

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

and

AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC., PAVILION  
SPORTS 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 2 OF 2)**

November 9, 2015

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TO: SERVICE LIST ATTACHED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

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**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

**FINAL REPORT OF THE RECEIVER**

**May 15, 2015**

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## I. INTRODUCTION

1. By Order of Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 8, 2014 (the "**Appointment Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed as receiver and manager (the "**Receiver**"), without security, 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**"), Pavilion Aquatic Club Inc. ("**PACI**"), Pavilion Clubs Inc. ("**PCI**"), 1887722 Ontario Ltd. ("**188**"), 1688902 Ontario Inc. ("**168**") and Forza Fitness Ltd. ("**FFL**") (collectively, the "**Debtors**"), acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**"). A copy of the Appointment Order is attached hereto as Appendix "**A**".
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property. In addition, the Receiver was authorized to manage, operate and carry on the business of the Debtors and to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, including the listing of the Property with a broker or listing agent. The Receiver was also authorized to sell without the approval of the Court, any parts of the Property provided that any individual transaction did not exceed \$50,000, and the aggregate of such transactions did not exceed \$150,000.
3. Prior to the appointment of the Receiver, pursuant to an Order made by Justice Brown on October 24, 2013, CBTL was appointed as Monitor of Aventura, PSCI, PSII, PSFB and PACI. Pursuant to an Order made on November 13, 2013 by Justice Thorburn, the Monitor was empowered and authorized to monitor such other accounting information of 188 and 168 as the Monitor deemed necessary or appropriate. Pursuant to an Order made on January 16, 2014 by Justice Wilton-Siegel, PCI became subject to the Monitor proceedings. By letter agreement dated July 14, 2014 between the Monitor and FFL, FFL agreed, among other things, that it was subject to all of the terms of the Monitor Order and shall conduct itself as if it were one of the Debtors subject to the Monitor Order dated October 24, 2013, as subsequently amended.
4. By Order of Justice Conway dated April 17, 2015, further to an application to the Court by DUCA Financial Services Credit Union Ltd. ("**DUCA**") the Receiver was substituted by Pollard & Associates Inc. ("**Pollard**") as receiver and manager of the Debtors (the "**Substitution Order**"). A copy of the Substitution Order is attached hereto as Appendix "**B**".

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5. Pallett Valo LLP (“**PV**”) is independent counsel to the Receiver.
  6. Publicly available information relating to this proceeding have been posted on the Receiver’s website, which can be found at <http://www.collinsbarrow.com/en/toronto-ontario/aventura-pavilion-group>

### **Purpose of Final Report**

7. The purpose of this final report of the Receiver (the “**Final Report**”) is to:
  - i) report to the Court on the activities of the Receiver since its appointment;
  - ii) request that the Court issue an Order approving the Final Report (and all appendices and supplements thereto) and the conduct and activities described therein for the period from September 8, 2014 to April 17, 2015;
  - iii) provide the Court with information on the marketing process conducted by the Receiver and the results of that process;
  - iv) provide the Court with the results of the Receiver’s operations of the Debtors for the period September 8, 2014 to February 28, 2015;
  - v) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period September 8, 2014 to April 17, 2015;
  - vi) request that the Court issue an Order approving the fees and disbursements of the Receiver and its legal counsel for the period from September 8, 2014 to April 17, 2015;
  - vii) request that the Court issue an Order approving the activities of CBTL and its legal counsel for the period from April 18, 2015 to May 15, 2015 in respect of matters relating to the transition to Pollard of the receivership administration and the finalization of matters by the Receiver in respect of its administration; and
  - viii) request that the Court issue an Order discharging CBTL as Receiver.

