

**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 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
(VOLUME 1 OF 2)**

November 9, 2015

PALLETT VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

BOBBY H. SACHDEVA (LSUC # 34454C)

Tel: (905) 273-3300
Fax: (905) 273-6920

Lawyers for the Court Appointed Monitor, Collins
Barrow Toronto Limited

TO: SERVICE LIST ATTACHED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

and

AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC., PAVILION
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TAB 1

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NOTICE OF MOTION

Collins Barrow Toronto Limited (“**CBTL**”), in its capacity as the Court-appointed monitor (the “**Monitor**”) of all of the assets, undertakings and properties of the Respondents and the form Court-appointed receiver and manager of all of the assets, undertakings and properties of the Respondents, Pavilion Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness (together the “**Debtors**”) will make a Motion to a Judge presiding over the Commercial List on December 21, 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, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[] in writing under subrule 37.12.1(1) because it is;

[] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

THE MOTION IS FOR *(state here the precise relief sought)*

- (a) An Order substantially in the form attached as Schedule "A" to this Notice of Motion:
- (i) approving the Final Report of the Receiver dated May 15, 2015 and the Supplement to the Final Report of the Receiver dated May 15, 2015 (together the "**Receiver's Report**") and the activities of CBTL as receiver as set out therein;
 - (ii) approving the Fourth and Final Report of the Monitor dated May 15, 2015 (the "Monitor's Report" and together with the Receiver's Report, the "Reports") and the activities of the Monitor as set out therein;
 - (iii) approving CBTL's interim statement of receipts and disbursements for the period from September 8, 2014 to April 17, 2015 (the "**SRD**");
 - (iv) approving the fees and disbursements of CBTL and its counsel and the fees and disbursements of the Monitor and its counsel to and including the date of the hearing of the herein motion;
 - (v) discharging CBTL as Monitor of the assets, undertakings and properties of the Respondents;
 - (vi) discharging CBTL as Receiver of the assets, undertakings and properties of the Debtors;

- (vii) releasing CBTL from any and all liability, as set out in paragraph 5 of this Order; and
 - (viii) sealing the Supplement to the Final Report of the Receiver dated May 15, 2015 (the “**Supplement Report**”) pending further order of the court; and
- (b) Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE

- (a) On October 24, 2013, CBTL was appointed as Monitor of the assets, undertakings and properties of the Respondents pursuant to the Order of the Honourable Justice Brown (the “**Monitor Order**”).
- (b) On September 8, 2014, CBTL was appointed as Receiver of the assets, undertakings and Properties of the Debtors pursuant to the Order of the Honourable Justice McEwen (the “**Appointment Order**”).
- (c) On April 17, 2015, CBTL was substituted by Pollard & Associates Inc. at the request of DUCA Financial Services Credit Union (“**DUCA**”) pursuant to the Order of the Honourable Justice Conway (the “**Substitution Order**”). CBTL did not oppose the motion by DUCA.
- (d) Since its appointment as Monitor, the Monitor:
 - (i) reported to the Court on, among other things, the status of the Respondents’ business operations;

- (ii) reviewed the Respondents' weekly receipts and disbursements;
 - (iii) monitored the progress of an ultimately unsuccessful agreement of purchase and sale for the sale of the Respondents' business;
 - (iv) corresponded with the Applicant, Business Development Bank of Canada ("BDC"), DUCA, the Respondents and Canada Revenue Agency ("CRA") with respect to certain HST refunds; and
 - (v) discussed a potential receivership with DUCA and BDC.
- (e) The Monitor's fees and disbursements for the period from October 24, 2013, to September 7, 2014, are \$186,226.39 plus HST of \$24,209.45 for a total of \$210,435.84.
- (f) The Monitor's counsel's fees and disbursements for the period ending September 7, 2014, are \$83,480.18 (after a fee reduction) plus HST of \$10,835.92 for a total of \$94,316.10.
- (g) The fees of the Monitor and its counsel are fair and reasonable in the circumstances.
- (h) DUCA does not oppose the fees and disbursements of the Monitor or its counsel.
- (i) Since its appointment as Receiver, the Receiver:
- (i) took possession of the Debtors' premises on September 8, 2014;
 - (ii) attended on site on a full time basis from its appointment until October 31, 2014, in order to stabilize the Debtors' operations due to the complexity of

the actual operations at the Pavilion Facility and issues encountered with day to day accounting;

- (iii) retained a property manager to manage the Debtors' facility on BDC's and DUCA's recommendation;
- (iv) attempted to reconstruct historical accounting records and maintained current accounting records for the Debtors;
- (v) Managed the Debtors' tenants;
- (vi) managed employees and administered the Wage Earner Protection Program;
- (vii) arranged for insurance for the Debtors' buildings, automobiles, contents, liability and boiler and machinery;
- (viii) obtained liability waivers from all members using the Debtors' fitness facilities;
- (ix) obtained a liquor licence in order to continue operating a bar at the Debtors' premises;
- (x) correspondence with the Debtors' third party provider of merchant services and requested that transactions be deposited into the Receiver's bank account;
- (xi) obtained membership information from the Debtors' membership database and processed gym membership fees;

- (xii) worked with the operator of the Debtors' pool in order to open the pool;
- (xiii) arranged for a detailed asset list of all assets at the Debtors' premises;
- (xiv) addressed maintenance and repair requirements, including repairs to the lighting systems and a related rebate under the SaveOnEnergy rebate program;
- (xv) held preliminary discussions with the owner of a juice bar at the Debtors' premises with respect to purchasing the juice bar;
- (xvi) reported to BDC and DUCA with respect to the operations of the business of the Debtors;
- (xvii) returned equipment which was leased or otherwise owned by third parties to the third parties;
- (xviii) sold one vehicle which had previously been financed by the Debtors;
- (xix) filed HST returns for the period up to the date of the Receiver's appointment and post appointment;
- (xx) set up payroll accounts for ongoing remittances of source deductions for the employees of the Debtors;
- (xxi) marketed the property, as set out in more detail below;
- (xxii) dealt with certain open building permits, an outstanding permit with respect to plumbing, and updated the Fire Safety Plan;

- (xxiii) mediated differences of opinion and approaches as between DUCA and BDC; and
 - (xxiv) corresponded with DUCA about concerns raised by DUCA with respect to the Receiver's fees.
- (j) The Receiver marketed the property of the Debtors as follows:
- (i) obtained a Phase 1 environmental report and a Building Condition Assessment report;
 - (ii) requested proposals to list the Debtors' property from five major realtors and obtained proposals from three;
 - (iii) consulted with DUCA and BDC with respect to the three proposals to list the property in order to select one realtor;
 - (iv) entered into a listing agreement with the selected realtor for the sale of the property;
 - (v) discussed with DUCA and BDC and ultimately rejected an offer made directly to the Receiver through one of the principals of the Debtors;
 - (vi) attended in court at a 9:30 appointment to deal with a proposed motion by the Debtors to force acceptance of the aforementioned offer;
 - (vii) reviewed a summary of the offers received by the realtor with DUCA and BDC and requested clarification from offerors;

- (viii) supervised and worked with the realtor with respect to a sales process and ultimately recommended a purchaser which offer to purchase was in fact rejected by DUCA;
 - (ix) reviewed and accepted an offer to purchase which was negotiated by DUCA and a prospective purchaser; and
 - (x) corresponded with the realtor with respect to the accepted offer.
-
- (k) The Receiver's fees and disbursements for the period from September 3, 2014, to April 17, 2015 are \$584,868.61 plus HST of \$76,032.91 for a total of \$660,901.52.
 - (l) CBTL rendered an additional invoice since April 17, 2015, in the amount of \$19,019.03 dated June 26, 2015, and currently has work in progress of approximately \$7,000.
 - (m) The Receiver's counsel's fees and disbursements for the period ending April 17, 2015 are \$262,268.07 (after a fee reduction) plus HST of \$34,078.34 for a total of \$296,346.41;
 - (n) The Receiver's counsel, Pallett Valo LLP, has rendered one invoice subsequent to April 17, 2015, in the amount of \$20,453.78 dated June 26, 2015, and has work in progress to November 6, 2015, in the amount of \$9,453.59.
 - (o) The fees of the Receiver and its counsel are fair and reasonable in the circumstances;

- (p) The Supplement Report contains confidential information. The current receiver and DUCA have requested that the Supplement Report be sealed. It would be prejudicial to the administration of the Receivership for the information contained in the Supplement Report to become public and as such the Receiver seeks a sealing order with respect to the Supplement Report;
- (q) CBTL has completed its mandate as Monitor and Receiver and seeks its discharge.
- (r) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion

- (a) The Fourth and Final Report of the Monitor dated May 15, 2015;
- (b) The Final Report of CBTL dated May 15, 2015;
- (c) The Supplement to the Final Report of CBTL dated May 15, 2015;
- (d) The Fee Affidavits; and
- (e) Such further and other evidence as the lawyers may advise and this Honourable Court permit.

