried employees as well as independent contractors. Both the salaried employees and the contractors are employed or retained by 1887722 Ontario Ltd. ("188"). Payments to employees and contractors are processed in-house semi-monthly. For the pay period ending October 24, 2013, the net payment was \$52,334 consisting of \$7,615 for six employees and \$44,719 for eighty contractors.
34. 188 is an Ontario corporation incorporated in December 2012. Its registered office is located at the Premises and Druckmann is the President while Henryk Karl is the Director. The independent contractors who enter into a contract for services with 188 are paid on an hourly basis, submit an invoice for their

services, and are responsible for remitting amounts they may owe to the government.

35. Prior to the incorporation of 188, salaried employees and contractors were employed or retained by 1688902 Ontario Inc. ("**168**"). The Monitor is not aware at this time as to the reason for 188 replacing 168.
36. Management provided copies of the Debtors' and 168's most recent financial statements, being unaudited, internal statements for the year ended December 31, 2012 as the Debtors do not prepare monthly or quarterly statements. The financial statements for PSCI, PSII and PSFB were marked "draft". A summary of the operating results is set out below:

	Aventura	PSCI	PSII	PSFB
Total income	\$3,644,926	\$ 3,322,071	\$ 1,803,248	\$ 313,911
Cost of goods sold	-	1,018	-	171,744
Gross profit	3,644,926	3,321,053	1,803,248	142,166
Total expense	2,687,570	4,471,579	1,835,309	246,365
Net ordinary income	957,355	(1,150,526)	(32,062)	(104,198)
Write-off amounts due from related companies	(1,867,163)	-	-	-
<b>Net income</b>	<b>\$ (909,808)</b>	<b>\$ (1,150,526)</b>	<b>\$ (32,062)</b>	<b>\$ (104,198)</b>

37. The income statement for 168 showed no activity, while the balance sheet showed negative total assets of \$10,726, representing an overdrawn bank account of \$30,569 offset by a net receivable of \$19,843.

### INSURANCE

38. Aventura is the named insured on a policy with Intact Insurance for the period July 12, 2013 to July 12, 2014. The monthly premium is \$2,955.02. BDC and DUCA are named as loss payees. The policy covers property with the building insured to a value of approximately \$26 million, and provides commercial general liability insurance with a \$5,000,000 limit per occurrence and in aggregate.
39. PSCI, PSII, and PSFB are the named insured on a policy with Lloyd's for the period between April 1, 2013 and April 1, 2014. The monthly premium is \$11,431.77. The policy includes general liability coverage with a \$5,000,000 limit per occurrence and in aggregate.
40. The Monitor spoke with the insurance broker identified by the Debtors which confirmed to the Monitor that the Debtors' insurance was in full force and effect.

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### WEEKLY RECEIPTS AND DISBURSEMENTS

41. As set out above, the information provided by the Debtors to the Monitor has not been to the satisfaction of the Monitor. The weekly reporting of receipts and disbursements has been lacking in detail and/or is incomplete. The copies of bank statements provided did not reflect all the receipts or disbursements reported for the same week. In addition, the bank statements provided for Aventura and PSII indicate that the relevant accounts are frozen while 168's bank statement indicates that account information could not be retrieved.
42. In reviewing the Debtors' bank account statements provided by the Debtors, the Monitor could not trace a number of the receipts and disbursements reported to it by the Debtors to the transactions included on the Debtors' bank statements. Furthermore, the Monitor noted that there were a minimal number of transactions going through those accounts. The Monitor was told that Aventura's account was frozen because it was compromised and there was a security threat and that PSII's account was frozen because of legal demands arising from income tax payable for 2005-2007, which is in the process of being reversed.
43. Management advised the Monitor on November 7, 2013 that as of June 2011, the "Pavilion Companies" started to use a different account trying to consolidate all the accounting into one account. All of the Pavilion companies deposit their funds into that account at the TD Bank ("**TD Account**") and all expenses are paid from that same account. In response to the Monitor's request for copies of the bank statements for all bank accounts held by the Debtors, management advised that all the bank statements for the bank accounts held by the Debtors were provided to the Monitor. On November 8, 2013, the Monitor requested copies of the bank statements showing activity for the TD Account since October 21, 2013.
44. In response to its request, the Debtors advised the Monitor on November 8, 2013 that the name of the TD Account is "Pavilion Clubs", and provided a copy of a statement of account activity only for the period October 28, 2013 to November 1, 2013. The balance in the bank account as at November 1, 2013 was approximately \$133,500. It therefore appears to the Monitor that funds of the Debtors are being deposited to a bank account that is not in the legal name of any of the Debtors. Based on the existence of this account, and the length of time it took for it to be disclosed to the Monitor, in accordance with paragraph 30 of the Monitor Order, the Monitor is respectfully requesting that this Honourable Court make an Order that (i) amends the Monitor Order to delete paragraph 30 from the Monitor Order; and (ii) paragraph 4(a) of the Monitor Order be expanded to provide the Monitor with "...the right to access all information relating to the Debtors' accounts, *or the Property*, at any financial institution...".

## TENANTS

45. PSCI, PSII and PSFB are tenants at the Premises and Aventura charges monthly rents of \$169,167, \$75,000 and \$3,333, respectively. There is not a formal lease arrangement between Aventura and these tenants.
46. There are also currently five third-party tenants at the Premises. The monthly rent from these parties is \$45,591. Four of the five tenants have leases with Aventura while the fifth has an agreement with PSCI.
47. Pursuant to the leases/offers to lease, tenants are required to carry their own property and liability insurance and to add Aventura as a "named insured" on their policies. Management has provided copies of insurance certificates from four of the tenants, on which either Aventura or PSCI have been named as "additional insured".
48. Copies of lease documentation provided by management for the third party tenants are incomplete as formal leases were not executed for three of the five third party tenants. A summary of the tenants and leases is set out below:

<i>Tenant</i>	<i>Lease documentation</i>	<i>Certificate of Insurance</i>	<i>Monthly Rent</i>
Private school	Unsigned offer to lease	Aventura added insured	\$9,600
Private school	Signed lease	Aventura added insured	\$23,625
Physiotherapy clinic	Signed lease	Aventura added insured	\$6,150
Juice Bar	Signed offer to lease	None	\$1,050
Swim School	Letter of agreement with PSCI	PSCI added insured	\$5,166
<b>Total</b>			<b>\$45,591</b>

49. In addition to the five third party tenants, there is a hair salon at the Premises. While the hair salon is not leased to a third party, the stylists operating at the hair salon are independent and rent the "chairs" from Aventura. The total monthly rent collected by Aventura from the hair stylists is \$4,869. Aventura does not have any formal rental agreements with the stylists. Following its review of the Debtors' insurance policies and discussions with management, the Monitor is waiting for clarification from the Debtors as to the insurance presently in place for the operations of the hair salon.

## PRIORITY CREDITORS

50. Aventura is in arrears on property taxes payable to the City of Vaughan. A copy of the 2013 Final Tax Bill indicates that Aventura's property tax liability was \$879,134.01 as of July 10, 2013, of which \$746,017.19 was past due. The final tax bill for 2013 alone was \$274,512.41.

51. Management has provided copies of the most recent notices of assessment received from Canada Revenue Agency ("**CRA**") which indicate the Debtors' HST position is as set out below. As management has not yet received an updated statement of PSCI's HST position as of September 30, 2013, for the purposes of calculating a net position, the Monitor has assumed that PSCI's balance as at September 30, 2013 is the same as at June 30, 2013.

Aventura – liability as of Sept. 30, 2013	\$404,227.32
PSCI – refund as of June 30, 2013	(979,516.53)
PSII – refund as of Sept. 30, 2013	(361,992.14)
PSFB – liability as of Sept. 30, 2013	<u>1,688.97</u>
Net refund per CRA assessments	<u><u>\$(935,592.38)</u></u>

52. The Monitor understands that Aventura made a voluntary disclosure of a HST liability which was submitted to CRA in June 2012 and may not be reflected in CRA's notice of assessment. The Monitor is seeking further clarification on this matter.
53. The HST refunds owed to PSCI and PSII are being held by CRA as the companies were not current in the filing of their corporate tax returns. The 2012 corporate tax returns were recently filed in October 2013.
54. No statements of account or notices of assessment were available for 188. Management has advised that none have been received to date.
55. Further to correspondence from CRA to 168 dated October 12, 2013, 168 is indebted to CRA in the amount of \$59,180.74 with respect to source deduction arrears. Management has confirmed this debt is still outstanding.

## V. SALES PROCESS

56. The Monitor intends to submit a Supplemental Report to this Honourable Court which will provide a summary of the sales process that has been undertaken by the Debtors (the "**Sales Process**").
57. Pursuant to paragraph 24 of the Monitor Order, all information received regarding the Sales Process is to be kept confidential and the Monitor requests that its Supplemental Report be sealed by the Court until after a sale transaction closes.

## VI. POSSIBLE RECEIVERSHIP OF THE DEBTORS

58. As set out earlier in this report, the Monitor Order was issued with the consent of the Debtors on the return date of the receivership application. In anticipation of that hearing, one of the issues facing CBTL, as putative receiver, was whether or not, upon the issuance of a receivership order, the receiver would continue the operations of the Pavilion.