### **Terms of Reference**

8. In preparing this Final Report and making the comments herein, the Receiver has relied upon unaudited internal financial information, other information prepared or provided by the Debtors, and information from other third-party sources (collectively, the “**Information**”). As the Information included in this Final Report has not been prepared by the Receiver, or has been provided by other parties, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not

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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 CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

## II. BACKGROUND

### The Companies in Receivership

9. The Companies in receivership all relate to the operations of The Pavilion (described in Paragraphs 12-16 herein). The Receiver's understanding of their areas of operation, as at the date of the Appointment Order, are:
  - (a) Aventura II Properties Inc. - owner of The Pavilion real property;
  - (b) Pavilion Sports Clubs Inc. - company operating the non-ice and non-food and beverage operations of The Pavilion;
  - (c) Pavilion Sports Ice Inc. - company operating the ice operations of The Pavilion;
  - (d) Pavilion Sports Food and Beverage Inc. - company operating the food and beverage operations of The Pavilion;
  - (e) Pavilion Aquatic Club Inc. - operations ceased;
  - (f) Pavilion Clubs Inc. - company whose bank account was used to process banking transactions pertaining to the operations of The Pavilion;
  - (g) 1688902 Ontario Inc. - inactive company that previously was used to make payments to The Pavilion's employees and independent contractors;
  - (h) 1887722 Ontario Ltd. - company used to process payments to The Pavilion's employees and independent contractors; and
  - (i) Forza Fitness Ltd. - company incorporated in the months prior to the Appointment Order presumably in connection with the re-branding of "The Pavilion" to "Forza Fitness".
10. Additional information on these entities can be found in the three reports of the Monitor that have been filed in these proceedings. Attached, as Appendices "C", "D" and "E" are copies of the First, Second and Third Reports of the Monitor (excluding Appendices). The Fourth and Final Report of the Monitor is being filed with the Court at the same time as this Final Report is being filed.

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11. Based on corporate searches of the Debtors conducted by the Receiver, Johny Druckmann ("**Druckmann**") is the sole director of Aventura, PSCI, PSII and PSFB. Henry Karl ("**Karl**") is named as the sole director of PCI, 188 and FFL. Druckmann and Karl are both directors of 168. Druckmann is also the President of 188, but not a director. PACI's charter was cancelled due to non-filing of annual returns, but on prior corporate searches from November 2013, Druckmann was the sole officer and one of two directors, along with Roman Erlikh.

### **The Pavilion**

12. The Pavilion is 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 two swimming pools, a boxing facility, two ice rinks, squash courts, indoor climbing wall, gymnasium/fitness studio and a full-service restaurant (the "**Premises**").
13. In 2014, The Pavilion changed its name to "Forza Fitness".
14. In addition, The Pavilion premises include retail or commercial space that Aventura leases to third party tenants. As at the date of the Appointment Order, the tenants include two private schools, a swimming school, a physiotherapy clinic, as well as certain individuals who rent space in the hair salon.
15. Aventura, PSCI, PSII, PSFB, and PACI are referred to herein as the "**Original Debtors**".
16. The Receiver continued substantially all of The Pavilion's operations that were conducted prior to the receivership. Details of the Pavilion's operations are set out later in this report.

### **The Secured Lenders**

17. Business Development Bank of Canada ("**BDC**"), the Applicant in these proceedings was, as at the Appointment Date, a secured creditor and lender to the Original Debtors. As at the date of the Appointment Order, BDC was owed approximately \$7 million in respect of its advances to the Original Debtors.
18. DUCA is a secured creditor and lender to the Original Debtors. As at the date of the Appointment Order, DUCA was owed approximately \$9.9 million in respect of its advances to the Original Debtors.
19. Return on Innovation Capital Ltd., as agent ("**RICL**"), is a secured creditor and lender to the Original Debtors. The Receiver understands that RICL was owed approximately \$3 million by the Original Debtors as at the Appointment Date.
20. In addition to BDC, DUCA and RICL, as at the Appointment Date, secured creditors of the Debtors (individually or collectively) included City of Vaughan,

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Canada Revenue Agency, Her Majesty the Queen in Right of Ontario and Ford Credit Canada Leasing.

21. The Receiver has received opinions from PV that subject to the assumptions and qualifications contained in PV's opinion letters, the security interests over the real and personal property of the Original Debtors granted in favour of BDC and DUCA (collectively referred to as the "**Lenders**") pursuant to their Loan and Security Documents are valid and enforceable against the Original Debtors in accordance with their respective terms.
22. On or about January 12, 2015, BDC assigned its security to DUCA.