November 9, 2015

PALLET VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

Bobby H. Sachdeva (LSUC # 34454C)
Wojtek Jaskiewicz (LSUC # 49809L)

Tel: (905) 273-3300
Fax: (905) 273-6920

Lawyers for Collins Barrow Toronto Limited in its
capacity as the Court Appointed Monitor and the
former Court Appointed Receiver

TO: SERVICE LIST

SERVICE LIST

TO: AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, Ontario
M5J 2T9

STEVEN L. GRAFF
Tel: (416) 865-7726
Fax: (416) 863-1515

IAN AVERSA
Tel: (416) 865-3082
Fax: (416) 863-1515

BRETT KENWORTHY
Tel: (416) 865-3406
Fax: (416) 863-1515

Lawyers for the Applicant,
Business Development Bank of Canada

AND TO: COLLINS BARROW TORONTO LIMITED
11 King Street West, Suite 700
Toronto, Ontario
M5H 4C7

DANIEL WEISZ / BRYAN TANNENBAUM
Tel: (416) 480-0160
Fax: (416) 480-2646
Email: dweis@collinsbarrow.com / btannenbaum@collinsbarrow.com

Court-appointed Receiver

AND TO: **DEVRY SMITH FRANK LLP**
Lawyers & Mediators
95 Barber Greene Road
Suite 100
Toronto, Ontario
M3C 3E9

KELLI PRESTON (LSUC #47467B)
Tel: (416) 449-1400
Fax: (416) 449-7071
Email: kelli.preston@devrylaw.ca

Lawyers for the Receiver,
Pollard & Associates Inc.

AND TO: **LERNERS LLP**
Barristers and Solicitors
130 Adelaide Street West
Suite 2400
Toronto, Ontario
M5H 3P5

DOMENICO MAGISANO
Tel: (416) 601-4121
Fax: (416) 601-4123
Email: dmagisano@lernalers.ca

Lawyers for the Respondents,
Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc.,
Pavilion Sports Food and Beverage Inc. and Pavilion Aquatic Club Inc.

AND TO: **MINDEN GROSS LLP**
Barristers and Solicitors
145 King Street West
Suite 2200
Toronto, Ontario
M5H 4G2

TIMOTHY DUNN
tdunn@mindengross.com

CATHERINE FRANCIS
cfrancis@mindengross.com

Tel: (416) 369-4335
Fax: (416) 864-9223

Lawyers for DUCA Financial Services Credit Union Ltd.

AND TO: **CHAITONS LLP**
Barristers and Solicitors
5000 Yonge Street
10th Floor
Toronto, Ontario
M2N 7E9

MAYA POLIAK
Tel: (416) 218-1161
Fax: (416) 218-1844
Email: maya@chaitons.com

Lawyers for Return on Innovation Capital Ltd.

AND TO: **HEALTH GARDEN PAVILION**
130 Racco Parkway
Thornhill, Ontario
L4J 8X9

TATIANA PAVLOVSKAIA
Tel: (416) 973-3172
Email: healthgarden@live.com

AND TO: **DEPARTMENT OF JUSTICE CANADA**
Ontario Regional Office
130 King Street West, Suite 3400
Box 36
Toronto, Ontario
M5X 1K6

DIANE WINTERS
Tel: (416) 973-3172
Fax: (416) 973-0810
Email: diane.winters@ontario.ca

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE**
33 King Street West, 6th Floor
Oshawa, Ontario
L1H 8E9

KEVIN J. O'HARA
Email: kevin.ohara@ontario.ca

AND TO: **CLARK FARB FIKSEL**
188 Avenue Road
Toronto, Ontario
M5R 2J1

DAVID A. SCHATZKER
Tel: (416) 599-7761 EXT 248
Fax: (416) 324-4213
Email: dschatzker@efflaw.com

Lawyers for Centent Lighting Canada Inc.

AND TO: **COLLIERS INTERNATIONAL CANADA**
1 Queen Street East, Suite #2200
Toronto, Ontario
M5C 2W5

SCOTT ADDISON
Email: scott.addison@colliers.com

AND TO: **LIFE FITNESS INTERNATIONAL SALES, INC.**
5100 N. river Road
Schiller Park, IL
60176

AND TO: **FORD CREDIT CANADA LEASING A DIVISION OF CANADIAN ROAD
LEASING COMPANY**
P.O. Box 2400
Edmonton, Alberta
T5J 5C7

SCHEDULE "A"

Court File No. ——— CV-13-10285-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) ~~WEEKDAY, MONDAY,~~ THE #21st
JUSTICE)
) DAY OF MONTH, ~~20~~YR~~DECEMBER,~~
) 2015

B E T W E E N:

PLAINTIFF

Plaintiff

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

DEFENDANT

Defendant

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

Respondents

DISCHARGE ORDER

THIS MOTION, made by [~~RECEIVER'S NAME~~] Collins Barrow Toronto Limited ("CBTL") in its capacity as the Court-appointed monitor (the "Monitor") of all of the assets, undertakings and properties of the Respondents and the former Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor"), and manager of

all of the assets, undertakings and properties of the Respondents, Pavilion Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness (together the "Debtors"), for an order:

1. approving the Final Report of CBTL dated May 15, 2015 and the Supplement to the Final Report of CBTL dated May 15, 2015 (together the "Receiver's Report") and the activities of the Receiver-CBTL in its role as the former receiver as set out in the report of the Receiver dated [DATE] (the "Report"); therein;

2. approving the Fourth and Final Report of the Monitor dated May 15, 2015 (the "Monitor's Report" and together with the Receiver's Report, the "Reports") and the activities of the Monitor as set out therein;

3. approving CBTL's interim statement of receipts and disbursements for the period from September 8, 2014 to April 17, 2015 (the "SRD");

4. approving the fees and disbursements of the Receiver-CBTL and its counsel and the fees and disbursements of the Monitor and its counsel;

5. approving the distribution and discharging CBTL as Monitor of the remaining proceeds available in the estate assets, undertakings and properties of the Debtor; ~~and~~ Respondents;

6. discharging [RECEIVER'S NAME] CBTL as Receiver of the undertaking, property assets, undertakings and assets properties of the Debtor; ~~and~~ Debtors;

7. releasing [RECEIVER'S NAME] CBTL from any and all liability, as set out in paragraph 56 of this Order[†]; and

8. sealing the Supplement to the Final Report of the Receiver dated May 15, 2015 (the "Supplement Report") until further order of the Court,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~Report~~ Reports, the affidavits of CBTL, the Receiver-Monitor, and their respective counsel as to fees (the "Fee Affidavits"), and on hearing the submissions of

[†] If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

counsel for the ~~Receiver~~, CBTL, and counsel for DUCA Financial Services Credit Union Ltd., no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed²;

1. THIS COURT ORDERS that the Reports and the activities of CBTL and the Receiver~~Monitor~~, as set out in the ~~Report~~Reports, are hereby approved.

2. THIS COURT ORDERS that the SRD is hereby approved.

2.3. THIS COURT ORDERS that the fees and disbursements of the Receiver~~CBTL and its counsel~~, and the fees and disbursements of the Monitor and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.

3. ~~THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³.~~

4. ~~THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 hereof [and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report], the Receiver~~THIS COURT ORDERS that CBTL shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) ~~the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein~~, and (b) ~~the Receiver~~CBTL shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of [RECEIVER'S NAME]CBTL in its capacity as Receiver.

5. {THIS COURT ORDERS that the Monitor shall be discharged as Monitor of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete its duties as Monitor, and (b) the Monitor shall continue to

² This model order assumes that the time for service does not need to be abridged.

³ This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of CBTL in its capacity as Monitor.

5.6. THIS COURT ORDERS AND DECLARES that [RECEIVER'S NAME]CBTL is hereby released and discharged from any and all liability that [RECEIVER'S NAME]CBTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of [RECEIVER'S NAME]CBTL while acting in its capacity as Receiver or Monitor herein, save and except for any gross negligence or wilful misconduct on the Receiver's or the Monitor's part. Without limiting the generality of the foregoing, [RECEIVER'S NAME]CBTL is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's or the Monitor's part.⁴.

7. THIS COURT ORDERS that the Supplement Report shall be segregated from the other documents filed in connection with this motion and shall be sealed in the court file and shall not be opened until further order of the Court.

⁴~~The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS
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Court File No. CV-13-10285-00CL

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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

PALLET VALO LLP

Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

Bobby H. Sachdeva (LSUC# 34454C)

Tel: (905) 273-3300

Fax: (905) 273-6920

Lawyers for the Court Appointed Monitor,
Collins Barrow Toronto Limited

TAB 2

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and PAVILION AQUATIC CLUB INC.**

Respondents

FOURTH AND FINAL REPORT OF THE MONITOR

May 15, 2015

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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) (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 (the "**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 PSII 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".

11. The Third Report of the Monitor dated August 5, 2014 (the "**Third Report**") was filed with the Court on August 11, 2014. The purpose of the Third Report was to:
 - (a) inform the Court as to The Pavilion's status and operations since the date of the First Report to July 30, 2014;
 - (b) advise the Court with respect to the activities of the Monitor since the date of the First Report to July 30, 2014;
 - (c) 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;
 - (d) 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
 - (e) 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.

A copy of the Third Report, without appendices, is attached hereto as Appendix "J".

12. Pursuant to the Order of the Honourable Mr. Justice Hailey dated August 20, 2014 ("**August 20 Order**"), *inter alia*:
- (a) the Second Report and the Third Report and the conduct and activities of the Monitor described therein are approved, without prejudice to the Debtors' rights to challenge the quantum of the fees and disbursements incurred by the Monitor and its legal counsel for the conduct and activities of the Monitor described in the Second Report and the Third Report;
 - (b) if the Monitor does not receive from the Debtors' counsel a written statement on or before 5:00 p.m. on Tuesday August 26, 2014 that none of the companies subject to the Monitor Order have received the \$979,516.53 HST credit balance (or any portion thereof) in respect of PSCI, described in paragraphs 71-73 of the Third Report, (i) the Monitor is authorized to contact the CRA to ascertain the disposition of the \$979,516.53 HST credit balance in respect of PSCI, and (ii) PSCI is directed to execute the CRA's Business Consent form RC59 authorizing the CRA to discuss matters relating to PSCI with a representative of the Monitor.