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59. Two of the more significant factors affecting that decision are whether the receiver would be able to (i) identify a party that could manage the operations of the Pavilion during the receivership, and (ii) secure, on a cost efficient basis, insurance coverage for ongoing operations that would be satisfactory to the receiver.
60. In order to address these two issues, prior to the return date of the receivership application, CBTL met with two parties to discuss their potential engagement to manage the Pavilion if the Court was to issue a receivership order. During those discussions, CBTL enquired of these parties as to whether insurance coverage could be facilitated through their respective insurance brokers if so required. Subsequent to the issuance of the Monitor Order, on October 24, 2013, the Monitor advised the two parties that the receivership motion was adjourned (one of which was informed of the November 12 return date in response to a question to the Monitor). The Monitor also did not initiate any further correspondence following October 24, 2013 with these two parties regarding potential management of the facility or obtaining insurance.
61. With respect to the insurance, it has been the experience of representatives of the Monitor that in order to minimize receivership administration costs, it is preferable that the receiver be added to a debtor's insurance coverage as a loss payee and as an additional named insured. As a result, during its discussions with the Debtors' insurance broker, the Monitor enquired as to whether, if there was a receivership of the Debtors, the insurers would be amenable to adding the receiver as a loss payee and additional named insured. Based on the comments received by the Monitor from the insurance broker, and correspondence surrounding the renewal of the policy(s) reviewed by the Monitor, the Monitor chose to not pursue this issue further at that time.
62. The receivership application is still before this Honourable Court. Paragraph 25 of the Monitor Order provides that nothing in the Monitor Order prevents the Monitor from acting as an interim receiver, receiver, receiver and manager or trustee in bankruptcy of any of the debtors or 168. However, in view of the terms of the Monitor Order, the Monitor is of the view that it does not have the authority to address with the Applicant, or any other secured creditor(s), matters that would pertain to the issuance of a receivership order or in respect of the Property and the Debtors' affairs. The Monitor believes that it is necessary to engage in those discussions with the secured creditor(s) as appropriate since, pending the results of the Sales Process, the secured lender(s) are the parties with the primary financial interest in the Debtors. As a result, in the event that this Honourable Court does not see fit to order that paragraph 30 of the Monitor Order is of no further force and effect, the Monitor respectfully requests that the reference to paragraph 4(f) be removed from paragraph 30.

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**VII. CONCLUSION**

63. For the reasons set out above, the Monitor respectfully requests that this Honourable Court issue an Order:

- (a) approving the First Report and the Monitor's conduct and activities to date as described therein;
- (b) amending the Monitor Order to delete paragraph 30 from the Monitor Order, or, in the alternative, deleting from paragraph 30 of the Monitor Order any reference to paragraph 4(f) of the Monitor Order;
- (c) amending paragraph 4(a) of the Monitor Order to provide the Monitor with "...the right to access all information relating to the Debtors' accounts, or the Property, at any financial institution...";
- (d) amending paragraph 4(b) of the Monitor Order to include 1887722 Ontario Ltd. as one of the companies the Monitor is to monitor; and
- (e) sealing the Supplemental Report until conclusion of the Sales Process.

All of the foregoing is respectfully submitted to this Honourable Court as of this 8<sup>th</sup> day of November, 2013.

**COLLINS BARROW TORONTO LIMITED** in its capacity as  
Court-appointed Monitor of  
**Aventura II Properties Inc.**  
**Pavilion Sports Clubs Inc.**  
**Pavilion Sports Ice Inc.**  
**Pavilion Sports Food and Beverage Inc.**  
**Pavilion Aquatic Club Inc.**  
and not in its personal capacity

Per: 

Daniel R. Weisz, CPA, CA, CIRP  
Senior Vice-President

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC.  
and PAVILION AQUATIC CLUB INC.**

Respondents

**SECOND REPORT OF THE MONITOR**

January 16, 2014

This is Exhibit C<sup>v</sup> referred to in the  
affidavit of Timothy R. Dunn  
sworn before me, this 13<sup>th</sup>  
day of April 2015

Karen Fox  
A COMMISSIONER FOR TAKING AFFIDAVITS

Karen Anne Fox, a Commissioner, etc.,  
Province of Ontario, for Minden Gross LLP,  
Barristers and Solicitors.  
Expires November 28, 2017.

**Table of Contents**

- I. INTRODUCTION.....2
- II. BACKGROUND.....3
  - PAVILION CLUBS INC.....4
  - DISBURSEMENTS OUT OF PCI TD ACCOUNT .....5
- III. CONCLUSION .....6

**Appendices**

- Monitor Order ..... 1
- Endorsement.....2
- First Report .....3
- November 13 Order.....4
- January 6 Endorsement .....5
- PCI TD Account (defined below) bank statement .....6
- Corporate Profile Report of PCI (defined below) dated December 2, 2013.....7
- PCI (defined below) online bank statement .....8
- Template Membership Agreement.....9

## I. INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 24, 2013 (the "**Monitor Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed as Monitor (the "**Monitor**"), without security, of all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to any business carried on by any of the Respondents (collectively, the "**Debtors**"), including all proceeds thereof (the "**Property**"), pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* and Section 101 of the *Courts of Justice Act*. A copy of the Monitor Order is attached hereto as Appendix "1".
2. Pursuant to the Endorsement of the Honourable Mr. Justice Brown of the Court dated October 24, 2013 (the "**Endorsement**"), the balance of the application was adjourned to November 12, 2013. A copy of the Endorsement is attached hereto as Appendix "2".
3. The First Report of the Monitor dated November 8, 2013 (the "**First Report**") was filed with the Court prior to the November 12, 2013 motion. A copy of the First Report, without appendices, is attached hereto as Appendix "3".
4. By Order of the Honourable Madam Justice Thorburn dated November 13, 2013 (the "**November 13 Order**"), the Debtors were given until January 3, 2014 to deliver to the Monitor, the Applicant and DUCA Financial Services Credit Union Ltd. ("**DUCA**") a binding Agreement of Purchase and Sale in respect of the Property that was satisfactory in form and content to the Applicant and DUCA (an "**APS**"). If an APS was not delivered within that period, the Applicant and DUCA were each granted the right to return to the Court, without further notice to the Debtors at a 9:30 a.m. chambers attendance to obtain an Order appointing a receiver. A copy of the November 13 Order is attached as Appendix "4".
5. The November 13 Order also expressly empowered and authorized the Monitor to do any of the following (among other powers described in the November 13 Order):
  - (a) monitor any of the Debtors' receipts and disbursements including, without limitation, the right to access all information relating to the Debtors' accounts at any financial institution;
  - (b) monitor such other accounting information of the Debtors, 1887722 Ontario Ltd. ("**188**") and 1688902 Ontario Inc. ("**168**") as the Monitor deems necessary or appropriate;
  - (c) report to, meet with and discuss with the Applicant, DUCA, Return on Innovation Capital Ltd. ("**ROIC**") and the Debtors (collectively, the "**Stakeholders**") and to share information with them, provided that all Stakeholders receive the same material information (in the Monitor's

discretion) from the Monitor at the same time or as soon thereafter as practical; and

(d) consult with and enter into agreements with prospective insurance providers (including the Debtors' insurance provider(s)), property managers and facility managers to facilitate an orderly transition in the event a receivership Order is granted.

6. Pursuant to the Endorsement of the Honourable Madam Justice Thorburn dated January 6, 2014, the date by which the Debtors must deliver an APS was extended from January 3, 2014 to January 15, 2014. A copy of the Endorsement of Madam Justice Thorburn dated January 6, 2014 (the "**January 6 Endorsement**") is attached hereto as Appendix "5".

#### PURPOSE OF SECOND REPORT

7. The purpose of this second report of the Monitor (the "**Second Report**") is to:
- i) provide information to the Court with respect to transactions of Pavilion Clubs Inc. ("PCI"); and
  - ii) to recommend that the Court issue an Order adding PCI as an entity subject to the Monitor Order.
8. In preparing this Second Report and making the comments herein, the Monitor has relied upon unaudited or draft internal financial statements and financial information prepared by the Debtors, discussions with management, and information from other third-party sources (collectively, the "**Information**"). As the Information included in this Second Report has been provided by the Debtors or other parties, the Monitor has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.
9. Capitalized terms not defined in this Second Report are as defined in the Monitor Order or the First Report. All references to dollars are in Canadian currency unless otherwise noted.

#### II. BACKGROUND

10. The Debtors are:
- (a) Aventura II Properties Inc. ("**Aventura**");

- (b) Pavilion Sports Clubs Inc. ("PSCI");
  - (c) Pavilion Sports Ice Inc. ("PSII");
  - (d) Pavilion Sports Food and Beverage Inc. ("PSFB"); and
  - (e) Pavilion Aquatic Club Inc. ("PACI").
11. The Debtors own and operate "The Pavilion Fitness Club", commonly referred to as "The Pavilion" which is a multi-purpose recreation facility containing a swimming pool, a boxing facility, two ice rinks, squash courts, indoor climbing wall, gymnasium/fitness studio and a full-service restaurant located in Thornhill, Ontario (the "Pavilion").
  12. The Pavilion's employees and the independent contractors working at the Pavilion are employed or retained by 188. Prior to the incorporation of 188, employees and contractors were employed or retained by 168.
  13. In addition, as is described in further detail below, the main operating account used by the Pavilion is held in the name of PCI.
  14. Descriptions of the Debtors, the premises and the secured creditors, are set out in Paragraphs 8 to 22 of the First Report.

#### PAVILION CLUBS INC.

15. In the First Report, the Monitor reported that the Debtors were consolidating their banking into one bank account that, according to the Debtors, was set up in the name of "Pavilion Clubs" (the "PCI TD Account"). Proceeds from the Debtors' operations were deposited to, and payments of certain expenses were made from, the PCI TD Account.
16. The Monitor has since obtained a copy of the bank statement for the PCI TD Account which identifies the holder of the account as "Pavilion Clubs Inc." ("PCI") having an account number 1890-5254061. A copy of a bank statement relating to the PCI TD Account is attached as **Appendix "6"**.
17. PCI is an Ontario corporation incorporated in 2007. Its registered address is at the Premises. According to a Corporation Profile search conducted by the Monitor, the sole director of Clubs is Henry Karl ("Karl"). No officers of PCI are listed in the Corporation Profile. Karl is an employee of 188, and is also a director of 188 and 168. Druckmann advised the Monitor that Karl is the sole shareholder of PCI. Attached as **Appendix "7"** is a true copy of a Corporate Profile Report of PCI dated December 2, 2013.
18. According to a search conducted by the Monitor pursuant to the *Personal Property Security Act* (Ontario) (the "PPSA") registration system dated January 7, 2014, no security interests have been registered against PCI.