### III. THE RECEIVER'S ACTIVITIES TO DATE

#### Meeting/Discussions prior to application for the appointment of a receiver

23. As set out in the Monitor's final report dated May 15, 2015, on September 2, 2014, following correspondence between PV and Lerner's LLP ("**Lerner's**"), counsel to certain of the Debtors, Lerner's informed counsel to BDC, DUCA and the Monitor, that a CRA HST refund payable to PSCI had been received by PSCI in January 2014 and was used to pay "questionable people".
24. Following that disclosure, in the afternoon of September 4, 2014, a meeting was held at the office of CBTL that was attended by representatives of BDC, DUCA, the Monitor and their respective counsel. During that meeting, BDC informed CBTL that it would be seeking the appointment of a receiver by the Court on Monday, September 8, 2014. DUCA supported BDC's position.
25. At the meeting, CBTL discussed with DUCA and BDC various operational logistics that needed to be addressed prior to and upon the appointment of a receiver. These issues included securing insurance required in view of the nature of The Pavilion's operations, engagement of a manager to manage the day-to-day operations of The Pavilion, etc.
26. At the September 4, 2014 meeting, DUCA advised CBTL that it was of the view that one individual should be retained to manage the facility (the "**Facility Manager**"). DUCA put forward the name of Alex Paterson as the Facility Manager. BDC decided that it would go with the suggestion made by DUCA. In view of the fact that BDC and DUCA had the primary economic interest in the Debtors, CBTL acceded to the Lenders' request.
27. Following the meeting, CBTL spoke with Mr. Paterson of DHR Ventures Inc. ("**DHR**") for the first time on Friday, September 5, 2014, to discuss the pending receivership and the matters that needed to be addressed prior to the commencement of the receivership.

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28. Given the issue of the missing funds from the CRA HST refund, both DUCA and BDC made it clear to CBTL that they were not prepared to delay the commencement of the receivership and they wanted CBTL in a position to assume control of the Facility on September 8, 2014 immediately upon obtaining the Receivership Order.

### **Taking Possession of The Pavilion**

29. The Receiver attended the Debtors' offices at 130 Racco Parkway, Vaughan at approximately 11:00 am on September 8, 2014 following the issuance of the Appointment Order. The Receiver met with Druckmann and Ms. Jennifer Bitton ("**Bitton**"), who is Druckmann's daughter and the Contracts, Collections and Reception Manager. While the Monitor had on September 5, 2014 at the request of counsel to the Respondents provided a list of information that would be required by the Receiver upon its appointment, certain critical information that the Receiver had requested in advance was not made available to the Receiver.
30. During the Receiver's meeting with Druckmann and Bitton, the Receiver was advised that they had limited knowledge of the accounting systems/records at The Pavilion and Karl was the person who had such knowledge as well as information on the passwords required to access the computer systems at The Pavilion. However, Bitton advised the Receiver that the only contact information that they had for Karl was a mobile phone number. The Receiver subsequently determined that the mobile phone number for Karl that Bitton provided to the Receiver had not been activated.
31. Druckmann and Bitton were not asked by the Receiver to remain at The Pavilion based on their claimed limited knowledge of The Pavilion's accounting or IT matters.
32. In short, as of the Appointment Date, there were no individuals at The Pavilion to assist the Receiver, or provide the Receiver, with information relating to the operations of The Pavilion's accounting systems and pre-receivership accounting and transactions, or the computer systems used for the operations of The Pavilion including in respect of access to the facility, its ongoing operations or accounting.
33. Upon its appointment, the Receiver:
- (a) engaged Tert and Ross Ltd. ("**T&R**") to secure The Pavilion. T&R changed locks on all outside doors, certain interior doors and arranged for a security guard to patrol the premises until the alarm and surveillance systems were activated. The Receiver/T&R took control of all keys either directly or through signed undertakings with employees who had been entrusted to have access to the facility;

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- (b) contacted LVS Inc., the existing security company, to determine the status of the security systems that were in place, to change the access codes for the fire alarm system and to re-activate the burglary alarm system;
  - (c) contacted TD Bank to freeze the bank accounts of the Debtors;
  - (d) arranged for security guards to patrol the premises as the Receiver determined that The Pavilion's alarm system was not operational;
  - (e) engaged DHR to be the Facility Manager at The Pavilion;
  - (f) met with certain key employees at The Pavilion to notify them of the receivership;
  - (g) met with certain tenants to advise them of the receivership;
  - (h) arranged for certain new insurance coverage for the Receiver. This matter is discussed in further detail later in this report;
  - (i) posted the Appointment Order to the Receiver's website; and
  - (j) was in constant contact with the Facility Manager and responded to numerous enquiries.