A copy of the August 20, 2014 Order is attached hereto as Appendix "K".

13. On September 8, 2014, a Receivership Order was made against the Debtors, 168, 188, PCI and Forza ("**Receivership Order**").
14. By Order of Justice Conway dated April 17, 2015, further to an application to the Court by DUCA, the Monitor was substituted by Pollard & Associates Inc. ("**Pollard**") as Monitor of the Debtors (the "**Substitution Order**"). A copy of the Substitution Order is attached hereto as Appendix "L".

PURPOSE OF FOURTH AND FINAL REPORT

15. The purpose of this fourth and final report of the Monitor (the "**Fourth Report**") is to:
- i) advise the Court with respect to the activities of the Monitor since the date of the Third Report to September 7, 2014;
 - ii) advise the Court as to the status of the APS that had been entered into by the Debtors;
 - iii) advise the Court as to the Monitor's findings in respect of the \$979,516.53 HST credit balance that appeared on a Notice of Assessment dated August 2, 2013 in respect of PSCI ("**HST Credit Balance**");

- iv) request that the Court issue an Order approving the fees and disbursements to September 7, 2014 of the Monitor and its legal counsel in these proceedings; and
 - v) request that the Court issue an Order discharging CBTL as Monitor.
16. In preparing this Fourth 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 Fourth 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 Chartered Professional Accountants Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.
17. Capitalized terms not defined in this Fourth Report are as defined in the Monitor Order, the First Report, the Second Report or the Third Report. All references to dollars are in Canadian currency unless otherwise noted.
18. 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.
19. The Monitor notes that this Fourth Report does not report on certain matters included in the First Report. The Monitor has not provided updated financial information on the Debtors as a result of the issuance of the Receivership Order.

II. BACKGROUND

20. 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.

21. 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".
22. 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. Almost all amounts paid to the independent contractors and The Pavilion's employees were paid from the 188 bank account.
23. 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**").
24. 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. A description of Forza is set out in the Third Report.

III. ACTIVITIES OF THE MONITOR

25. Pursuant to the Monitor Order, the Debtors have provided the Monitor with information on the Debtors' weekly receipts and disbursements. The Monitor has attended at The Pavilion to review original and/or supporting documents, on 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, the commercial accounting software used by the Debtors.
26. Set out below is a summary of the Monitor's findings since the Third Report.

IV. AGREEMENT OF PURCHASE AND SALE ("APS")

27. As set out in the Third Report, the Debtor(s) 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.

28. 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.
29. 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.
30. 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.
31. The final extension provided for in the APS expired on September 2, 2014. On that day, counsel to the Debtors informed counsel to the Applicant and DUCA that the purchaser was requesting additional time to complete the transaction. Counsel to the Applicant provided certain conditions by which the Applicant would consider the extension request.
32. On September 4, 2014, counsel to the Debtors informed the Monitor that to the best of its knowledge, the Debtors had not signed back the extension agreement. As a result, by its terms, the APS was at an end.

V. HST CREDIT BALANCE

33. As set out in the August 20, Order, if the Monitor did not receive from the Debtors' counsel a written statement on or before 5:00 p.m. on Tuesday August 26, 2014 that none of the companies subject to the Monitor Order have received the \$979,516.53 HST credit balance (or any portion thereof) in respect of PSCI, described in paragraphs 71-73 of the Third Report, (i) the Monitor is authorized to contact the CRA to ascertain the disposition of the \$979,516.53 HST credit balance in respect of PSCI, and (ii) PSCI is directed to execute the CRA's Business Consent form RC59 authorizing the CRA to discuss matters relating to PSCI with a representative of the Monitor.
34. The Monitor did not receive from counsel to the Debtors the written statement referred to above. On August 28, 2014, PSCI provided to the Monitor an executed RC59 form authorizing the Monitor to contact CRA.
35. On September 2, 2014, the Monitor contacted CRA and was informed that the following refunds were issued by CRA to PSCI:
 - a) December 4, 2013 - \$986,594.96;
 - b) March 21, 2014 - \$78,640.93;

c) May 13, 2014 - \$50,550.31; and

d) May 23, 2014 - \$63,066.38.

36. The Monitor was aware of the March and May refunds referred to above. However, the Debtors, in response to the Monitor's ongoing numerous enquiries of the Debtors relating to the status of the HST Refund, had informed the Monitor that the HST Credit Refund had not been received.
37. On September 2, 2014, the Monitor informed counsel to the Debtors of the above information and that, in fact, the HST Credit Refund had been issued to PSCI, and requested that the Debtors advise as to the status of those funds.
38. By e-mail dated September 2, 2014, counsel to the Debtors advised the Monitor, counsel to the Applicant and counsel to DUCA that, *inter alia*, the HST Credit Refund had been received and that the funds were used to pay certain creditors who were "questionable people" that had indirectly threatened both Mr. Karl and his family and Mr. Druckmann's family if they did not receive immediate payments. A copy of the e-mail is attached as hereto as Appendix "M".
39. As a result of the issuance of the Receivership Order, the Monitor has not sought from the Court additional powers to investigate the disposition of the HST Credit Refund.

VI. INFORMATION DISCLOSED TO SECURED CREDITORS

40. 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 and DUCA in addition to certain information forwarded by the Debtors to the Monitor:
 - (a) different scenarios relating to where a Receiver may be appointed; and
 - (b) information on the HST Credit Refund.

VII. THE MONITOR'S FEES AND DISBURSEMENTS

41. 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.
42. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of these proceedings.
43. The Monitor's accounts total \$186,226.39 in fees and disbursements plus HST of \$24,209.45 for a total amount of \$210,435.84 from October 24, 2013 to

September 7, 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 May 15, 2015 that is attached as Appendix "N".

44. The accounts of the Monitor's counsel, Pallett Valo LLP, total \$83,480.18 in fees and disbursements (after fee reduction) and \$10,835.92 in HST for a total of \$94,316.10 (the "**PV Accounts**") for the period ending September 7, 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 John Russo sworn May 15, 2015 is attached as Appendix "O".

VIII. CONCLUSION

45. The Monitor respectfully requests that this Honourable Court issue an Order:

(a) approving the Fourth Report, and the Monitor's conduct and activities to September 7, 2014 described herein;

(b) approving the fees and disbursements of the Monitor and its legal counsel to September 7, 2014 in these proceedings; and

(c) discharging CBTL as Monitor.

All of the foregoing is respectfully submitted to this Honourable Court as of this 15th day of May, 2015.

COLLINS BARROW TORONTO LIMITED in its capacity as
former 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

APPENDIX A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 24TH DAY
JUSTICE BROWN) OF OCTOBER, 2013

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**

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 monitor (in such capacity, the “**Monitor**”), 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. and Pavilion Aquatic Club Inc. (each, a “**Debtor**” and,

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:

- (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 "A. ... 7", written over a horizontal line.

OCT 24 2013
NB

SCHEDULE "A"
LIST OF INFORMATION REQUIRED

Item #	Description	Delivery Date (no later than)
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;

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-13-10285-00CI.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ONM5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Lawyers for Business Development Bank of Canada

APPENDIX B

BUSINESS DEVELOPMENT BANK OF CANADA

- and -

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents

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

Oct. 24 13

Oct 24/13

On consent, adj'd to November 12/13, for 30 minutes, in accordance with the terms of the current order which I have signed.

[Signature]
D.M. Brown s.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

APPLICATION RECORD
(Returnable October 24, 2013)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com



Lawyers for Business Development Bank of Canada

APPENDIX C

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

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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).

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

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 institution¹;
 - To access any and all computer systems and servers, wherever located, related to the business and affairs of any of the Debtors²; 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 advisable³.
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.

¹ Monitor Order, paragraph 4(i)

² Monitor Order, paragraph 4(d)

³ Monitor Order, paragraph 4(f)

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 (1st) or fifteenth (15th) 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)	-	-	-
Net income	\$ (909,808)	\$ (1,150,526)	\$ (32,062)	\$ (104,198)

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.

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
Total			\$45,591

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>\$(935,592.38)</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.

-
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.

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 8th 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

APPENDIX D

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

WT
13
TUESDAY, THE 12TH DAY

THE HONOURABLE)
JUSTICE THORBURN)

OF NOVEMBER, 2013

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**

ORDER

THIS MOTION for directions, made by Collins Barrow Toronto Limited (“CBTL”) in its capacity as Court Appointed Monitor (in such capacity, the “Monitor”) of all of the assets, undertakings and properties of Aventura II Properties Inc. (“Aventura”), Pavilion Sports Clubs Inc. (“PSCI”), Pavilion Sports Ice Inc. (“PSII”), Pavilion Sports Food And Beverage Inc. (“PSFB”), and Pavilion Aquatic Club Inc. (“PACT”, and together with Aventura, PSCI, PSII and PSFB, the “Debtors”), for an order, among other things, (i) authorizing the Monitor to do any of the acts outlined

in paragraph 4 of the Order of the Honourable Mr. Justice Brown dated October 24, 2013 (the "**Monitor Order**", a copy of which is attached as **Schedule "A"** hereto), (ii) approving the First Report of the Monitor dated November 8, 2013 (the "**First Report**"), and (iii) sealing the Supplemental Report of the Monitor dated November 11, 2013 (the "**Supplemental Report**") until the conclusion of the Sales Process (as defined in paragraph 56 of the First Report), and the Application made by Business Development Bank of Canada (the "**Applicant**") for, among other things, the appointment of a receiver and manager over the assets, undertakings and properties of the Debtors that was, pursuant to the Monitor Order, adjourned to November 12, 2013, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the First Report, and the Supplemental Report, and on hearing the submissions of counsel for the Monitor, the Debtors, DUCA Financial Services Credit Union Ltd. ("**DUCA**"), and the Applicant,

APPROVAL OF MONITOR'S REPORT

1. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Monitor described therein are approved.