19. Based on the above, proceeds realized from the operations of the Debtors are being deposited to the PCI TD Account, over which the Debtors' secured creditors do not appear to hold any security.
20. On December 31, 2013, a deposit of \$342,286.58 was made to the PCI TD Account. As at January 8, 2014, the balance in the PCI TD Account was \$326,978.07. Attached as **Appendix "8"** is a copy of an online bank statement provided by the Debtors for PCI setting out activities in that bank account between December 31, 2013 and January 8, 2014. The Monitor notes that the bank account number referenced on the bank statement at **Appendix "8"** is the same account number as the bank statement in **Appendix "6"**.
21. With reference to the deposit of \$342,286.58, the Monitor asked to see a copy of the CRA documentation that came with the cheque. The Manager was advised by the Debtors that no documentation had been provided by CRA and they did not retain a copy of the cheque stub. The Monitor was advised by the Debtors that this amount represented a GST/HST refund in respect of PCII.
22. In the First Report, the Monitor reported at Paragraph 51 of that report that according to a notice of assessment received from Canada Revenue Agency ("CRA"), there was a credit balance of \$361,992.14 in the HST account pertaining to PCII.
23. As no supporting documentation has been made available to the Monitor, the Monitor is unable to report on why the refund received is less than the amount set out on the above notice of assessment.
24. In addition, management provided the Monitor with a copy of a template membership agreement for the Pavilion. The Monitor notes that members enter into the membership agreement with PCI. Attached as **Appendix "9"** is a copy of the template membership agreement.

#### DISBURSEMENTS OUT OF PCI TD ACCOUNT

25. According to a PCI TD Account bank statement, a bank draft was issued for \$92,007.50 on October 24, 2013 (the "**October 24 Payment**"), and a deposit was made into the PCI TD Account on October 25, 2013 for \$92,000. The Monitor notes that the October 24 Payment was made on the same date as the motion for an appointment of a receiver before Mr. Justice Brown.
26. The Monitor was advised by Druckmann that he was the payee in respect of the October 24 Payment. The Monitor had requested but did not receive copies of the supporting documentation in respect of the October 24 Payment. Counsel to the Debtors advised that the actions taken by his client protected both the secured creditors and the employees while not prejudicing the CRA (as the alleged arrears were subsequently reversed) or resulting in any benefit to Druckmann, his family, or anyone else.



27. The PCI TD Account bank statement shows a debit entry on November 12, 2013 for \$25,000 from the PCI TD Account, and a subsequent credit entry on November 13, 2013 for \$25,000 into the PCI TD Account.
28. The above transactions were not included in the Debtors' weekly reporting of receipts and disbursements.
29. On December 27, 2013, there was a transfer from the PCI TD Account of \$50,000. Management stated in its weekly reporting that this was another "out" and "in" (similar to the transaction described in paragraph 26 above). On January 2, 2014, there was a transfer into the PCI TD Account of \$50,000. Management advised that the \$50,000 deposited into the PCI TD Account had been transferred from Henry Karl's account.
30. A payment of \$48,000 was made to Jennifer Bitton on October 23, 2013, which was not included in the Debtors' weekly reporting of receipts and disbursements for the week ended October 27, 2013. The Monitor was advised by management that this was a salary payment to Bitton who had not taken any salary from the Debtors in 2013. A search of the Debtors' accounting records indicated that there were no other payments to Bitton in 2013 and only one payment to Bitton in 2012 of \$2,260.
31. Counsel for the Debtors advised that the payments made to Bitton were for arrears in wages, and wages that were payable under a forbearance agreement (prior to its cancellation by the Applicant), which are still payable or at least not prohibited under the Monitor Order and November 13 Order. The fact that Bitton deferred her salary for a period was a benefit to the Debtors (and by extension the stakeholders) as it assisted the Debtors with its cash flows during its "off season" for the business.
32. During the period between November 4, 2013 and November 10, 2013, the Monitor notes a payment in the amount of \$4,500 from the TD PCI Account to an entity known as "Wolfen Trust", which Druckmann advised was an interest payment on an unsecured loan advanced 3 to 4 years ago for approximately \$250,000. Druckmann advised that Wolfen Trust used to be a related party (being an entity related to his former mother-in-law). Interest on the loan is \$1,600 per month and the \$4,500 included a catch-up for arrears. The Monitor has not received any loan documents in respect of this loan.

### III. CONCLUSION

33. For the reasons set out above, the Monitor respectfully requests that this Honourable Court issue an Order:
  - (a) approving the Second Report and the Monitor's conduct and activities as described therein; and

(b) adding PCI to the entities subject to the Monitor Order.

All of the foregoing is respectfully submitted to this Honourable Court as of this 16<sup>th</sup> day of January, 2014.

**COLLINS BARROW TORONTO LIMITED** in its capacity as  
Court-appointed Monitor of  
**Aventura II Properties Inc.**  
**Pavilion Sports Clubs Inc.**  
**Pavilion Sports Ice Inc.**  
**Pavilion Sports Food and Beverage Inc.**  
**Pavilion Aquatic Club Inc.**  
**1887722 Ontario Ltd.**  
**1688902 Ontario Inc.**  
and not in its personal capacity

Per: 

Daniel R. Weisz, CPA, CA, CIRP  
Senior Vice-President

Court File No. CV-13-10285-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC.  
and PAVILION AQUATIC CLUB INC.

Respondents

THIRD REPORT OF THE MONITOR

August 5, 2014

This is Exhibit <sup>4</sup> D referred to in the  
affidavit of Timothy R. Dunn  
sworn before me, this <sup>13<sup>th</sup></sup> day of April 2015  
Karen Fox  
A COMMISSIONER FOR TAKING AFFIDAVITS

Karen Anne Fox, a Commissioner, etc.,  
Province of Ontario, for Minden Gross LLP,  
Barristers and Solicitors.  
Expires November 28, 2017.

## Table of Contents

I.	INTRODUCTION .....	1
	PURPOSE OF THIRD REPORT .....	4
II.	BACKGROUND.....	5
	ACTIVITIES OF THE MONITOR .....	6
	PAVILION CLUBS INC.....	6
	FORZA FITNESS LTD. ("Forza").....	7
	FITNESS CLUB MEMBERSHIPS .....	9
	WEEKLY RECEIPTS AND DISBURSEMENTS .....	9
	PSII HST REFUNDS .....	11
	TRANSFER OF FUNDS FROM PCI TO PSII.....	11
	BANK BALANCES AS AT JULY 25, 2014 .....	12
	CORPORATE TAX RETURNS .....	12
	PRIORITY CREDITORS.....	13
III.	SALES PROCESS .....	17
IV.	POSSIBLE RECEIVERSHIP OF THE DEBTORS.....	18
V.	INFORMATION DISCLOSED TO SECURED CREDITORS .....	18
VI.	THE MONITOR'S FEES AND DISBURSEMENTS .....	19
VII.	CONCLUSION .....	20

### Appendices

Monitor Order .....	A
Endorsement.....	B
First Report.....	C
November 13 Order.....	D
January 6 Endorsement .....	E
Second Report .....	F
January 16 Order and Endorsement .....	G
Notice of Motion .....	H
January 23 Order .....	I
Corporate Profile Report of Forza Fitness Ltd, .....	J
Letter Agreement.....	K

Disbursements \$10,000 and over made by the Pavilion Parties  
between January 24, 2014 to July 15, 2014 .....L  
Affidavit of Daniel Weisz sworn August 5, 2014 .....M  
Affidavit of Alex Ilchenko sworn August 1, 2014.....N

## 1. INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 24, 2013 (the "**Monitor Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed as Monitor (the "**Monitor**"), without security, of all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to any business carried on by any of the Respondents (collectively, the "**Debtors**"), including all proceeds thereof (the "**Property**"), pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* and Section 101 of the *Courts of Justice Act*. A copy of the Monitor Order is attached hereto as Appendix "**A**".
2. Pursuant to the Endorsement of the Honourable Mr. Justice Brown dated October 24, 2013 (the "**Endorsement**"), the balance of the application was adjourned to November 12, 2013. A copy of the Endorsement is attached hereto as Appendix "**B**".
3. The First Report of the Monitor dated November 8, 2013 (the "**First Report**") was filed with the Court prior to the November 12, 2013 motion. A copy of the First Report, without appendices, is attached hereto as Appendix "**C**".
4. By Order of the Honourable Madam Justice Thorburn dated November 13, 2013 (the "**November 13 Order**"), the Debtors were given until January 3, 2014 to deliver to the Monitor, the Applicant and DUCA Financial Services Credit Union Ltd. ("**DUCA**") a binding Agreement of Purchase and Sale in respect of the Property that was satisfactory in form and content to the Applicant and DUCA (an "**APS**"). If an APS was not delivered within that period, the Applicant and DUCA were each granted the right to return to the Court, without further notice to the Debtors, at a 9:30 a.m. chambers attendance to obtain an Order appointing a receiver. A copy of the November 13 Order is attached hereto as Appendix "**D**".
5. The November 13 Order also expressly empowers and authorizes the Monitor to do any of the following (among other powers described in the November 13 Order):
  - (a) monitor any of the Debtors' receipts and disbursements including, without limitation, the right to access all information relating to the Debtors' accounts at any financial institution;
  - (b) monitor such other accounting information of the Debtors, 1887722 Ontario Ltd. ("**188**") and 1688902 Ontario Inc. ("**168**") as the Monitor deems necessary or appropriate;
  - (c) report to, meet with and discuss with the Applicant, DUCA, Return on Innovation Capital Ltd. ("**ROI**") and the Debtors (collectively, the "**Stakeholders**") and to share information with them, provided that all Stakeholders receive the same material information (in the Monitor's

discretion) from the Monitor at the same time or as soon thereafter as practical; and

(d) consult with and enter into agreements with prospective insurance providers (including the Debtors' insurance provider(s)), property managers and facility managers to facilitate an orderly transition in the event a receivership Order is granted.