34. During the first week of the receivership, the Receiver discovered that:

- (a) employees and contractors were unable to log into the computer network on Monday, September 8, 2014 following the issuance of the Appointment Order. The Receiver understands that users were instructed to log out of the system in the morning of September 8, 2014 and when they attempted to log back in, their User IDs were flagged as inactive employees thereby preventing access to the network. The Receiver was able to restore access to the computer network for the users on September 12, 2014;
- (b) the swipe card system by which fitness club members scanned their membership cards in order to gain entrance to the facility was not working. The Receiver was able to restore the system on September 10, 2014 so that member access to the fitness club could be controlled using swipe cards;
- (c) the Receiver was unable to access computer systems or servers without passwords and the passwords were not made available to the Receiver by Druckmann or Bitton. The Receiver had to use alternate means to obtain access to the computer systems within a few days of the Receivership Order;

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- (d) certain QuickBooks files which contained key accounting information appeared to have been deleted. The Receiver was able to restore certain of the accounting information that was not available upon the appointment of the Receiver;
  - (e) the website for The Pavilion was inaccessible on Monday, September 8, 2014 although the website appears to have been working on Saturday, September 6, 2014, prior to the beginning of the receivership. The Receiver subsequently determined that the website was not registered in the name of any of the Debtors, but rather was controlled by Druckmann's son-in-law. While representatives of The Pavilion were in contact with Druckmann's son-in-law who had indicated that he would activate the website, the website was not operational;
  - (f) the burglary alarm system was not operational;
  - (g) original, signed contracts for PSII were missing;
  - (h) The Pavilion was, as of September 4, 2014, looking to install a camera for inside the office area; and
  - (i) the fitness club membership database was inaccurate as records did not appear to be up to date.

35. Subsequent to the first week of the receivership, the Receiver:

- (a) worked with PV to prepare a form of waiver that conformed to the insurance company's requirements, and then worked in conjunction with the Facility Manager, The Pavilion's employees/contractors and tenants, to obtain forms of waiver executed by individuals utilizing The Pavilion facilities;
- (b) distributed notices to suppliers to inform them of the receivership and that all invoices issued subsequent to the date of the Appointment Order for goods supplied or services rendered were to be issued to the Receiver;
- (c) conducted an inventory of the fixed assets located on the premises;
- (d) established lockboxes to allow designated employees to open/close the premises as The Pavilion was typically open from 5am to midnight daily. The Receiver took control over the lockboxes either directly or through signed undertakings from employees who had been entrusted to have access;
- (e) changed the locks to the accounting area, and restricted access such that access was only provided to the Receiver and designated individuals;



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- (f) arranged for the repair of the burglary alarm system at The Pavilion and entered into a monitoring arrangement with a security firm. Upon confirmation that the alarm system was operational, the Receiver ceased its engagement of the security guards;
  - (g) prepared and distributed letters to employees or contractors at The Pavilion setting out the terms of their employment or engagement, respectively;
  - (h) arranged for the return of the ATM machines that were on the premises;
  - (i) opened safes that were found at the premises;
  - (j) reviewed the ownership of certain assets claimed by other parties and, as appropriate, returned the assets or ensured that these third party assets were identified and/segregated;
  - (k) arranged for immediate repairs at The Pavilion for items identified as posing a health or safety risk and arranged for ongoing repairs as required to continue operations;
  - (l) responded to alarm calls from the security company and issues of unauthorized entry to The Pavilion;
  - (m) boxed and catalogued all books and records located in the accounting/administrative offices area;
  - (n) through PV, responded to parties which had claims against the Debtors;
  - (o) engaged the services, on an as-needed basis, of an Information Technology consultant to restore operations of the various computer systems and surveillance camera system; and
  - (p) kept BDC and DUCA informed of the Receiver's major activities.