APPOINTMENT OF RECEIVER

2. **THIS COURT ORDERS** that, unless the Debtors deliver to the Monitor, Applicant and DUCA a binding Agreement of Purchase and Sale in respect of the Property (as defined in paragraph 3 of the Monitor Order) that is satisfactory in form and substance to the Applicant and DUCA on or before January 3, 2014, the Applicant or DUCA may immediately and without notice to the Debtors return to this Court at a 9:30 a.m. appointment to obtain an Order appointing a receiver, substantially in the form filed in draft in this application.

MONITOR'S POWERS

3. **THIS COURT ORDERS** that, notwithstanding any other Order of this Court, 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:

- (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', or the Property ~~(as defined in paragraph 11 of the Monitor Order)~~ ^{JP}, at any financial institution, and the Monitor shall (subject to paragraph 4 below) have 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, 1887722 Ontario Ltd. ("188"), 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 and payment history;
- (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 the Applicant, Duca, Return on Innovation Capital Ltd. ("ROI Capital") and the Debtors (collectively, the "Stakeholders") 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, providing that all Stakeholders receive the same material (in the Monitor's ^D discretion) information from the Monitor at the same time or as soon thereafter as practical; [↑]

- (g) 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; and
- (h) 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 empowered to do so, to the exclusion of all other Persons (as defined in paragraph 11 of the Monitor Order), with the exception of the Debtors, and without interference from any other Person.

4. **THIS COURT ORDERS** that in the event that the Monitor requires access to the Premises to carry out any of its powers in paragraph 3 above, the Monitor shall provide the Debtors with 24 hours advanced notice of its intention to attend the Premises for these purposes.

SEALING SUPPLEMENTAL REPORT

5. **THIS COURT ORDERS** that the Supplemental Report is sealed by the Court until conclusion of the Sales Process (as defined in paragraph 56 of the First Report) or until further Order of this Court.

GENERAL

6. **THIS COURT ORDERS** that, except as expressly described in this Order, all terms of the Monitor Order remain in effect.

7. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as interim receiver, receiver, receiver and manager or trustee in bankruptcy of any of the Debtors, 188 or 168.

8. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Monitor shall have the power to meet and discuss with CBRE Limited all matters relating to the

Debtors, 188, 168 and the Property providing that the Debtors are afforded an opportunity to participate in any such meetings or discussions.

A handwritten signature, possibly "C. W. 19", is written above a solid horizontal line.

NOV 13 2013
MB

SCHEDULE "A"

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

PALLET VALO LLP
77 City Centre Drive
West Tower, Suite 300
Mississauga, ON L5B 1M5

Greg Azeff (LSUC # 45324C)
Tel: (905) 273-3300
Fax: (905) 273-6920
Email: gazeff@palletvalo.com

Asim Iqbal (LSUC # 61884B)
Tel: (905) 273-3300
Fax: (905) 273-6920
Email: aiqbal@palletvalo.com

Lawyers for the Court Appointed Monitor

APPENDIX E

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

B.b.c. _____
Plaintiff(s)

AND

Aventure _____
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

On the consent of all parties, Paragraph 2 of my
November 13th, 2013 Order shall be amended to extend the
debts from January 3 to January 15, 2014.

Jan 6, 2014 _____
Date

 _____
Judge's Signature

Additional Pages _____

APPENDIX F

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

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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) (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 16th 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.
Pavillon 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

APPENDIX G

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 16TH DAY
)
JUSTICE WILTON-SIEGEL) OF JANUARY, 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**

ORDER

THIS MOTION, made by Business Development Bank of Canada (“**BDC**”), for an Order, *inter alia*, amending the Order granted by the Honourable Mr. Justice Brown on October 24, 2013 in these proceedings (the “**October 24th Order**”), which was subsequently amended by an Order of the Honourable Madam Justice Thorburn granted on November 13, 2013 (the “**November 13th Order**”) and an Order granted by the Honourable Madam Justice Thorburn on January 6, 2014 (the “**January 6th Order**” and, together with the October 24th Order and the November 13th Order, the “**Monitoring Order**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Bernat Affidavit, the First Report and the Supplemental Report, and on hearing the submissions of counsel for BDC, counsel for DUCA, counsel for ROI Capital, counsel for the Debtors and counsel for the Monitor, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Monitoring Order.

2. **THIS COURT ORDERS** that the Monitoring Order be and is hereby amended as follows:

(a) paragraph 2 of the November 13th Order, as amended by the January 6th Order, shall be further amended by replacing "January 16, 2014" with "January 22, 2014"; and

(b) Pavilion Clubs Inc. ("**Clubs**"), an entity related to the ^{Respondents} Debtors, shall be included in the definition of Debtors and, commencing on the date of this Order, shall be subject, in all respects, to the terms and conditions of the Monitoring Order.

3. **THIS COURT ORDERS** that Clubs shall immediately repay the amount of \$342,286.58 to Pavilion Sports Ice Inc.

4. ~~of any nature or magnitude outside the ordinary course of operations,~~ **THIS COURT ORDERS** that Clubs shall not make any payments to any related parties, including, without limitation, Johny Druckmann or Jennifer Bitton, for any amount in excess of \$5,000 in any one payment or any cumulative payments over a 30 day period, without the prior written consent of the Monitor. ^{morning} ^{payments}

5. **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 under this Order or the Monitoring Order.

HTS

other payments of the Respondents' expenses and Clubs' expenses, in each case in the ordinary course and in accordance with historical practice, nor any payments

6. **THIS COURT ORDERS** that, except as expressly described in this Order, all terms of the Monitoring Order shall remain in effect.

W. Dan - L. J.

(Handwritten mark)

JAN 19 2016

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
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ONM5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Lawyers for Business Development Bank of Canada

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Business Development Bank Plaintiff(s)
AND
Adventure Properties Inc. Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The applicants seek certain relief set out in the draft order before the Court. All parties have been served and no objections received other than regarding paragraph 2(b).

The evidence before the Court in the form of the Monitor's Second Report indicates that an account of Partition Clubs Inc. ^(a "Club") receives the income of the debtors and disburses those amounts on payment of ^{the respondents'} expenses. There

January 16/14
Date

W. Don - J. J.
Judge's Signature

Additional Pages 3

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

names are trustee names of the Respondents. While this may well have been the historical practice of the Respondents, it remains highly unusual. The names appear to be outside the secured creditors' security and unless they are subject to a trust in favour of the Respondents.

While I accept that the ownership of Clubs rests with an unrelated party, that is not, however, determinative in the present circumstances. It has chosen to receive and deal with property of the Respondents. The ~~Respondent~~ Monitor Order, and the order dated November 13, 2013 of Theobald J., both provide that the Monitor shall monitor the ~~Respondents~~ Respondents' receipts and disbursements, including having access to information relating to the ~~status of Respondents' Property at any financial institution~~ information. Accordingly, the Respondents have already consented to the relief sought in paragraph 2(b) of the draft order.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

Because Clubs has chosen to conduct its business in the manner it has by receiving and disbursing monies of the Respondents, it is subject to has an obligation to preserve such monies for the Respondents. The applicant does not seek an order freezing or seizing such monies at the present time, merely an order extending the monitoring to any accounts of Clubs. This is an order that is entirely foreseeable given Clubs' relationships to the Respondents. The Court has the authority to grant such relief as a protective order to ensure that the Respondents' property is preserved, and thereby, the interest of the secured creditors in such property is preserved.

Accordingly, Order to go in the form attached.

Court File Number: CV-13-10285-00 CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Nothing in this order affects any
right that the applicant or any other party
may otherwise have to ~~assess~~ ^{claim} costs of this
hearing today ~~for~~ against Cluto.

APPENDIX H

**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 241(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
OF THE RESPONDENTS
(Returnable January 23, 2014)**

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LSUC#: 45725E
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmagisano@lernalers.ca

Lawyers for the Respondents, Aventura II
Properties Inc., Pavilion Sports Clubs Inc.,
Pavilion Sports Ice Inc., Pavilion Sports Food
and Beverage Inc. and Pavilion Aquatic Club
Inc.