6. Pursuant to the Endorsement of the Honourable Madam Justice Thorburn dated January 6, 2014, the date by which the Debtors must deliver an APS was extended from January 3, 2014 to January 15, 2014. A copy of the Endorsement of Madam Justice Thorburn dated January 6, 2014 (the "**January 6 Endorsement**") is attached hereto as Appendix "**E**".
7. The Second Report of the Monitor dated January 16, 2014 (the "**Second Report**") was filed with the Court on January 16, 2014. The purpose of the Second Report was to provide information to the Court with respect to transactions of Pavilion Clubs Inc. ("**PCI**") and to recommend to the Court that the Court issue an Order adding PCI as an entity subject to the Monitor Order. A copy of the Second Report, without appendices, is attached hereto as Appendix "**F**".
8. Pursuant to the Order of the Honourable Mr. Justice Wilton-Siegel dated January 16, 2014 ("**January 16 Order**"):
  - (a) the date by which the Debtors must deliver an APS was extended from January 16, 2014 to January 22, 2014;
  - (b) PCI is included in the definition of Debtors commencing January 16, 2014, and subject to the terms and conditions of the Monitor Order;
  - (c) PCI shall immediately repay \$342,286.58 to Pavilion Sports Ice Inc. ("**PSII**"); and
  - (d) PCI shall not make any payments other than (sic) payments of the Respondents' expenses and PCI's expenses in the ordinary course and in accordance with historical practice, nor any payments to any related parties for any amount in excess of \$5,000 in any one payment or any cumulative payments over a 30 day period.

Copies of the January 16 Order and the accompanying endorsement are attached hereto as Appendix "**G**".
9. On January 21, 2014, the Respondents filed a Notice of Motion (the "**January 21 Motion**") returnable January 23, 2014 in which they sought an Order:
  - (a) sealing the Confidential Brief (filed by the Respondents) until the Sales Process has been completed; and

- (b) varying the terms of the Monitor Order, the November 13 Order, and/or the January 16 Order to: (i) adjourn the receivership in such a way as to eliminate the need for constant court attendances; (ii) reduce some of the time and cost associated with the existing reporting structure; and (iii) confirm that the CRA Refund (defined below) could be used for operating costs.

A copy of the Notice of Motion is attached hereto as Appendix "H".

- 10. Pursuant to the Order of the Honourable Mr. Justice Brown dated January 23, 2014 ("**January 23 Order**");
  - (a) the Debtors' Confidential Brief dated January 21, 2014 was sealed until conclusion of the Sales Process;
  - (b) Schedule "A" to the Monitor Order was replaced by the Schedule "A" attached to the January 23 Order;
  - (c) the Debtors are to immediately advise the Monitor, the Applicant and DUCA if the agreement of purchase and sale ("**APS**") entered into is terminated or if the purchaser elects to not pursue the transaction contemplated by the APS;
  - (d) paragraph 2 of the November 13 Order is replaced by a provision that orders that if the APS is terminated or the purchaser elects to not pursue the transaction contemplated in the APS for any reason whatsoever, the Applicant or DUCA may immediately and on one day's notice to the Respondents, 168, 188 and PCI (collectively the "**Pavilion Parties**"), return to Court at a 9:30 a.m. appointment to obtain an order appointing a receiver over the Pavilion Parties;
  - (e) paragraph 3 of the January 16 Order is replaced by a provision that orders that on or before January 31, 2014, PSII will make attempts to open a bank account at a Schedule "1" bank (the "**Account**") and deposit a cheque to the Account, representing the total refund received ("**CRA Refund**") from the Canada Revenue Agency and deposited on December 31, 2013 in the amount of \$342,286.58 less all of the Respondents' expenses paid using proceeds from the CRA Refund. The January 23 Order further orders that if PSII is unable to open the Account by January 31, 2014, PSII is to advise the Monitor forthwith and, if required, seek further advice and direction from the Court;
  - (f) paragraph 4 of the January 16 Order is replaced by a provision that PCI or PSII shall not make payments other than payments of the Pavilion Parties' expenses in the ordinary course of the Pavilion Parties business and affairs, nor payments to related parties including Johny Druckmann, Jennifer Bitton and Henryk Karl for any amount in excess of \$5,000 in any one payment to any one related party, or any cumulative payments over a



30 day period to any one related party without the prior written consent of the Monitor;

- (g) the Respondents are authorized to use the CRA Refund for their ongoing operations provided the funds are used in the ordinary course of business and that PSCII shall advise the Monitor of daily withdrawals, cheques, transfers or other debits from the Account in excess of \$20,000 in the aggregate and are to provide the Monitor with details and supporting documentation for any individual transaction of \$10,000 or higher;
- (h) the Pavilion Parties shall each advise the Monitor in advance before making daily withdrawals, cheques, transfers or other debits from its account in excess of \$20,000, in the aggregate and are to provide the Monitor with details and supporting documentation for any proposed individual transaction of \$10,000 or higher executed on its behalf; and
- (i) the Respondents are to immediately advise the Monitor upon receipt of any refund from CRA and shall not deposit, or otherwise disburse, said refund without the Monitor's consent or further Order of the Court.

A copy of the January 23 Order is attached hereto as Appendix "I".

#### PURPOSE OF THIRD REPORT

11. The purpose of this third report of the Monitor (the "Third Report") is to:
  - i) inform the Court as to The Pavilion's status and operations since the date of the First Report to July 30, 2014;
  - ii) advise the Court with respect to the activities of the Monitor since the date of the First Report to July 30, 2014;
  - iii) request that the Court issue an Order approving the Second Report and the Third Report, and the Monitor's conduct and activities to July 30, 2014 described therein;
  - iv) request that the Court expand the Monitor's mandate to authorize the Monitor to contact CRA to ascertain the disposition of the \$979,516.53 HST credit balance that appeared on a Notice of Assessment dated August 2, 2013 in respect of PSCI and to require the Debtors to execute CRA's Business Consent Form RC59 authorizing CRA to discuss PSCI's HST account with a representative of the Monitor; and
  - v) request that the Court issue an Order approving the fees and disbursements for the period ending June 30, 2014 of the Monitor and its legal counsel in these proceedings.

12. In preparing this Third Report and making the comments herein, the Monitor has relied upon unaudited or draft internal financial statements and/or financial information prepared by the Debtors, discussions with management of the Respondents, and information from other third-party sources (collectively, the "Information"). As the Information included in this Third Report has been provided by the Debtors or other parties, the Monitor has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.
13. Capitalized terms not defined in this Third Report are as defined in the Monitor Order, the First Report or the Second Report. All references to dollars are in Canadian currency unless otherwise noted.
14. The Monitor has not posted on its website any of the Monitor's reports to the Court, the Court Orders issued, or any other proceedings in respect of this matter. These proceedings have not been ordered by this Honourable Court to be subject to the Commercial List E-Service Protocol.
15. The Monitor notes that this Third Report does not report on certain matters included in the First Report. The information the Debtors were required to provide the Monitor pursuant to the Appointment Order (and, in turn, the information the Monitor reports to this Honourable Court) was limited by the January 23 Order to the required information contained in Schedule "A" to the January 23 Order. The Third Report is accordingly more limited in scope.

## II. BACKGROUND

16. The Debtors are:
  - (a) Aventura II Properties Inc. ("Aventura");
  - (b) Pavilion Sports Clubs Inc. ("PSCI");
  - (c) PSII;
  - (d) Pavilion Sports Food and Beverage Inc. ("PSFB");
  - (e) Pavilion Aquatic Club Inc. ("PACI"); and
  - (f) PCI.

17. The Debtors own and operate "The Pavilion Fitness Club", commonly referred to as "The Pavilion" which is a multi-purpose recreation facility containing a swimming pool, a boxing facility, two ice rinks, squash courts, indoor climbing wall, gymnasium/fitness studio and a full-service restaurant located in Thornhill, Ontario. Around spring 2014, the Debtors changed the name of the facility to "Forza Fitness".
18. The Pavilion's employees are employed by PSCI, while the independent contractors working at The Pavilion are retained by 188. Prior to the incorporation of 188, contractors were retained by 168. Currently, almost all amounts paid to the independent contractors and The Pavilion's employees are paid from the 188 bank account.
19. The main operating bank account used by The Pavilion is held in the name of PCI at the Toronto Dominion Bank (the "**PCI TD Account**").
20. Descriptions of the Debtors, the premises and the secured creditors, are set out in Paragraphs 8 to 22 of the First Report. A description of PCI is set out in the Second Report.

#### ACTIVITIES OF THE MONITOR

21. Pursuant to the Monitor Order, the Debtors have provided the Monitor with information on the Debtors' weekly receipts and disbursements. In addition, the Monitor has requested and for the most part has received on a timely basis other financial information requested of the Debtors.
22. The Monitor has attended at The Pavilion to review original and/or supporting documents, on approximately a weekly basis to December 31, 2013 and a bi-weekly basis thereafter as a result of the January 23 Order. Johny Druckmann, a director of each of the Debtors ("**Druckmann**") (except for PCI) and his daughter, Jennifer Bitton have made themselves available to answer the Monitor's questions. When answers to questions are not readily available to them, they have undertaken to speak to others to obtain the information requested by the Monitor. Management has also given the Monitor, during the Monitor's attendances at The Pavilion, restricted access rights to review transactions directly in QuickBooks ("**QB**"), the commercial accounting software used by the Debtors.
23. Set out below is a summary of the Monitor's findings since the First Report, with the exception of certain matters relating to PCI for the period ending January 16, 2014, which are set out in the Second Report.

#### PAVILION CLUBS INC.

24. Pursuant to the January 16 Order, PCI was ordered to, among other things, (i) immediately repay the CRA Refund to PSII, (ii) not make any payments other than payments of the Respondents' and PCI's expenses in the ordinary course

and in accordance with historical practice, and (iii) not make any payments to any related parties for any amount in excess of \$5,000 in any one payment or any cumulative payments over a 30 day period.