36. The Receiver was required to maintain a full-time presence at the Pavilion from the Appointment Date to on or about October 31, 2014 in order to stabilize the Pavilion's operations to the satisfaction of the Receiver. This was required due to the complexity of The Pavilion's operations, as well as the issues encountered by the Receiver in ensuring that the Pavilion's day-to-day accounting was properly set up, and that the accounting information generated was satisfactory to the Receiver. In addition, the Receiver was required to assist with the day to day accounting and payroll preparation as the individual responsible for managing the accounting functions was away from The Pavilion for over two weeks between late September and mid-October.

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37. There were certain occurrences of fire alarms and break-ins at the facility and auto thefts from the parking lot, and the Receiver dealt with these incidents, as required.

### **Engagement of Facility Manager**

38. In order to ensure the proper management of The Pavilion facilities, and to control the costs of the receivership, the Receiver, on the recommendation of DUCA and BDC, engaged DHR to be the Facility Manager. DHR's managing director is Alex Paterson. Mr. Paterson's prior experience included working as a Chief Restructuring Officer over a facility that included an ice rink, a full scale amusement park and a licensed food service operation, and he was the owner and director of a facility that included a variety of fitness, school, camp and licensed food service operations.
39. As part of its agreement with the Receiver, DHR engaged the services of Ron Jenkins, CPA, CA to manage the day-to-day accounting functions of The Pavilion and Mr. Paul Macey, to manage the food and beverage operations of The Pavilion.

### **Receivership Notice**

40. The Receiver issued the Notice and Statement of the Receiver ("**Receivership Notice**") in accordance with sections 245(1) and 246(1) of the Bankruptcy and Insolvency Act on September 18, 2014. A copy of the Receivership Notice is attached hereto as Appendix "F".
41. The Report of Receiver dated March 25, 2015 filed with the Office of the Official Receiver pursuant to Section 246(2) of the Bankruptcy and Insolvency Act is attached hereto as Appendix "G".

## **IV. BOOKS AND RECORDS**

42. As set out earlier in this report, as at the date of the Appointment Order, it appeared to the Receiver that certain of the Debtors' accounting records, which were maintained using QuickBooks software, had been deleted. Although the Receiver was able to restore certain of the deleted files, the Receiver was unable to verify the accuracy or completeness of these records.
43. The Receiver's counsel made several efforts to determine if the principals of the Debtors, namely Druckmann, Karl and Bitton are in possession of any of the books, records or property of the Debtors but counsel for these individuals failed to answer the questions put to them in this regard. Attached as Appendix "H" are copies of the emails from the Receiver's counsel to the lawyers for these individuals.

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44. The Receiver obtained a license from Intuit, allowing the Receiver to use the QuickBooks accounting software, and maintained the accounting records for the receivership.
  45. The Receiver, to the extent possible, maintained the accounting records separately for the operations of Aventura, PSCI, PSII and PSFB. The Receiver had also been allocating to those entities on a basis that was considered reasonable by the Receiver certain expenses that were not specifically allocable to individual entities, such as management fees, insurance, etc.
  46. As set out earlier in this report, the security provided by the Original Debtors to DUCA and BDC (subsequently assigned to DUCA) is valid and enforceable against the Original Debtors in accordance with their respective terms.
  47. It appeared to the Receiver that it was possible that the realizations from the assets of the Original Debtors would not be sufficient to fully repay the amounts owing pursuant to the DUCA and BDC security. Accordingly, and since The Pavilion's operations consisted of the operations of the Original Debtors, the Receiver, as it considered necessary, transferred funds between the Receiver's trust bank accounts maintained in respect of the operations of the Original Debtors.