TO: THE ATTACHED SERVICE LIST

SERVICE LIST

TO: AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff
Tel: 416.863.7726
Fax: 416.863.1515
E-mail: sgraff@airdberlis.com

Ian Aversa
Tel: 416.865.3082
Fax: 416.863.1515
E-mail: iaversa@airdberlis.com

Lawyers for the Applicant, Business Development Bank of Canada

AND TO: PALLET VALO LLP
77 City Centre Drive, West Tower, Suite 300
Mississauga, ON L5B 1M5

Bobby Sachdeva
Tel: 905.273.3022 ext. 295
Fax: 905.273.6920
E-mail: sachdeva@pallettvalo.com

Greg Azeff
Tel: 905.273.3022 ext. 264
Fax: 905.273.6920
E-mail: gazeff@pallettvalo.com

Asim Iqbal
Tel: 905.273.3022 ext. 232
Fax: 905.273.6920
E-mail: aiqbal@pallettvalo.com

Lawyers for Collins Barrow Toronto Limited

AND TO: COLLINS BARROW TORONTO LIMITED
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Daniel Weisz
Tel: 416.480.0160
Fax: 416.480.2646
E-mail: dweisz@collinsbarrow.com

Bryan Tannenbaum
Tel: 416.480.0160
Fax: 416.480.2646
E-mail: btannenbaum@collinsbarrow.com

Monitor of Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc., Pavilion Sports Food and Beverage Inc. and Pavilion Aquatic Club Inc.

AND TO: MINDEN GROSS LLP
145 King Street West, Suite 2200
Toronto, ON M5H 4G2

Timothy Dunn
Tel: 416.369.4335
Fax: 416.864.9225
E-mail: tdunn@mindengross.com

Lawyers for Duca Financial Services Credit Union Ltd.

AND TO: CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak
Tel: 416.218.1161
Fax: 416.218.1844
E-mail: maya@chaitons.com

Lawyers for Return on Innovation Capital Ltd.

AND TO: Crawley MacKewn Brush LLP
179 John Street, Suite 800
Toronto, ON M5T 1X4

Robert Brush
Tel: 416.217.0822
Fax: 416.217.0220
E-mail: rbrush@cdblaw.ca

Anna Markiewicz
Tel: 416.217.0803
Fax: 416.217.0220
E-mail: amarkiewicz@cdblaw.ca

Lawyers for Pavilion Clubs Inc.

AND TO: DEPARTMENT OF JUSTICE
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: 416.973.3712
Fax: 416.973.0810
E-mail: diane.winters@justice.gc.ca

AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY
THE MINISTER OF FINANCE
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Kevin O'Hara
E-mail: kevin.ohara@ontario.ca

AND TO: HELENA BEN-DAHAN
130 Racco Parkway
Vaughan, ON L4J 8X9

AND TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTRY OF REVENUE
6th Floor – 33 King Street West
Oshawa, ON L1H 8H5

AND TO: LIFE FITNESS INTERNATIONAL SALES, INC.
5100 N. River Road
Schiller Park, IL 60176

AND TO: FORD CREDIT CANADA LEASING
A DIVISION OF CANADIAN ROAD LEASING COMPANY
P.O. Box 2400
Edmonton, AB T5J 5C7

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| 2. | Affidavit of Johnny Druckmann, sworn January 16, 2013 |
| A. | Exhibit "A" – Order of Mr. Justice Brown dated October 24, 2013 |
| B. | Exhibit "B" – Order of Madam Justice Thorburn dated November 13, 2013 |
| C. | Exhibit "C" – Endorsement of Madam Justice Thorburn dated November 13, 2013 |

TAB 1

**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 241(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
(returnable January 23, 2014)**

The Respondents will make a motion to the Court on January 23, 2014, at 2:00 p.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

1. THE MOTION IS FOR:

- (a) an Order, *inter alia*:
- (i) if necessary, abridging the time for service and filing of this of this Notice of Motion and the Motion Record herein, validating service effected to date and dispensing with further service upon any other persons not already served with this Notice of Motion and Motion Record;
 - (ii) sealing the Confidential Brief until the Sales Process (as defined in the Affidavit of Johny Druckmann, sworn January 16, 2014) has completed;
 - (iii) varying the Orders of the of Justice D. Brown dated October 24, 2013 dated (the "**Monitoring Order**"), Justice Thorburn dated November 11, 2013 (the "**Extension Order**") and Justice Wilton-Siegel dated January 16, 2014 (the "**PCI Order**" and together with the Monitoring Order and the

Extension Order are the "**Orders**") including, but not limited to, deleting paragraph 2 of the Extension Order and replacing same with:

THIS COURT ORDERS that the Applicant's application to appoint a Receiver is adjourned *sine die*, returnable on two (2) business days' notice to the respondents.

- (iv) in the alternative to paragraph 1(a)(iii) above, varying paragraph 2 of the Extension Order so as to permit the Respondents to remain in possession of their assets pending closing or termination of the Final APS (as defined in the affidavit of Johnny Druckmann sworn January 16, 2014);
- (v) in the further alternative to paragraph 1(a)(iii) above, varying paragraph 2 of the of the Extension Order by suspending its application until the earlier of August 15, 2014 or further Order of this Court; and
- (vi) such further and other relief as counsel may advise and this Honourable Court may permit.

2. THE GROUNDS FOR THE MOTION ARE:

- (a) Collins Barrow Toronto Limited was appointed as non-CCAA monitor (the "**Monitor**") pursuant to the Monitoring Order;
- (b) the Respondents have complied with the terms of the Monitoring Order, the Extension Order, and to the extent it is applicable to the Respondents, the PCI Order;

THE ORDERS GENERALLY

- (c) the Respondents retained CBRE Limited ("**CBRE**") to assist in marketing and selling the Respondents' business and property (collectively, the "**Assets**");
- (d) the Applicant supported the Respondents retaining CBRE and in fact proposed that the receiver, if appointed, continue to use CBRE to market and sell the Assets;
- (e) the Respondents and CBRE have obtained an agreement of purchase and sale (the "**APS**") from a reputable purchaser with a proven track record in real estate development;

- (f) the APS represents the highest and best offer to date and CBRE recommends that the Respondents proceed with same;
- (g) the APS requires the Respondents to maintain operations through to closing and requires the principals of the Respondents to continue operations following closing, which the Respondents and their principals are prepared to do providing that it is able to obtain reasonable terms from the Applicant, the Purchaser and the Court;
- (h) the purchase price under the APS may be sufficient (depending on, among other things, the expenses related to this proceeding) to repay the Applicant in full;
- (i) the current obligations placed upon the Respondents by the Orders are becoming cumbersome and are drawing senior management's attention away from day to day operations. Now that the initial collection of materials has been completed, there should be a reduction in quantum and frequency of information requests from the Monitor;
- (j) most significantly, a reduction in the quantum and frequency of information requests from the Monitor should help to reduce the Monitor's (and its counsel's) fees on this matter (which have exceeded \$100,000 for the period between October 24, 2013 and December 31, 2013), thereby leaving additional recoveries for other stakeholders and reducing any obligations which may be accruing on account of guarantee obligations;

THE PCI ORDER SPECIFICALLY

- (k) the PCI Order was obtained in a highly irregular fashion. The January 16, 2014 hearing date was not even on the Court's schedule. It was ultimately arranged as a "walk in" appointment wherein the Applicant would obtain a receivership order as contemplated by paragraph 2 of the Extension Order, or alternatively, to schedule a return date for the above contemplated motion;
- (l) on January 16, 2014, the Applicant's counsel presented Respondents' counsel and Pavilion Clubs Inc.'s ("PCI") counsel with a draft version of the PCI Order (the "Draft Order") and sought all parties consent. While some paragraphs were not opposed, PCI opposed the relief sought in paragraph 2(b) of the Draft Order

and neither PCI, nor the Respondents were able to consider the ramifications of paragraph 3 of the Draft Order;

- (m) ultimately, the Court proceeded with what amounted to a full day hearing on the Draft Order, even though the Applicant had not served any motion material, the Draft Order was provided on the morning of January 16, 2014, and the Monitor "served" a report mid-way through the impromptu motion. The Court ultimately granted the PCI Order which was a modified version of the Draft Order;
- (n) paragraph 3 of the PCI Order is particularly concerning to the Respondents. The banking/accounting arrangements between the Respondents and PCI have been in place for many years (and to the Respondents' recollection, since before the Applicant's loan was advanced). As a result, the Respondents (and specifically Pavilion Sports Ice Inc.) do not have their own bank accounts;
- (o) further it was explicitly understood by the parties (and implicitly included in the PCI Order) that the \$342,286.58 referenced in paragraph 3 of the PCI Order (the "Funds"), would be available for use by the Respondents in the ordinary course of their business, irrespective of where the Funds were held;
- (p) the principal of the Respondents is out of the country and unable to open a bank account for Pavilion Sports Ice Inc. He will be returning to the Respondents' offices on the week of January 27th, however, the Respondents have had and continue to have expenses for which they will require access to the Funds;
- (q) the Monitor already has visibility into PCI's business and affairs (including its bank accounts), The Monitor will be able to advise the Court if the Funds are not used for the Respondents' operations, or alternatively, are used for nefarious purposes;
- (r) paragraph 29 of the Monitoring Order;
- (s) paragraph 6 of the Extension Order;
- (t) paragraph 6 of the PCI Order; and
- (u) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Affidavit of Johnny Druckmann, sworn January 16, 2014, and the exhibits attached thereto; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

January 21, 2014

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LSUC#: 45725E
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmagisano@lernalers.ca

Lawyers for the Respondents, Aventura II
Properties Inc., Pavilion Sports Clubs Inc., Pavilion
Sports Ice Inc., Pavilion Sports Food and Beverage
Inc. and Pavilion Aquatic Club Inc.