25. Upon the Monitor's attendance at The Pavilion on January 17, 2014, the Monitor noted that the balance in the PCI TD Account was \$169,388 as of January 16, 2014 as a number of disbursements had been made since January 8, 2014 when there was a balance of \$326,978.07 (as reported in the Second Report). In particular, the Monitor noted the following disbursements from the PCI TD Account:

Date	Amount	Description
14-Jan-14	\$10,000.00	Certified cheque payable to Crawley MacKewn Brush LLP ("Crawley"), legal counsel retained on behalf of PCI.
14-Jan-14	\$50,000.00	Certified cheque payable to Lerner's LLP ("Lerner's"), counsel for the Debtors.
14-Jan-14	\$17,114.33	Cheque payable to Karl; management subsequently advised that the payment represented a 5% contingency fee payable to Karl with respect to the PSII HST refund of \$342,286.58 received in December 2013. No written agreement setting out this arrangement has been provided to the Monitor.
16-Jan-14	\$80,000.00	Cheque payable to 188 (and confirmed deposited to the account on January 16, 2014). Management advised that it wanted to maintain a surplus balance in the account, rather than the historical practice of transferring only the amount needed to fund the upcoming payroll.
<b>Total</b>	<b>\$157,114.33</b>	

26. Based on the above, PCI did not have the funds in its bank account as at January 16, 2014 with which to repay the CRA Refund to PSII.
27. On January 20, 2014, the Monitor sought from Lerner's and Crawley, legal counsel for the Debtors and PCI, respectively, (i) an explanation for the failure of PCI to repay the CRA Refund, (ii) written documentation to substantiate the commission payment made to Karl and (iii) an explanation for the need for surplus funds in 188's bank account. The Monitor received a response from counsel to the Debtors and subsequent to that, the January 21 Motion was filed.

**FORZA FITNESS LTD. ("Forza")**

28. On April 8, 2014, the Debtors provided to the Monitor a copy of the insurance binder for The Pavilion in respect of the renewal of The Pavilion's insurance coverage. In reviewing the insurance binder, the Monitor noted that Forza was listed as a named insured in the insurance binder. While the Monitor was previously aware that The Pavilion was changing its name to "Forza Fitness", the Monitor was not aware until it reviewed the insurance binder that Forza would be incorporated as a separate legal entity.

29. On April 9, 2014, the Monitor instructed its legal counsel to obtain a corporate profile search against the name "Forza Fitness Ltd." Attached hereto as Appendix "J" is a copy of a Corporate Profile Report dated April 9, 2014 in respect of Forza (the "**Corporate Profile Report**").
30. The Corporate Profile Report indicates that Forza was incorporated on March 18, 2014 by Henry Karl, and its registered head office address is 130 Racco Parkway. Mr. Karl is the sole director listed therein.
31. Mr. Karl's involvement in the operation and management of The Pavilion is described at paragraphs 15 through 18 and paragraph 29 of the Second Report. In particular, Mr. Karl is the sole shareholder and director of PCI, through which The Pavilion conducts its banking. In addition, Mr. Karl is also the director of 188, the entity by which The Pavilion's independent contractors are retained and paid and from whose bank account The Pavilion's employees are paid.
32. In response to the Monitor's enquiries, the Monitor was informed by the Debtors on April 9, 2014 that:
  - (a) Forza had a bank account (opened on March 19, 2014);
  - (b) as of April 5, 2014, new memberships at The Pavilion were being entered into with Forza;
  - (c) as of April 9, 2014, membership fees were still being billed from and paid to PCI; and
  - (d) as of April 9, 2014, goods and services were "not yet" purchased by Forza nor were invoices billed to Forza.
33. As of July 25, 2014, the balance in the Forza bank account was \$7,243.50. Between the date the bank account was opened (March 19, 2014) to July 25, 2014, there has not been significant activity in the bank account. Total receipts to July 25, 2014 are \$13,295.94 and disbursements to that date are \$6,052.44 of which \$4,800.00 was transferred to the PCI TD Account. The Monitor was advised by the Debtors that the deposits were from individuals who issued cheques payable to Forza.
34. In its review of the Forza bank statements, the Monitor noted that on April 8, 2014, there were two bank charges to the aforementioned bank account for "Cheques+GST/HST CCQ". Based on the above, it appeared to the Monitor that Forza may soon enter into cash receipt and cash disbursement transactions.
35. In light of the above, the Monitor believed that it would be appropriate for the Monitor Order to extend to Forza and sought to do so by way of a consent motion. To that end, on April 24, 2014, draft motion materials were forwarded to counsel for the Debtors for its review and comment.

36. The Monitor understands that subsequent to the issuance of the draft motion materials, discussions took place primarily between counsel to BDC and DUCA and the Debtors that resulted in a resolution between BDC, DUCA, ROI and the Debtors with the effect that the Monitor Order would not extend to Forza.
37. The Monitor was informed that the secured lenders were agreeable that Forza not be included as one of the parties to which the Monitor Order applied. After some negotiation in respect of the terms of the letter, the Monitor and Forza entered into a letter agreement ("**Letter Agreement**") that provides that (i) Forza is subject to all of the terms of the Monitor Order and will conduct itself as if it were one of the Debtors subject to the Monitor Order, (ii) Forza agrees that should it fail to comply with its obligations under the Letter Agreement and the Monitor Order, the Monitor would be at liberty to bring a motion to a judge of the Commercial List seeking an order amending the Monitor Order so as to include Forza as a Debtor and (iii) Forza consents to such relief if it is sought by the Monitor on the basis of a breach of the Letter Agreement or the failure of Forza to comply with the terms of the Monitor Order, subject only to Forza's right to argue as to whether it defaulted on its obligations under the Letter Agreement or the Monitor Order. A copy of the Letter Agreement is attached as Appendix "K".

#### FITNESS CLUB MEMBERSHIPS

38. On July 17, 2014, the Debtors provided the Monitor with a summary of the number of club memberships for the period from January 31, 2014 to July 16, 2014. The Monitor notes that there has not been a significant increase or decrease in the number of club memberships during the aforementioned period.

#### WEEKLY RECEIPTS AND DISBURSEMENTS

##### *Update on Debtors' Banking and Accounting System*

39. The Debtors' banking is consolidated in the PCI TD Account, with the exception of payroll and the payment of independent contractors, which are funded by transfers from the PCI TD Account to a bank account set up in the name of 188. For the most part, all of the employees and independent contractors are paid from the bank account of 188, with the exception of a handful of people.
40. Notwithstanding that the banking is consolidated in either the PCI TD Account or 188's bank account, the Debtors' accounting appears to be recorded in three separate companies in QB being: (i) "PGC Operating" ("**QB PGC**") used to record transactions for PSCI, PSII, Aventura and PSFB, (ii) "1887722 Ontario Ltd." used to record most payments to individuals working at The Pavilion ("**QB 188**"), and (iii) "Aventura II Properties Inc." used to record rent, interest payments to secured lenders, property taxes, and payments to utility companies ("**QB Aventura**"). All transactions, including those receipts and disbursements made through the PCI TD Account, are recorded in QB PGC, QB 188 or QB Aventura, and in some cases recorded in both QB PGC and QB Aventura.

41. The Monitor has asked the Debtors if the Forza deposits are recorded in QB PGC. The Debtors have stated that they are, but the Monitor has not been able to trace all deposits to QB PGC as yet. The Debtors have fallen behind in their bookkeeping from time to time and entries have on occasion been miscoded.
42. Pursuant to the January 23 Order, the Debtors have advised the Monitor in advance of daily withdrawals, cheques, transfers or other debits from its account in excess of \$20,000 and provided supporting documentation for transactions of \$10,000 or higher. A summary of the disbursements or transfers from the PCI TD Account of \$10,000 or higher for the period January 24 to July 24, 2014 is provided below. A detailed list is attached at Appendix "L".

Interest paid to BDC/DUCA	\$ 617,396
Transfers to 188	625,000
Utilities (Power Stream or Enbridge)	449,836
Insurance	51,365
Other	<u>145,341</u>
	<u>\$1,888,938</u>

43. A Statement of Claim was filed on November 29, 2013 naming PSCI and Kendal Aquatics Ltd. ("Kendal") as defendants in a lawsuit arising from an incident that occurred in The Pavilion's swimming pool in July 2013. The plaintiffs are claiming general and special damages of \$3.5 million and punitive, exemplary and aggravated damages of \$1.0 million. The Debtors believe that a defense was filed and the litigation process is continuing and are waiting for confirmation of this.
44. On July 2, 2014, the Debtors advised that they would be issuing two payments in the amounts of \$13,020.08 and \$6,979.92 to the CRA in respect of payroll remittances for PSCI. \$13,020.08 was paid from the PCI TD Account while \$6,979.92 was paid from the Account.
45. Paragraph 32 of the Second Report referred to a payment made to Wolfin Trust in the amount of \$4,500 which the Debtors advised used to be a related party (being an entity related to Druckmann's former mother-in-law). The payment was made on account of an unsecured loan of approximately \$250,000.
46. On July 9, 2014, the Debtors made a payment to "S. Stern" in the amount of \$4,669.66 which was recorded in QuickBooks as "Due to Related Parties". While previous other payments for the same or different amounts have been made to S. Stern, this was the first time that the payment was recorded as a payment to a related party. As this payment, though under \$5,000, was recorded as being made to a related party, the Monitor enquired of the Debtors who S. Stern was. The Debtors advised that S. Stern is not a related party and the payments were in respect of the 2009 loan to Aventura from Wolfin Trust which S. Stern had taken over. On July 23, 2014, the Monitor requested that the Debtors provide the Monitor with a copy of the assignment agreement or other document whereby the

loan was transferred to S. Stern. As of the date of this report, the Monitor has not yet received the documentation requested.

#### PSII HST REFUNDS

47. On February 3, 2014, the Debtors reported to the Monitor that they had received a HST refund cheque in the amount of \$9,934.48 from CRA (the "CRA Funds"). The Debtors forwarded to the Monitor a copy of pages 3-4 of the Notice of Assessment which identified it as an HST refund owed to PSII for the period October to December 2013. The Monitor requested copies of pages 1 and 2 of the Notice of Assessment but was advised that the cheque presumably made up the first 2 pages of the Notice of Assessment and that the information provided to the Monitor was all that the Debtors had in their possession.
48. The Debtors advised the Monitor that the cheque had been deposited, which was not in accordance with the terms of paragraph 11 of the January 23, 2014 Order which states that "*the Respondents shall immediately advise the Monitor upon receipt of any refund from CRA and shall not deposit, or otherwise disburse, said refund without the Monitor's consent or further Order of the Court*". The Monitor subsequently received an email on February 4, 2014 from counsel to the Debtors advising that his clients had inadvertently deposited the CRA Funds into the newly created PSII account. His clients recognized that pursuant to paragraph 11 of Mr. Justice Brown's Order of January 23, 2014 they were not to deposit the CRA Funds without the Monitor's consent (or court order) but advised that the money remains in the PSII account and has not been disbursed or otherwise used.
49. The Monitor was advised during the Monitor's attendance at The Pavilion on February 6, 2014, that the Debtors did not have a copy of the refund cheque ready for the Monitor's review and that the person who had possession of the cheque was not in at that time. The Debtors undertook to email a copy of the cheque to the Monitor. On February 26, 2014, the Debtors advised the Monitor that they did not have a copy of the refund cheque.
50. On May 20, 2014, the Debtors advised the Monitor that a HST refund cheque had been received for the reporting period January 1 to March 31, 2014 in the amount of \$1,886.21. The Debtors requested permission to deposit the cheque and the Monitor responded that the cheque could be deposited to the PSII bank account.