## V. TENANTS

48. At the date of the Appointment Order, there were four major third party tenants plus six hair stylists who rented chairs in the hair salon. A brief description of the tenancy of the four major tenants is set out below.
49. Everest Academy ("**Everest**") rents an office and classrooms in the ice arena portion of The Pavilion. Everest's tenancy appears to be supported by an unsigned Offer to Lease which commenced August 1, 2010 and expires July 31, 2015. As at the date of the receivership, Everest was making monthly lease payments of \$29,710.15 inclusive of HST. Everest indicated to the Receiver Everest's position that the amounts being paid by Everest represent a distressed amount of rent and sought to either negotiate a fresh short term agreement or pay rent in an amount equal to the base amounts specified in the unsigned Offer to Lease. The Receiver informed Everest of the Receiver's position that the amounts negotiated between Everest and Aventura prior to the receivership should be the amounts paid during the receivership. Commencing in January 2015, Everest began making payments equal to the base rent owing pursuant to an unsigned offer to lease ("**Unsigned Offer**") which sets out the basis of Everest's tenancy.
50. At DUCA's request, on January 30, 2015, the Receiver provided information to DUCA in connection with the Receiver's efforts to have Everest continue to pay

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the amounts that Everest was paying to December 31, 2014. Following that e-mail, representatives of DUCA began communicating with Everest regarding Everest's tenancy, which per the unsigned Offer to Lease is scheduled to end on July 31, 2015. Everest continued to pay to the Receiver the base rent through April, 2015 and the Receiver advised DUCA accordingly. A representative of DUCA acknowledged this matter and on April 6 advised the Receiver that "This continues to be a live issue. I shall keep you posted". As a result, the Receiver did not communicate with Everest in connection with the payment of rent subsequent to January 30, 2015.

51. UMCA Richtree Academy ("**UMCA**") rents space in the fitness portion of The Pavilion. By lease made as of September 1, 2014, UMCA and Aventura entered into a lease agreement which effectively extended UMCA's tenancy through to August 31, 2019; the lease agreement provides UMCA with one option to renew for five years. The monthly rent being paid is \$26,696.25 (inclusive of HST).
52. Physiomed Thornhill Inc. ("**Physiomed**") rents space in the fitness portion of The Pavilion. Physiomed's lease, which expires on June 30, 2016, provides Physiomed with two options to renew for two additional terms of not more than five years each. The monthly rent currently being paid is \$8,041.30 (inclusive of HST). Physiomed corresponded with the Receiver with a view to reduce amounts being paid pursuant to the lease. The Receiver informed Physiomed of the Receiver's position that the amounts negotiated between Physiomed and Aventura prior to the receivership should be the amounts paid during the receivership.
53. Kendal Aquatics Swim Program Ltd. ("**Kendal**") has a letter agreement with PSCI. The lease term expires December 31, 2015. Kendal has the right to renew for two further periods of five years. The monthly amount being paid by Kendal as at December 31, 2014 was \$5,932.50 (inclusive of HST).
54. The Receiver understands that another tenant, Tatiana Loshtik, had operated a juice bar ("**The Juice Bar**") and occupied the premises until June 2014 when her lease was terminated by Aventura. This is referred to in more detail below under Juice Bar Assets.
55. The Receiver also understands that another tenant, Chattanooga Pizza and Grill, had operated a restaurant which closed prior to the Receiver's appointment.

## **VI. PAVILION OPERATIONS**

### **VI.1 Bank Accounts**

56. On September 8, 2014 the Receiver requested that TD Bank freeze all bank accounts of the Debtors, permitting deposits but no withdrawals or debits from

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the accounts. The main operating bank account used by The Pavilion was held in the name of PCI at TD Bank (the "**PCI TD Account**"). This account was used to pay expenses with the exception of payroll and payments to independent contractors, which were paid from the TD 188 Bank Account which was funded by transfers from the PCI TD Account.

57. The Receiver opened up trust bank accounts to record the ongoing operations of The Pavilion. In addition, a separate bank account was opened to track funding provided to the Receiver by way of Receiver Certificates.
58. On September 8, 2014, the balance in the TD 188 Bank Account was \$19,065.91. This balance was transferred to the Receiver on September 25, 2014. This money was then transferred by the Receiver to the PSFB operating account.
59. The balance in the PCI TD Account on September 8, 2014 was \$62,493.68. Subsequent to September 8, 2014, credit card deposits continued to be made to this account until the Receiver was able to set up new merchant accounts in the name of the Receiver and to arrange for the redirection of credit card proceeds to the Receiver's accounts.
60. \$92,514.78 and \$19,644.07 were transferred to the Receiver's bank account on September 25, 2014 and October 14, 2014, respectively. These funds were subsequently used to fund payroll and other operating expenses.