TO: THE ATTACHED SERVICE LIST

TAB 2

**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 241(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**

**AFFIDAVIT OF JOHNY DRUCKMANN
(sworn January 16, 2014)**

I, Johny Druckmann, of the City of Thornhill, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the President of the respondent companies, Aventura II Properties Inc. ("**Aventura**"), Pavilion Sports Clubs Inc. ("**PSCI**"), Pavilion Sports Ice Inc. ("**PSII**"), Pavilion Sports Food and Beverage Inc. ("**PSFB**") and Pavilion Aquatic Club Inc. ("**PAC**", and together with Aventura, PSCI, PSII and PSFB, collectively referred to as the "**Respondent Companies**"). As such, I have personal knowledge of the facts and matters to which I hereinafter depose, except where the same are stated to be information and belief, in which case I verily believe them to be true.

2. I am also the principal and directing mind of 1688902 Ontario Inc. ("**168**") and as such was able to consent to the Order granted on October 24, 2013 (the "**Monitoring Order**") and attached at Appendix "A" to the First Report of Collins Barrow Toronto Limited (the "**Monitor**" or "**CBTL**"), the non-CCAA court appointed Monitor (the "**First Report**").

3. I am not the principal or directing mind of Pavilion Clubs Inc. ("**PCI**") or 1887722 Ontario Ltd. ("**188**"), although I acknowledge that the Respondent Companies have a close working relationship with PCI and 188 as each provides services to the Respondent Companies. The

Applicant, Business Development Bank of Canada ("**BDC**"), together with Duca Financial Services Credit Union Ltd. ("**Duca**") and CBTL, have been aware of this fact for some time.

4. This affidavit seeks to update the Court on CBRE Limited's ("**CBRE**") efforts to market and sell the Respondent Companies' assets, advise the Court of an offer made for said assets, and request that this Court adjourn BDC's receivership application so that the proposed purchaser can complete due diligence and move the transaction towards closing.

BACKGROUND

5. This Court first appointed the Monitor by Order of Mr. Justice Brown dated October 24, 2013 (the "**Monitoring Order**"). The provisions of the Monitoring Order were modified and extended by the Order of Madam Justice Thorburn dated November 13, 2013 (the "**Extension Order**"). On January 6, 2014 the Monitoring Order and the Extension Order were extended on consent to January 16, 2014. A copy of the Monitoring Order and the Extension Order are attached hereto as **Exhibit "A"** and **Exhibit "B"**, respectively.

6. It was understood that as part of both the Monitoring Order and the Extension Order, the Respondent Companies were expected to cooperate with the Monitor. To date, the Respondent Companies have cooperated with the Monitor, in fact, I believe that PCI has also cooperated with the Monitor even though neither Order specifically extends to their business and operations.

7. The overarching reason for both the Monitoring Order and the Extension Order was to permit the Responding Companies, with the assistance of CBRE, to market and sell the Respondent Companies' assets (the "**Sales Process**"). The largest of the Respondent Companies' assets (both in dollar value and physical size) is an approximately 7.7 acre parcel of land located at 130 Racco Parkway, Vaughan, Ontario owned by Aventura (the "**Premises**").

8. At the hearing that gave rise to the Extension Order, the Court was provided with an update of the Sales Process and was provided with a summary of offers to date. The particulars of the offers are sealed pursuant to the Extension Order, but suffice it to say that the offers did not meet the needs of the stakeholders.

9. The Extension Order granted the Respondent Companies until January 3, 2014 to obtain a further and better offer, failing which BDC would be permitted to appoint CBTL as Receiver at a 9:30 a.m. chambers appointment.

THE SALES PROCESS

10. Following the Extension Order, the Respondent Companies and CBRE continued their solicitation of offers for the Respondent Companies' business and the Premises.

11. On December 16, 2013, the Respondent Companies received an offer from 1466574 Ontario Inc. ("146"), a nominee company for a large retail developer (the "New APS"). The New APS, as further negotiated, will be provided to the Court as confidential **Exhibit "1"** to the confidential exhibit brief that will be provided to the Court prior to the hearing (the "**Confidential Brief**"). The Confidential Brief contains documents that are commercially sensitive and could adversely affect the Sales Process. Accordingly we are seeking a Sealing Order for the Confidential Brief pending closing of any or all transactions relating to the Respondent Companies' and/or their assets.

12. The New APS was irrevocable until December 23, 2013 and contained provisions that require both me and my team to remain involved with the business, even after closing. The New APS was also a superior offer to those previously presented. CBRE recommended that I engage in negotiations with 146 and I did so.

13. Negotiations continued up to the holidays and again early in the new year. As described above, the Monitoring Order and the Extension Order were extended, on consent, to January 16, 2014 so that the Respondent Companies could continue their negotiations with 146. A copy of the endorsement of Madam Justice Thorburn is attached hereto as **Exhibit "C"**.

14. The Responding Companies kept BDC and Duca apprised of the negotiations while regularly reporting to the Monitor on developments. Both BDC and Duca's main quarrels with the offer appeared to be the due diligence period and (to a lesser extent) the purchase price. Based on the feedback received from BDC and Duca, the Responding Companies signed back the offer at the purchase price suggested by BDC and Duca and at the banks' request, significantly reduced the due diligence period.

15. On January 13, 2014, we received 146's response to our sign back. 146 agreed to a moderate increase in price and a moderate change to the due diligence period. While not included in their sign back (by oversight), 146 also provided a minor adjustment on another financial term (the "**Additional Adjustment**") of the New APS as a means of further enhancing the offer. The APS as provided on January 13, 2014 (the "**Final APS**") is the confidential

Exhibit "1" referenced above. The Final APS was irrevocable until January 14, 2014 at 5:00 p.m.

16. BDC and Duca continued to have reservations about the due diligence period and requested that we again request a significantly reduced due diligence period. We made inquiries of CBRE as to whether that request would be advisable. The e-mail response from CBRE was unequivocal: If we proceed with a further reduction on due diligence, we risk losing the deal. The e-mail exchange between my daughter, Jennifer Bitton and Peter Senst, CBRE President: Canadian Capital Markets dated January 14, 2014 contains sensitive information regarding the Sales Process and is provided to the Court as **Exhibit "2"** to the Confidential Brief.

17. Faced with advice from CBRE and the fear of losing the Final APS, on the afternoon of January 14, 2014 I added the Additional Adjustment, executed the Final APS, and returned it to CBRE for delivery to 146.

18. In spite of the clear direction from CBRE, BDC and Duca insisted that we convene a conference call between myself, the Monitor and CBRE to revisit the due diligence period in the Final APS. The conference call was convened yesterday at 11:30 a.m. and CBRE reluctantly agreed to revisit the due diligence period with 146. The Monitor's summary of the conference call is provided to the Court as **Exhibit "3"** to the Confidential Brief.

19. Yesterday afternoon CBRE advised me that it had contacted 146 and inquired about the relevant due diligence provisions. While 146 in fact provided some positive clarification regarding the due diligence start period, 146 appears to be quite clear about its position regarding the substantive portions of its due diligence. A copy of the e-mail I received from CBRE conveying its discussions with 146 is provided to the Court as **Exhibit "4"** to the Confidential Brief.

20. I am very concerned that continued action by BDC and Duca, including an appointment of a receiver will increase costs, while potentially having adverse effects on the Sales Process. the total principal owed to BDC and Duca is \$16,337,398.99 and pursuant to the Monitoring Order, the Respondent Companies are required to keep interest payments current. While the Respondent Companies have some priority payables and BDC and Duca likely have protective disbursements that have been added to the debt (including professional fees), the current

purchase price could leave additional proceeds for other creditors, which will assist me in my potential personal liability for some of the Respondent Companies' other debts.

21. I am hopeful that the Respondent Companies will be able to see the Final APS to closing as it maximizes recovery to stakeholders (at least compared to other offers), but more importantly, it permits me, my team and my existing employees, private contractors and suppliers an opportunity to continue operations for the foreseeable future.

22. I want to be clear, while the Final APS envisions a role for me in operation of the business beyond closing, it is far from a "pot of gold at the end of the rainbow". The Monitor's own calculations demonstrate that the financial "upside" to me is virtually nil. The Monitor's calculations and reporting e-mails regarding these matters are contained at **Exhibit "5"** to the Confidential Brief.

23. Conversely, if a receiver is appointed over the Respondent Companies, the Final APS will no longer be available for acceptance as the Final APS cannot be closed with a receiver in possession of the Respondent Companies' assets.

MONITORS ROLE

24. In the First Report, there was some suggestion that material received was not what it expected. This statement was shocking to me as we had consistently cooperated with the Monitor and its requests for information. Following service of the First Report, both my counsel and I had discussions with the Monitor regarding this statement which led to a productive dialogue on how to ensure the Monitor received the information it was seeking in a timely fashion.

25. Me, my team and the Respondent Companies have continually cooperated with the Monitor in its investigations. Furthermore, while not a Respondent to these proceedings, PCI has also complied with the Monitor's requests for information. In fact, I am advised by my counsel that after the First Report was served, he asked that the Monitor contact him immediately if we were not cooperating or if the Monitor was not receiving information it expected. I am further advised that my counsel never received a call from the Monitor concerning our cooperation (or lack thereof).

26. As part of the Monitoring Order, the Monitor was appointed by the Court. Its fees and the fees of its counsel are payable by the Respondent Companies, failing which they are added to BDC and Duca's debt.