#### TRANSFER OF FUNDS FROM PCI TO PSII

51. Pursuant to Paragraph 7 of the January 23 Order, PSII was to make attempts to open a bank account at a Schedule "1" bank to which the CRA Refund less all of the Respondents' expenses paid using proceeds from the CRA Refund was to be deposited. In the event that the PSII bank account could not be opened by



January 31, 2014, PSII was to advise the Monitor and, if required, seek further advice and direction from the Court.

52. The Debtors provided documentation to show that an account in the name of PSII was set up at TD Canada Trust on January 30, 2014 and that the balance at February 6, 2014 was \$9,929.96, representing the PSII refund cheque of \$9,934.48 less bank charges of \$4.52.
53. When the Monitor inquired as to why funds had not been transferred from the PCI TD Account to the PSII account as required under the January 23 Order, the Monitor was told that the Debtors were unable to use the new PSII account for daily transactions because they did not have cheques yet and would not be able to process any payments from the PSII account. The Monitor subsequently requested confirmation from the Debtors that cheques had been ordered and the expected date of their receipt. On or about March 20, 2014, the Monitor was informed by the Debtors that they were not yet in possession of the PSII cheques and currently did not intend to use the account.
54. There has been minimal activity in the PSII account. As at July 25, 2014, the balance in the PSII bank account was \$20,836.24, reflecting the deposit of the two HST refund cheques, a deposit of \$16,161.00 on June 6, 2014 which the Debtors stated were payments for ice rentals, less a cheque for \$6,979.92 to CRA and bank charges. No deposit slip was available to show the breakdown for the \$16,161.00 deposit, as the Debtors do not maintain a deposit book for the PSII account.

#### BANK BALANCES AS AT JULY 11, 2014

55. As at July 25, 2014, the balances in the respective bank accounts of the Debtors were:

188	\$24,341.62
Forza	7,243.50
PCI	117,115.27
PSII	<u>20,836.24</u>
	<u>\$169,536.63</u>

The Aventura bank account is showing a balance of \$Nil as that account was frozen.

#### CORPORATE TAX RETURNS

56. The Debtors filed 2012 corporate tax returns for each of Aventura, PSCI, PSII and PSFB in October 2013. The returns were prepared internally, while in prior years the year-end financial statements and corporate income tax returns were prepared by external accountants.

57. CRA issued notices of assessment on November 18 and 21, 2013 which assessed the Debtors' 2012 corporate income tax liability as follows:

Aventura	\$510.69 (Electronic filing penalty)
PSCI	\$510.43 (Electronic filing penalty)
PSII	\$0.00
PSFB	\$0.00

58. The Debtors have not as yet filed 2013 corporate tax returns.
59. On February 11, 2014, the Debtors provided to the Monitor a copy of a Statement of Account from the Ontario Ministry of Finance that indicated that PSCI owed \$16,435.13 in respect of the 2008 taxation year. The Debtors issued monthly post-dated cheques for \$3,209.61 to pay off this balance by June 2014.

#### PRIORITY CREDITORS

##### *HST*

60. As set out in the First Report, based on notices of assessment dated October 25, 2013 and August 2, 2013 for PSII and PSCI, respectively, HST refunds were expected of \$361,992.14 in respect of PSII for returns filed to September 30, 2013, and \$979,516.53 in respect of PSCI for returns filed to June 30, 2013.
61. With respect to the HST refund owed to PSII, the Debtors advised that payment was received from CRA in the amount of \$342,286.58 in December 2013. For additional details on the PSII refund, please refer to paragraphs 20 to 23 of the Monitor's Second Report.
62. A letter dated November 14, 2013 was sent by the CRA to PSCI setting out that PSCI's HST return for the period July 1, 2013 to September 30, 2013 was selected for examination and requesting detailed supporting documentation for sales and supplier payments. Subsequently, a letter dated February 6, 2014 was sent by the CRA to PSCI stating that the CRA's review was being expanded to include the period October 1, 2013 to December 31, 2013. The Debtors informed the Monitor that the supporting documentation requested was sent to the CRA and provided the Monitor with a copy of their transmittal letter dated February 20, 2014 which accompanied the information that was sent in response to the CRA's second audit request. Pending the completion of the CRA's review, the Monitor anticipated that all or a portion of the refunds owed to PSCI would likely not be processed for payment.
63. On March 27, 2014, the Debtors advised that they had received a HST refund cheque for PSCI for the period October 1, 2013 to December 31, 2013 in the amount of \$78,640.93, and requested the Monitor's consent to deposit the cheque and to use the funds to reduce Aventura's HST liability. On March 28, 2014, the Monitor responded that the Monitor did not approve such payment

since that payment would be made to a creditor which is not a creditor of PSCI, which could be to the detriment of PSCI's creditors.

64. On May 26, 2014, the Debtors informed the Monitor that they had received a HST refund cheque for PSCI for the period January 1, 2014 to March 31, 2014 in the amount of \$50,550.31. The Monitor authorized the deposit of this cheque by the Debtors.
65. On May 29, 2014, the Debtors advised the Monitor that a HST refund cheque in the amount of \$63,066.38 was received for the period July 1, 2013 to September 30, 2013. The Monitor authorized the deposit of this cheque by the Debtors.
66. For the period October 1, 2013 to December 31, 2013, Aventura filed a HST return that indicated a liability of \$96,303.92, which remains unpaid. In addition, for the period January 1, 2014 to March 31, 2014, Aventura filed an HST return that indicated a liability of \$65,965.93, which liability remains unpaid. A Notice of Assessment dated May 7, 2014 was issued by the CRA to Aventura assessing its HST liability at \$579,317.98 as of March 31, 2014.
67. The CRA issued a Requirement to Pay to TD Canada Trust dated November 19, 2013 in respect of the obligation of Aventura for HST owed in the amount of \$405,806.33. As noted in the First Report, Aventura's bank account at TD Canada Trust has been frozen.
68. Management told the Monitor that Aventura's HST liability as assessed by the CRA correctly reflects Aventura's net position after its voluntary disclosure in 2012. The voluntary disclosure arose from the reclassification of cash transfers to Aventura from the other Debtors as rent (thereby triggering HST on rent collected).
69. The Debtors have advised the Monitor that the majority of the input tax credits claimed by PSCI on its HST returns arise from its rent payable to Aventura.
70. The Monitor noted that PSCI and PSII continue to receive HST refunds, a portion of which relate to expenses paid to Aventura, but that Aventura does not appear to be remitting the HST collected from PSCI and certain other of the Pavilion Parties. While the Monitor did not approve on March 28, 2014 the Debtors' request to use the PSCI refund to pay the Aventura HST liability due to a lack of information provided with that request, the Monitor has subsequently requested confirmation, from the Debtor's counsel, as to whether the Debtors are requesting the Monitor's approval to make any payments on account of HST. The Monitor has not yet received a reply to its request in this regard.
71. As noted above and in the First Report, on the Notice of Assessment dated August 2, 2013, there was a credit (refund) balance of \$979,516.53 regarding PSCI as of the period ending June 30, 2013. The Monitor had been advised by the Debtors that the return for July 1 to September 30, 2013 was

subject to audit and therefore payment of the \$979,516.53 had not yet been received.

72. On the last two Notices of Assessment received for PSCI, the Monitor noted that the opening balance recorded on the Notice of Assessment was \$0. While the Debtors have told the Monitor that they have not received this amount, the Monitor has not been provided by the Debtors with a Notice of Assessment or other correspondence from CRA to indicate the disposition of the credit balance of \$979,516.53. The Monitor has inquired of the Debtors why the \$979,516.53 credit is no longer showing on the Notice of Assessment. The Debtors have informed the Monitor that they do not know the reason why the credit amount no longer appears on the statement of account.
73. The Monitor was told by the Debtors that they have not contacted the CRA at this time to ascertain the status of the \$979,516.53 balance. As a result, the Monitor is not aware of why this amount no longer appears on the CRA's Notice of Assessment. The Debtors informed the Monitor that they did not want to contact the CRA regarding the \$979,516.53 balance out of an abundance of caution that communication with the CRA could negatively impact the ongoing refunds being received from the CRA, and indicated that they did not want the Monitor to contact the CRA for that same reason.
74. In view of the above and since it appears that HST refunds have now been received by PSCI for the two periods under audit, the Monitor is seeking the approval of the Court to expand its mandate to authorize the Monitor to contact CRA to ascertain the disposition of the \$979,516.53.
75. A Notice of Assessment dated January 20, 2014 was issued by CRA to PSFB assessing its HST liability at \$2,160.51 as of December 31, 2013.
76. On June 6, 2014, the Debtors advised the Monitor that CRA had denied 188 the right to file HST returns (to claim ITC credits for HST paid on contractor invoices) because 188 was acting as an agent and was not a revenue generating business. The Debtors have not, to date, provided the Monitor with copies of any HST returns filed by 188 or any correspondence from CRA setting out its position.

#### *Payroll*

77. On January 30, 2014, the Debtors provided to the Monitor a copy of a Notice of Assessment received from CRA that assessed PSFB in the amount of \$27,960.62 with respect to source deductions. The Debtors have advised the Monitor that they dispute the liability on the basis that there were never any employees employed by PSFB.
78. While source deductions have been taken from PSCI's employees' gross pay, they have not been remitted to CRA. There were seven employees of PSCI as of November 2013, according to the list of employees provided by the Debtors.

The Monitor's review of the December 3, 2013 payroll showed that source deductions were deducted from the gross pay of six employees who had a total gross payroll of approximately \$10,000. The source deductions would be approximately \$2,200 per pay period.