## **VI.2 Employees and Contractors**

61. At the date of the receivership, the books and records indicated that Pavilion had eight employees who were employed by PSCI and 68 independent contractors who were retained by 188. Prior to the incorporation of 188, contractors were retained by 168. Employees and contractors are paid on the 3rd and 18th of each month.
62. As per paragraph 13 of the Appointment Order, all employees of the Debtors remain as employees of the Debtors until the Receiver, on the Debtors' behalf, terminates their employment. Of the eight employees listed on the payroll prior to September 8, 2014:
  - (a) Druckmann, Bitton and Karl – were not retained subsequent to the issuance of the Appointment Order;
  - (b) four employees continued as employees of the Debtors after September 8, 2014; and
  - (c) one employee did not report for work at The Pavilion on or after September 8, 2014.

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63. The Receiver reviewed the list of contractors and determined that, based on the nature of their job activities, the majority would be reclassified as employees in the respective operating entity for which they worked, namely PSFB, PSCI or PSII. The Receiver drafted new employee and contractor letters setting out the terms of their employment or engagement after the date of receivership which were distributed for signature to the employees and contractors. The Receiver also set up new CRA payroll accounts for PSFB, PSCI and PSII and commenced remitting source deductions on the 15th of the month for the prior month's payroll.
  64. The Receiver funded the September 18, 2014 payment to employees and contractors, for the period August 25 to September 9, 2014, for those individuals who continued to work. This payment included \$15,535.79 for pre-receivership arrears for these individuals as it was determined that not paying these amounts could have a negative impact on the ongoing operations. Contractors who no longer worked for The Pavilion did not receive the payment of any arrears.
  65. There were four employees who appeared to be owed wage arrears for the pre-receivership period: Druckmann, Bitton, Karl and one other employee. The Wage Earner Protection Program Act ("**WEPPA**") compensates eligible workers for unpaid wages, vacation, termination and severance pay they are owed when their employer becomes bankrupt or becomes subject to a receivership under the Bankruptcy and Insolvency Act. Based on the Receiver's research, analysis, and interpretations of WEPPA, Druckmann, Bitton and Karl are ineligible under WEPPA and the one other employee was owed approximately \$1,200. As the Receiver determined that it would be more cost efficient to pay the amount owed to this employee than to comply with the reporting requirements under WEPPA, the Receiver attempted to negotiate payment with this employee. However, as the Receiver did not reach an agreement with the employee, the Receiver advised the employee of her rights to file a claim under the WEPP.
  66. The Facility Manager recommended that each of the general manager of the rink and general manager of the gym be offered retention bonuses as they were key to continuing operations during the receivership. After consultation with BDC and DUCA, retention bonus amounts were agreed to by the Receiver.
  67. The Receiver determined that there were two accounts with Sun Life Assurance Company of Canada in the name of PCI for the provision of health and life benefits for certain employees. The Receiver cancelled the existing accounts and made arrangements to compensate the two employees who had been covered and continued to work at The Pavilion.
  68. Prior to the receivership, The Pavilion's payroll had been processed manually. The Facility Manager recommended that the Receiver use an outside payroll service such as Ceridian Canada Ltd. ("**Ceridian**") to process the semi-monthly payroll as it would be more cost effective. In addition, Ceridian would issue T4's, prepare records of employment and make payroll remittances to CRA.

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69. Following discussions and correspondence with Ceridian, the Receiver entered into a Master Service Agreement with Ceridian on September 23, 2014 and as of the October 24, 2014 pay period, payroll was processed by Ceridian. The Receiver retained control of the payroll as it pre-approved each payroll run online.
  70. The Receiver issued 2014 T4's to the employees who were employed by the Debtors up to September 7, 2014. T4's in respect of 2014 for amounts paid to employees subsequent to the appointment of the Receiver were issued.
  71. There were a number of employee related issues that were brought to the attention of the Receiver. These issues were dealt with by the Receiver. The Receiver consulted with PV on certain of these employment issues as the Receiver considered appropriate.