27. Should we be permitted to see the Final APS through to closing, we will continue to cooperate with the Monitor, but we are very concerned about the costs being incurred. While I acknowledge that it is highly unlikely that I will receive any recovery from the sale of assets in my capacity as a shareholder, I continue to have an interest in seeing maximum recovery to the secured creditors due to the possibility of claims being made against me personally pursuant to certain guarantees.

28. To date I have received five accounts from the Monitor and its counsel totalling approximately \$100,000. These expenses are for services rendered between October 24, 2013 and December 15, 2013 (for the Monitor) and between October 24, 2013 and December 31, 2013 (for the Monitor's counsel).

29. While we recognize that the Monitor has an important role to play, we are very concerned about the costs should the Monitor become the receiver, thereby adding management and operations to the list of tasks it already completes for the Court. We are particularly concerned about the increased costs of a receivership given our cooperation to date and our willingness to maintain operations through to closing of the Final APS.

PAVILION CLUBS INC.

30. On December 23, 2013, the Monitor advised my counsel that should this matter come before the Court again, it would be recommending that PCI be included in the Monitoring Order.

31. As previously mentioned, while the Respondent Companies have a close working relationship with PCI and 188, I am not the principal or directing mind of either entity. Henryk (Henry) Karl (whom I admittedly know well), is the principal and directing mind of both PCI and 188. I advised Mr. Karl of the e-mail received from the Monitor and suggested that he retain counsel.

32. I further understand that Mr. Karl attempted to arrange counsel but given the proximity to the holidays, he was not able to speak with counsel until the new year.

33. I have now been advised that Mr. Karl has retained counsel for PCI and that his counsel is in direct communication with BDC, Duca and the Monitor's counsel.

34. While I am certain PCI's counsel will put its position before the court, I note the following:
- (a) PCI is not a debtor of either BDC or Duca;
 - (b) PCI has cooperated with requests from the Monitor;
 - (c) while PCI may have contracts with the Respondent Companies and may be in possession of some of the Respondent Companies' assets, I am advised that a receiver would be free to terminate those contracts and take possession of the Respondent Companies' assets that may be in PCI's possession without adding PCI as a respondent; and
 - (d) while I have seen correspondence from the Monitor suggesting that PCI be included in the proceeding and have been advised that BDC and Duca would like PCI included in the proceeding, I have not received any motion material from the parties seeking that relief.

CONCLUSIONS

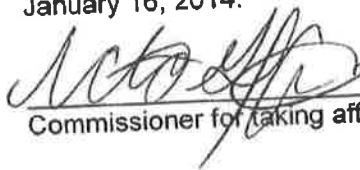
35. Me and my team have spent the last several months working with BDC and Duca to repay their respective debts. At first I held out hope that I could refinance the business, but by the summer of 2013 I realized that I had to consider selling the Respondent Companies' assets as a going concern and hope that there would be equity left for the shareholders (of which I am the majority shareholder). I have now come to the realization that my best case scenario is to minimize my personal exposure while maintaining the operations so that my employees, contractors and suppliers can continue their relationships with the business into the foreseeable future.

36. While both CBRE and I believe that with a full marketing process, free from pressure to quickly realize on assets, the Respondent Companies' business and Premises could sell for an amount in excess of the outstanding debt, I understand that I do not have that option now. I believe that given the circumstances and time constraints, the Final APS achieves the best result for everyone, however, it does require some patience from all sides.

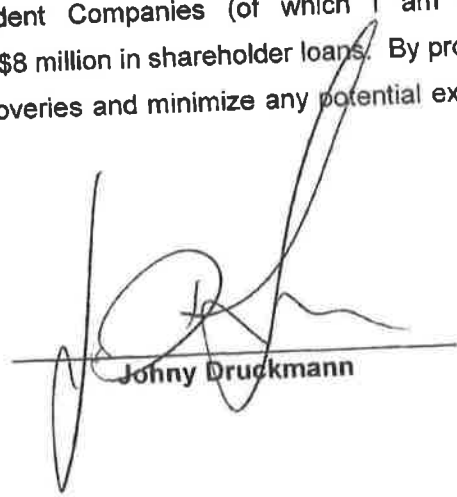
37. I am very concerned about recovery in a receivership proceeding. In particular, I am concerned about increased professional fees and decreased realizations that may stem from a distressed sale in a receivership. Finally, I am concerned about what will happen next if BDC and Duca do not recover their full indebtedness from the proceeds of sale.

38. The shareholders of the Respondent Companies (of which I am the majority shareholder), have advanced approximately \$8 million in shareholder loans. By proceeding with the Final APS, I would like to maximize recoveries and minimize any potential exposure going forward.

SWORN BEFORE ME at the City of
Thornhill, in the Province of Ontario, on
January 16, 2014.



Commissioner for taking affidavits



Johnny Druckmann

**Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Lemers LLP,
Barristers and Solicitors.
Expires November 27, 2016.**

**BUSINESS DEVELOPMENT BANK OF
CANADA**
Applicant

and

AVENTURA II PROPERTIES INC. et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**AFFIDAVIT OF JOHNY DRUCKMANN
(Sworn January 16, 2014)**

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

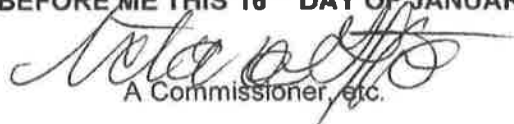
Domenico Magisano LSUC#: 45725E
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmagisano@lerners.ca

Lawyers for the Respondents, Aventura II
Properties Inc., Pavilion Sports Clubs Inc.,
Pavilion Sports Ice Inc., Pavilion Sports Food and
Beverage Inc. and Pavilion Aquatic Club Inc.

THE FOLLOWING IS EXHIBIT "A"

TO THE AFFIDAVIT OF JOHNY DRUCKMANN

SWORN BEFORE ME THIS 16TH DAY OF JANUARY, 2014.



A Commissioner, etc.

**Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Lemers LLP,
Barristers and Solicitors.
Expires November 27, 2016.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 24TH DAY
JUSTICE BROWN) OF OCTOBER, 2013

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**

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 monitor (in such capacity, the “Monitor”), 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. and Pavilion Aquatic Club Inc. (each, a “Debtor” and,

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:

- (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.

*and return on
Innovative 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.

RECEIVED
OCT 24 2013
NB



SCHEDULE "A"
LIST OF INFORMATION REQUIRED

Item #	Description	Delivery Date (no later than)
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;

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
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Lawyers for Business Development Bank of Canada

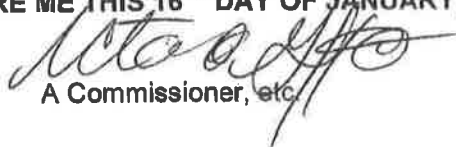
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THE FOLLOWING IS EXHIBIT "B"

TO THE AFFIDAVIT OF JOHNY DRUCKMANN

SWORN BEFORE ME THIS 16TH DAY OF JANUARY, 2014.



A Commissioner, etc.

**Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Lerners LLP,
Barristers and Solicitors.
Expires November 27, 2016.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE THORBURN

)
)
)

Wade *13*
TUESDAY, THE 12TH DAY

OF NOVEMBER, 2013

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**

ORDER

THIS MOTION for directions, made by Collins Barrow Toronto Limited (“**CBTL**”) in its capacity as Court Appointed Monitor (in such capacity, the “**Monitor**”) of all of the assets, undertakings and properties of Aventura II Properties Inc. (“**Aventura**”), Pavilion Sports Clubs Inc. (“**PSCI**”), Pavilion Sports Ice Inc. (“**PSII**”), Pavilion Sports Food And Beverage Inc. (“**PSFB**”), and Pavilion Aquatic Club Inc. (“**PACI**”, and together with Aventura, PSCI, PSII and PSFB, the “**Debtors**”), for an order, among other things, (i) authorizing the Monitor to do any of the acts outlined

in paragraph 4 of the Order of the Honourable Mr. Justice Brown dated October 24, 2013 (the "**Monitor Order**"), a copy of which is attached as **Schedule "A"** hereto), (ii) approving the First Report of the Monitor dated November 8, 2013 (the "**First Report**"), and (iii) sealing the Supplemental Report of the Monitor dated November 11, 2013 (the "**Supplemental Report**") until the conclusion of the Sales Process (as defined in paragraph 56 of the First Report), and the Application made by Business Development Bank of Canada (the "**Applicant**") for, among other things, the appointment of a receiver and manager over the assets, undertakings and properties of the Debtors that was, pursuant to the Monitor Order, adjourned to November 12, 2013, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the First Report, and the Supplemental Report, and on hearing the submissions of counsel for the Monitor, the Debtors, DUCA Financial Services Credit Union Ltd. ("**DUCA**"), and the Applicant,

APPROVAL OF MONITOR'S REPORT

1. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Monitor described therein are approved.

APPOINTMENT OF RECEIVER

2. **THIS COURT ORDERS** that, unless the Debtors deliver to the Monitor, Applicant and DUCA a binding Agreement of Purchase and Sale in respect of the Property (as defined in paragraph 3 of the Monitor Order) that is satisfactory in form and substance to the Applicant and DUCA on or before January 3, 2014, the Applicant or DUCA may immediately and without notice to the Debtors return to this Court at a 9:30 a.m. appointment to obtain an Order appointing a receiver, substantially in the form filed in draft in this application.