79. In addition, the Debtors told the Monitor that no payroll remittances to CRA on behalf of 188 have been made since 188 commenced operations in January 2013.
80. In the First Report, the Monitor reported that 188 replaced 168 as the employer for salaried employees and the entity which retained the contractors who work at The Pavilion. Management advised that it was the Debtors' policy to change the numbered company every two years in order to protect against the potential claims of contractors who may claim to be employees.
81. On February 11, 2014, the Debtors provided to the Monitor a copy of a Notice of Assessment with respect to 168's payroll account, showing that the company had been assessed for failure to remit for taxation year 2012 and as at February 6, 2014 had an outstanding balance of \$112,780.50.
82. On July 2, 2014, the Debtors provided to the Monitor copies of Notices of Assessment dated June 19, 2014 for PSCI's payroll account showing (i) arrears of \$77,047.90 for the year 2013 and (ii) arrears of \$47,287.72 for the year 2014 for total arrears of \$124,335.62. Subsequent to receipt of these notices, the Debtors confirmed that although employees were paid by way of a cheque drawn on 188's account, they were employed by PSCI.
83. Based on the Monitor's review of cheques recorded in QB 188 and QB PGC in June and July 2014, it appears that there are currently ten individuals who are salaried employees, based on the fact that source deductions are deducted from their pay.

#### *Property Taxes*

84. On February 6, 2014, Aventura received a final notice from the City of Vaughan ("City") that the City would proceed for tax sale registration if the property tax arrears in respect of The Pavilion's facility were not paid by February 28, 2014. As of February 6, 2014, the total amount outstanding was \$923,094.35.
85. On February 25, 2014, the Debtors provided the Monitor with a letter referring to a meeting that Aventura had with the City on February 24, 2014. The letter confirmed that the City and Aventura agreed that (i) Aventura will pay \$371,713.35 by February 28, 2014; and (ii) that the balance of the outstanding taxes will be paid by a future date agreed to by both parties. The letter further states that if these arrangements are honored, the City will not proceed with tax sale registration at this time.

86. After review of the letter and the balance in the PCI TD Account as at February 21, 2014, the Monitor contacted the Debtors to enquire if the Debtors projected that the bank balance would be sufficient to meet payment pursuant to Aventura's commitment to the City at the February 25 meeting and, if not, how the Debtors proposed to fund that payment.
87. The Debtors advised the Monitor on February 26, 2014 that they would be issuing interest payments to the Applicant and DUCA, and they did not project that the bank balance would be sufficient on February 28, 2014 and would therefore be unable to fund the payment to the City.
88. The Debtors have reported that their legal counsel contacted the City to notify them of the pending sale of The Pavilion, and, subsequent to that contact, no new correspondence or statements of account have been received from the City.
89. A recent title search dated July 14, 2014 indicated that the City has not made any registrations against the property in respect of the unpaid taxes.

### III. SALES PROCESS

90. The Debtor(s) have entered into an APS for The Pavilion. A description of the events leading up to the APS and the APS itself, can be found in the Supplemental Report of the Monitor dated November 11, 2013 filed in these proceedings ("**Supplemental Report**") and in the affidavit of Johny Druckmann sworn on January 16, 2013 which was filed in conjunction with the Respondents' motion heard on January 23, 2014. In conjunction with that motion, the Respondents filed the Confidential Brief which contained the APS.
91. Pursuant to paragraph 24 of the Monitor Order, all information received regarding the Sales Process is to be kept confidential. Accordingly, the Supplemental Report and the Confidential Brief have been sealed by the Court until after a sale transaction closes.
92. Counsel to the Debtors provided the Monitor with a copy of the final APS which was fully executed on February 3, 2014. Counsel also informed the Monitor on February 12, 2014 that counsel had received the first deposit cheque due under the APS. A second deposit is payable within five days of waiving the conditions included in the APS.
93. On May 3, 2014, and once again on July 7, 2014, counsel to the Debtors provided the Monitor correspondence from the purchaser where, in each case, the purchaser invoked its right to an extension provided for under the APS.

#### IV. POSSIBLE RECEIVERSHIP OF THE DEBTORS

94. Paragraph 3(g) of the November 13 Order authorized the Monitor to "consult with and enter into agreements with prospective insurance providers (including the Debtors' insurance provider(s)), property managers and facility managers, including such parties that may be bidders in the Sale Process (as defined in Paragraph 56 of the First Report), that the Monitor deems desirable to facilitate an orderly transition in the event a receivership Order is granted".
95. Following issuance of the November 13 Order, the Monitor entered into discussions and negotiations with a facilities manager, as to the terms and conditions under which that party would act as the facility manager for The Pavilion in the event a receivership order was granted and the decision made to continue The Pavilion's operations.
96. The Monitor and the proposed facility manager agreed on a form of agreement for management services (the "**Management Agreement**"). As the Debtor(s) have entered into an APS, the Monitor is not at this time seeking approval of the Management Agreement.
97. With a view to facilitating an orderly transition in the event of a receivership, the Monitor also consulted with prospective insurance providers, including a third party insurance broker and the Debtors' insurance broker.
98. With respect to insurance coverage, the Monitor made enquiries as to obtaining, and the cost of, property and general liability coverage in the event a receivership order was granted and the facility manager was engaged by the Receiver. The Receiver will report to the Court on its findings in the event the APS is not concluded and a Receiver is appointed.
99. The Applicant has indicated that it will request the Monitor prepare certain projections in respect of The Pavilion under different scenarios that it may wish to discuss with the Monitor and/or other secured creditors. Since the information to be requested relates to scenarios where a Receiver will have been appointed, the Monitor is of the view that this hypothetical information is not material to the Debtors and will exercise its discretion and will not disclose such hypothetical information to the Debtors.

#### V. INFORMATION DISCLOSED TO SECURED CREDITORS

100. With reference to Paragraph 3(f) of the November 13 Order, and other than discussions as between counsel, the Monitor has provided to the Applicant, DUCA and ROI in the period between November 14 and July 30, 2014, in addition to certain information forwarded by the Debtors to the Monitor:
  - (a) information regarding PCI and the PCI TD Account, including a Corporate Profile search and a search under the PPSA registration system;

- (b) information on the payments in the amounts of \$92,007.50, \$48,000.00 and \$50,000.00 discussed in paragraphs 25 to 30 of the Second Report;
- (c) the Statement of Claim (discussed earlier in the Third Report) filed against PSCI and Kendal;
- (d) the Monitor's response to a query of the Applicant regarding the ability of the Debtors (or successive entities) to fund a potential future expense;
- (e) a summary of a discussion held on January 15, 2014 between Mr. Druckmann, the Monitor and a representative of CBRE;
- (f) an update on various matters since the January 23 Order including the CRA Refund which was deposited to the PCI TD Account, activity in the PCI TD Account, the PSII bank account, the Sales Process, and CRA notices of assessment provided to the Monitor on January 30, 2014;
- (g) a copy of the fully executed APS and confirmation of the deposit received;
- (h) the correspondence from the City (discussed earlier in the Third Report) with respect to unpaid realty taxes;
- (i) the letter dated February 25, 2014 referred to in Paragraph 85 of this Third Report;
- (j) information on the incorporation of Forza and Forza's current role in the operations of The Pavilion;
- (k) a copy of the insurance binder renewal provided by the Debtors;
- (l) information on PSCI HST refunds received, the status of the PSCI credit balance referred to on a CRA notice of assessment, and the outstanding Aventura HST liability; and
- (m) indication to ROI as to whether it could receive funds in respect of The Pavilion matter.

The information in sub-paragraphs (d) and (e) was not provided to ROI at that time since ROI had not confirmed to the Monitor that it will not participate in the Sales Process. The Monitor has subsequently been providing certain information to ROI or its counsel.

## **VI. THE MONITOR'S FEES AND DISBURSEMENTS**

101. The Monitor Order provides that, if requested by the Debtors, the Monitor and its legal counsel pass their respective accounts from time to time, and for this



purpose the accounts of the Monitor and its legal counsel are referred to a judge of the Commercial List of the Court.

102. The Monitor, through its counsel, has sought confirmation from the Respondents' counsel that the Respondents would not oppose a motion to approve the fees and disbursements of the Monitor and its counsel at a later time after being given an opportunity to review the Monitor's and its counsel's invoices. The Monitor has provided its and its counsel's invoices to counsel for the Debtors, but has not received the requested confirmation. The Monitor viewed this as an implicit request to pass its accounts, and accordingly, the Monitor, to save costs, decided to utilize this court appearance to obtain the necessary approval of its (and its counsel's) fees and disbursements.
103. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of these proceedings.
104. The Monitor's accounts total \$149,394.95 in fees and disbursements plus HST of \$19,421.37 for a total amount of \$168,816.32 from October 24, 2013 through until June 30, 2014 (the "**Monitor's Accounts**"). A copy of the Monitor's Accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn August 5, 2014 that is attached as Appendix "**M**".
105. The accounts of the Monitor's counsel, Pallett Valo LLP, total \$75,186.42 in fees and disbursements and \$9,774.24 in HST for a total of \$84,960.66 (the "**PV Accounts**") for the period ending June 30, 2014. A copy of the PV Accounts, together with a summary of the personnel, hours and hourly rates described in the PV Accounts, supported by the Affidavit of Alex Ilichenko sworn August 1, 2014 is attached as Appendix "**N**".

## VII. CONCLUSION

106. For the reasons set out above, the Monitor respectfully requests that this Honourable Court issue an Order:
  - (a) approving the Second Report and the Third Report, and the Monitor's conduct and activities to July 30, 2014 described therein;
  - (b) request that the Court expand the Monitor's mandate to authorize the Monitor to contact the CRA to ascertain the disposition of the \$979,516.53 HST credit balance that appeared on a Notice of Assessment dated August 2, 2013 in respect of PSCI and to require the Debtors to execute CRA's Business Consent Form RC59 authorizing CRA to discuss PSCI's HST account with a representative of the Monitor; and

(c) approving the fees and disbursements of the Monitor and its legal counsel to June 30, 2014 in these proceedings.

All of the foregoing is respectfully submitted to this Honourable Court as of this 5th day of August, 2014.

**COLLINS BARROW TORONTO LIMITED** in its capacity as  
Court-appointed Monitor of  
**Aventura II Properties Inc.**  
**Pavilion Sports Clubs Inc.**  
**Pavilion Sports Ice Inc.**  
**Pavilion Sports Food and Beverage Inc.**  
**Pavilion Aquatic Club Inc.**  
**Pavilion Clubs Inc.**  
**1887722 Ontario Ltd.**  
**1688902 Ontario Inc.**  
and not in its personal capacity

Per:



Daniel R. Weisz, CPA, CA, CIRP  
Senior Vice-President

This is Exhibit **"E"** referred to in the affidavit of **Timothy R. Lund** sworn before me this **13<sup>th</sup>** day of **April** 20**15**  
**Karen Fox**  
A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Karen Anne Fox, a Commissioner, etc.,  
Province of Ontario, for Minden Gross LLP,  
Barristers and Solicitors,  
Expires November 28, 2017**

HONOURABLE **MR.** ) MONDAY, THE 8<sup>TH</sup> DAY  
)  
JUSTICE **McEWEN** ) OF SEPTEMBER, 2014

BETWEEN:

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC.  
and PAVILION AQUATIC CLUB INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**RECEIVERSHIP ORDER**

**THIS APPLICATION**, made by Business Development Bank of Canada ("**BDC**"), for an Order, *inter alia*, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), appointing Collins Barrow Toronto Limited ("**CBTL**") as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc., Pavilion Sports Food and Beverage Inc., Pavilion Aquatic Club Inc., Pavilion

Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd. (collectively, the “**Debtors**”), acquired for, or used in relation to businesses carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Margaret Bernat sworn October 7, 2013 and the exhibits thereto, the First Report of CBTL dated November 8, 2013, the Supplemental Report of CBTL dated November 11, 2013, the Second Report of CBTL dated January 16, 2014 and the Third Report of CBTL dated August 5, 2014 (collectively, the “**Monitor’s Reports**”), and the consent of CBTL to act as the Receiver, and on hearing the submissions of counsel for BDC, counsel for DUCA Financial Services Credit Union Ltd. (“**DUCA**”), counsel for the Debtors and counsel for Return on Innovation Capital Ltd., no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Eunice Baltkois sworn October 9, 2013, filed;

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, CBTL is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (collectively, the “**Property**”).

#### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the businesses of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of each of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of each of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to each of the Debtors and to exercise all remedies of each of the Debtors in collecting such monies, including, without limitation, to enforce any security held by each of the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to each of the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or each of them, for any purpose pursuant to this Order;

- 4 -

- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of each of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to each of the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, including the listing of the Property with a broker or listing agent as the Receiver may deem appropriate and at such listing price as may be recommended by such broker or listing agent and approved or agreed to by the Receiver as appropriate in the circumstances;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$150,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- 5 -

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or each of them;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of each of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by each of the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which each of the Debtors may have;
- (s) to file assignments in bankruptcy for each of the Debtors;
- (t) to conduct examinations, ~~if deemed necessary~~, including, without limitation, an examination of Johny Druckmann and Henry Karl; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

if compelled by the Receiver in accordance with the Rules of Civil Procedure

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and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of each of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this



paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or each of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or each of them, or the Property are hereby stayed and suspended pending further Order of this Court.

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

9. **THIS COURT ORDERS** that all rights and remedies against each of the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on; (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment; (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 THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by each of the Debtors, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having or having had oral or written agreements with the Debtors, or each of them, or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current 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 Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’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.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **GENERAL**

24. **THIS COURT ORDERS** that BDC, DUCA or any party who has filed a Notice of Appearance in these proceedings may serve any Court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List, as it may be amended from time to time.

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of each of the Debtors.

27. **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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Receiver be at liberty and is 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 Receiver 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.

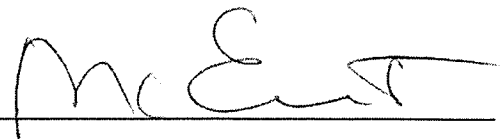
29. **THIS COURT ORDERS** that the Applicant and DUCA shall have their respective costs of this application, up to and including entry and service of this Order, provided for by the terms of the their respective security or, if not so provided by their respective security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. **THIS COURT ORDERS** that the Order of the Honourable Mr. Justice Brown granted on October 24, 2013 in these proceedings, the Order of the Honourable Madam Justice Thorburn granted on November 13, 2013 in these proceedings, the Order of the Honourable Madam Justice Thorburn granted on January 6, 2014 in these proceedings, the Order of the Honourable Mr. Justice Wilton-Siegel granted on January 16, 2014 in these proceedings, the Order of the Honourable Mr. Justice Brown granted on January 23, 2014 in these proceedings and the Order of the Honourable Mr. Justice Hainey granted on August 20, 2014 in these proceedings be and are hereby terminated and replaced with this Order, with the exception of the relief granted pursuant to the above mentioned orders relating to: (i) the approval of the Monitor's Reports and the activities of CBTL described therein; (ii) the sealing of the Monitor's Reports; (iii) the sealing of the Respondents' Confidential Brief dated January 21, 2014 (paragraph 3 of the Order of the Honourable Mr. Justice Brown); (iv) No Proceedings Against the Monitor (paragraph 14 of the Order of the Honourable Mr. Justice Brown); (v) Limitation on the Monitor's Liability (paragraph 19 of the Order of the Honourable Mr. Justice Brown); (vi) the Monitor's Accounts and the Monitor's Charge (paragraph 20 of the Order of the Honourable Mr. Justice Brown); and (vii) CBTL shall be discharged as Monitor upon the filing of the Monitor's final report and obtaining court approval of same.

SEP 08 2014

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**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that Collins Barrow Toronto Limited, the receiver and manager (in such capacities, the "**Receiver**") of all of the assets, undertakings and properties of Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc., Pavilion Sports Food and Beverage Inc., Pavilion Aquatic Club Inc., Pavilion Clubs Inc. and 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 8<sup>th</sup> day of September, 2014 (the "**Order**") made in an action having Court file number CV-13-10285-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.



- 2 -

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2014.

**COLLINS BARROW TORONTO LIMITED,**  
solely in its capacity as Receiver of the Property  
(as defined in the Order), and not in its personal  
capacity

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

Name: Daniel Weisz

Title: Senior Vice-President

**BUSINESS DEVELOPMENT BANK OF CANADA**

- and -

**AVENTURA II PROPERTIES INC., et al.**

Applicant

Respondents

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**RECEIVERSHIP ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
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*Lawyers for Business Development Bank of Canada*

15481801.7

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC.  
And PAVILION AQUATIC CLUB INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**CONSENT**

The undersigned, Pollard & Associates Inc. ("PAI"), hereby consents to the appointment of PAI as receiver and manager, without security, of all of the assets, undertakings and properties of Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc., Pavilion Sports and Beverage Inc., Pavilion Aquatic Club Inc., Pavilion Clubs Inc., 1688902 Ontario Inc., 1887722 Ontario Ltd. and Forza Fitness Ltd. (collectively, the "Debtors") pursuant to the terms of the orders issued in the above proceeding.

**DATED** at Toronto, this 9<sup>th</sup> day of April, 2015.

**POLLARD & ASSOCIATES INC.**

Per:

Name: Angela Pollard  
Title: Authorized Signing Officer

#2303684 v1 | 4084746

This is Exhibit.....referred to in the  
affidavit of.....Timothy R. Dunn  
sworn before me, this.....13<sup>th</sup>  
day of.....April.....20..15  
.....Karen Fox  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Karen Anne Fox, a Commissioner, etc  
Province of Ontario, for Minden G  
Solicitors  
Expires November 28, 2017.**

BETWEEN

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents  
Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**CONSENT**

**MINDEN GROSS LLP**  
Barristers and Solicitors  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Catherine Francis** (LSUC# 26900N)  
cfrancis@mindengross.com

Tel: 416-369-4137  
Fax: 416-864-9223

Lawyers for DUCA Financial Services Credit Union Ltd.

**TAB 3**



**ON READING** the Affidavit of Timothy R. Dunn sworn April 13, 2015 and on hearing the submissions of counsel for DUCA and CBTL, CBTL not opposing the relief sought, no other interested persons appearing, and on reading the Consent of Pollard,

1. **THIS COURT ORDERS** that the Receivership Order of the Honourable Mr. Justice McEwan in this matter dated September 8, 2014 (the "Receivership Order") be and is hereby amended as follows:

(a) Pollard be and is hereby appointed as receiver and manager of all the assets, undertakings and properties of the Debtors, as defined in the Receivership Order, for and in place of CBTL and subject to the terms of the Receivership Order;

(b) Notwithstanding the substitution of Pollard as Receiver, paragraphs 7, 12, 16, 17, 18, 19, 25 and 31 of the Receivership Order shall continue to apply and extend to CBTL, in addition to Pollard, until such time as CBTL has been discharged as Receiver, as described below;

2. **THIS COURT ORDERS** that CBTL shall be discharged as Receiver upon filing its final report and upon approval of its activities and fees and the fees of its counsel.

**B E T W E E N**

**BUSINESS DEVELOPMENT BANK OF CANADA**

-and-

**AVENTURA II PROPERTIES INC., et al.**

**Applicant**

**Respondents**

**Court File No. CV-13-10285-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial list**

Proceeding commenced at Toronto

**ORDER**

**MINDEN GROSS LLP**  
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[cfrancis@mindengross.com](mailto:cfrancis@mindengross.com)

Tel: 416-369-4137  
Fax: 416-864-9223

Lawyers for DUCA Financial Services Credit Union Ltd.



BETWEEN

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents

Court File No. CV-13-10285-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial list**

Proceeding commenced at Toronto

**MOTION RECORD  
(returnable April 17, 2015)**

**MINDEN GROSS LLP**

Barristers and Solicitors  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Catherine Francis (L-SUC# 26900N)**

[cfrancis@mindengross.com](mailto:cfrancis@mindengross.com)

Tel: 416-369-4137

Fax: 416-864-9223

Lawyers for DUCA Financial Services Credit Union Ltd.