MONITOR'S POWERS

3. **THIS COURT ORDERS** that, notwithstanding any other Order of this Court, 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:

- (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, or the Property ~~(as defined in paragraph 11 of the Monitor Order)~~ at any financial institution, and the Monitor shall (subject to paragraph 4 below) have 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, 1887722 Ontario Ltd. ("188"), 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 and payment history;
- (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 the Applicant, Duca, Return on Innovation Capital Ltd. ("ROI Capital") and the Debtors (collectively, the "Stakeholders") 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, providing that all Stakeholders receive the same material (in the Monitor's discretion) information from the Monitor at the same time or as soon thereafter as practical;

- (g) 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; and
- (h) 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 empowered to do so, to the exclusion of all other Persons (as defined in paragraph 11 of the Monitor Order), with the exception of the Debtors, and without interference from any other Person.

4. **THIS COURT ORDERS** that in the event that the Monitor requires access to the Premises to carry out any of its powers in paragraph 3 above, the Monitor shall provide the Debtors with 24 hours advanced notice of its intention to attend the Premises for these purposes.

SEALING SUPPLEMENTAL REPORT

5. **THIS COURT ORDERS** that the Supplemental Report is sealed by the Court until conclusion of the Sales Process (as defined in paragraph 56 of the First Report) or until further Order of this Court.

GENERAL

6. **THIS COURT ORDERS** that, except as expressly described in this Order, all terms of the Monitor Order remain in effect.

7. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as interim receiver, receiver, receiver and manager or trustee in bankruptcy of any of the Debtors, 188 or 168.

8. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Monitor shall have the power to meet and discuss with CBRE Limited all matters relating to the

Debtors, 188, 168 and the Property providing that the Debtors are afforded an opportunity to participate in any such meetings or discussions.



FILED 13 2013
MB

SCHEDULE "A"

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

PALLET VALO LLP
77 City Centre Drive
West Tower, Suite 300
Mississauga, ON L5B 1M5

Greg Azeff (LSUC # 45324C)
Tel: (905) 273-3300
Fax: (905) 273-6920
Email: gazeff@palletvalo.com

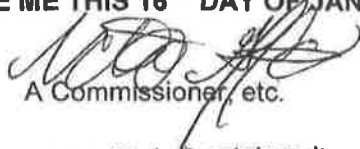
Asim Iqbal (LSUC # 61884B)
Tel: (905) 273-3300
Fax: (905) 273-6920
Email: aiqbal@palletvalo.com

Lawyers for the Court Appointed Monitor

THE FOLLOWING IS EXHIBIT "C"

TO THE AFFIDAVIT OF JOHNY DRUCKMANN

SWORN BEFORE ME THIS 16TH DAY OF JANUARY, 2014.



A Commissioner, etc.

**Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Lernars LLP,
Barristers and Solicitors.
Expires November 27, 2016.**

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

Oct 24/13

Oct 24/13
On consent, adj'd to November 12/13,
for 30 minutes, in accordance with the
terms of the consent order which I have
signed.

[Signature]
D.M. BREWER S.

November 13, 2013
Orders so as per the draft order signed by me

[Signature]

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

APPLICATION RECORD
(Returnable October 24, 2013)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com



Lawyers for Business Development Bank of Canada

**BUSINESS DEVELOPMENT BANK OF
CANADA** and
Applicant

AVENTURA II PROPERTIES INC. et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**MOTION RECORD OF THE RESPONDENTS
(Returnable January 23, 2014)**

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LSUC#: 45725E
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmagisano@lerners.ca

Lawyers for the Respondents, Aventura II
Properties Inc., Pavilion Sports Clubs Inc.,
Pavilion Sports Ice Inc., Pavilion Sports Food and
Beverage Inc. and Pavilion Aquatic Club Inc.

APPENDIX I

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE D. BROWN

)
)
)

THURSDAY, THE 23RD
DAY OF JANUARY, 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**

ORDER

THIS MOTION, made by the Respondents, was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Johny Druckmann sworn January 16, 2014 (the "Druckmann Affidavit"), filed, the Affidavit of Henryk Karl sworn January 22, 2014, filed, the Order of the Honourable Mr. Justice Brown dated October 24, 2013 (the "Monitoring Order"), as amended by the Order of the Honourable Madam Justice Thorburn dated November 13, 2013 (the "Extension Order"), and further amended by the Order of the Honourable Madam Justice Thorburn dated January 6, 2014, and further amended by the Order of the Honourable Mr. Justice Wilton-Sigel dated January 16, 2014 (the "PCI Order"), and on hearing submissions by counsel for the Respondents, counsel for Pavilion Clubs Inc., counsel for the Applicant, counsel for DUCA, counsel for the Monitor, counsel for Return on Innovation Capital Ltd. ("ROI"), and all others present, no others appearing although duly served as evidenced by the affidavit of Victoria Gifford, sworn January 21, 2014:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Monitoring Order.
3. **THIS COURT ORDERS** that the Respondents' Confidential Brief dated January 21, 2014 be and is hereby sealed until conclusion of the Sales Process.
4. **THIS COURT ORDERS** that Schedule "A" to the Monitoring Order be and is hereby deleted and replaced with Schedule "A" to this Order.
5. **THIS COURT ORDERS** that the Respondents shall immediately advise the Monitor, the Applicant and DUCA if the Final APS (as defined in the Druckmann Affidavit) is terminated or the Purchaser (as defined in the Final APS) elects not to pursue the transaction contemplated in the Final APS for any reason whatsoever.
6. **THIS COURT ORDERS** that paragraph 2 of the Extension Order be and is hereby deleted and replaced with:

THIS COURT ORDERS that, if the Final APS (as defined in the affidavit of Johnny Druckmann sworn January 16, 2014) is terminated or the Purchaser (as defined in the Final APS) elects not to pursue the transaction contemplated in the Final APS for any reason whatsoever, the Applicant or DUCA may immediately and, on one (1) business days' notice to the Respondents, Pavilion Clubs Inc., 1887722 Ontario Ltd. and 1688902 Ontario Inc., (collectively, the "**Pavilion Parties**") return to this Court at a 9:30 a.m. appointment to obtain an Order appointing a receiver over the assets of the Pavilion Parties, substantially in the form filed in draft in this application.

7. **THIS COURT ORDERS** that paragraph 3 of the PCI Order be and is hereby deleted and replaced with:

THIS COURT ORDERS that on or before January 31, 2014, Pavilion Sports Ice Inc. ("**PSII**") will make attempts to open a bank account at a Schedule 1 bank (the "**Account**") and after the Account is opened, Pavilion Clubs Inc. shall deliver a cheque to PSII representing the total refund (the "**CRA Refund**") received from the Canada Revenue Agency and deposited on December 31, 2013 (being \$342,286.58) less all of the Respondents' expenses paid using proceeds from the CRA Refund.

THIS COURT FURTHER ORDERS that, if PSII is unable to open the Account by January 31, 2014, it shall advise the Monitor forthwith and, if required, seek further advice and direction from the Court.

8. **THIS COURT ORDERS** that paragraph 4 of the PCI Order is amended as follows:

THIS COURT ORDERS that Clubs or PSII shall not make (i) any payments, other than payments of the Pavilion Parties expenses, in each case, in the ordinary course of the Pavilion Parties' business and affairs and in accordance with their historical practice; nor (ii) any payments to any related parties, including, without limitation, Johnny Druckmann, Jennifer Bitton, or 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.

9. **THIS COURT ORDERS** that the Pavilion Parties may use the balance of the CRA Refund for the ongoing operations of the Respondents and 1887722 Ontario Ltd. providing said funds are used in the ordinary course of business and that PSII shall (i) advise the Monitor forthwith of daily withdrawals, cheques, transfers or other debits from the Account in excess of \$20,000 in the aggregate; and (ii) provide the Monitor with details and supporting documentation for any individual such transaction of \$10,000 or higher.

10. **THIS COURT ORDERS** that each of the Pavilion Parties shall: (i) 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 (ii) provide the Monitor with details and supporting documentation for any proposed individual such transaction \$10,000 or higher executed on its behalf. For greater certainty each of the Pavilion Parties shall advise the Monitor of the information within its knowledge and control.

11. **THIS COURT ORDERS** 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.

12. **THIS COURT ORDERS** that, except as expressly described in this Order, all terms of the Monitoring Order (as amended by the Extension Order and the PCI Order) shall remain in effect.

2014
CRA
LEVE



JAN 24 2014



A. Anissimova
Registrar

SCHEDULE "A"
LIST OF INFORMATION REQUIRED

For each of the Pavilion Parties (as applicable):

1. Bi-weekly reporting to be delivered by Tuesday of the following week for the previous two weeks of activities:
 - (a) List of cash receipts; and
 - (b) List of disbursements with supporting documentation for expenses over \$5,000.

2. Weekly reporting to be delivered by Tuesday of the following week for the previous week of activities:
 - (a) Printouts of online bank statements.

3. Daily reporting to be delivered the following business day for the previous business day of activities:
 - (a) Copies of notices, statements, cheques, or other correspondence received from the Canada Revenue Agency, if any; and
 - (b) Copies of notices, statements or other correspondence received from the City of Vaughan, if any.

BUSINESS DEVELOPMENT BANK OF CANADA
Applicant

and

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

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SUPERIOR COURT OF JUSTICE
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ORDER

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Maglsano LSUC#: 45725E
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmaglsano@lernalers.ca

Lawyers for the Respondents, Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc., Pavilion Sports Food and Beverage Inc. and Pavilion Aquatic Club Inc.