### **VI.3 Insurance**

72. Prior to the appointment of the Receiver, the Debtors' property (building) and automobile insurance was provided by Intact Insurance Company ("**Intact**") (the "**Building Policy**" and "**Auto Policy**", respectively), its property (contents) and liability insurance was provided by K&K Insurance Canada ("**K&K**"), and its boiler and machinery coverage was provided by The Boiler Inspection & Insurance Company of Canada.
73. Upon the appointment of the Receiver, Intact agreed to continue coverage under the Auto Policy. The Auto Policy covered three vehicles, only two of which were in the Debtors' possession as of the Appointment Date, and was due to expire on December 14, 2014. The Receiver anticipated that three months coverage would allow it sufficient time to determine an appropriate course of action with respect to the two vehicles in its possession.
74. With respect to the Building Policy, Intact initially advised the Receiver that, although it required payment to the end of the policy term on July 12, 2015, it would provide coverage to the Receiver for only three to four months from the appointment of the Receiver. At the end of November 2014, the Receiver inquired of the Debtors' insurance broker, Paisley Manor Insurance Brokers Inc. ("**Paisley**") whether Intact would continue coverage under the Building Policy. Paisley advised the Receiver that the Building Policy would remain in full force and effect until the end of the policy term, being July 12, 2015.
75. Upon its appointment, the Receiver inquired of Paisley whether K&K would continue to extend coverage to the Receiver. K&K did not provide an immediate response and it was uncertain whether or not K&K would continue coverage. In order to be in a position to secure liability coverage as soon as possible following its appointment, the Receiver sought a quote from HUB International Insurance Brokers ("**Hub**") for liability insurance coverage with Lloyds of London (the "**Liability Policy**"). K&K had not as of September 8, 2014 confirmed that it would

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provide liability coverage to the Receiver. Based on the Receiver's discussions with Paisley, it was uncertain if and when K&K would provide confirmation that it would continue coverage. Given the inherent and ongoing risks associated with continuing operations, the Receiver instructed Hub to bind the Liability Policy. The premium for the Liability Policy was quoted at an annual cost of \$110,000 with a minimum retained premium of four months and a \$50,000 deductible. In accordance with the insurer's requirements, the \$110,000 premium was paid by the Receiver.

76. Hub informed the Receiver of the requirements of the Liability Policy including that (i) standardized waivers were required to be signed by all individuals using The Pavilion facilities, (ii) certificates of insurance were required to be obtained from tenants noting the addition of the Receiver as an additional insured, (iii) the Receiver retain a professional snow removal company with minimum liability coverage of \$2 million, and (iv) dedicated lifeguards were required in the pool area to oversee the use by general gym members of the pool area. The Receiver met the requirements imposed by the Insurer and worked with the Facility Manager to ensure ongoing compliance.
77. As a result of the termination of the K&K policy, the Receiver had to source alternative property (contents) insurance. Hub obtained a quote from Can-Sure Underwriting Ltd. for 3 months coverage to December 12, 2014 for a flat minimum premium (100% retained) of \$5,650 (the "**Property Policy**"); this coverage was extended such that it now expires on June 12, 2015. Hub also arranged for new boiler and machinery coverage at an annual cost of \$2,640 (the "**B&M Policy**"). These premiums were paid by the Receiver.
78. A risk assessment officer from Hub attended at The Pavilion on September 19, 2014 to conduct an inspection. Hub released its Risk Control Report to the Receiver in November 2014 with a list of twelve recommendations, most of which were procedural in nature. The Facility Manager reviewed and provided a written response to Hub and has addressed or is in the process of addressing the points raised in the Risk Control Report.
79. The Receiver, as required, sought guidance from Hub on matters at The Pavilion which may affect the Receiver's insurance.

#### **VI.4 Waivers**

80. Although a waiver process was in place at the time of the receivership, it was uncertain whether The Pavilion had obtained signed waiver forms from all users of The Pavilion facilities, and the waiver forms used by The Pavilion did not appear to meet industry standard taking into account recent case law. Hub gave the Receiver five days, subsequently extended, within which to implement a process whereby an updated and satisfactory standard waiver form would be signed by all individuals using The Pavilion facilities. PV drafted a standard waiver ("**new waiver**") to be used, a copy of which was provided to Hub.



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81. A process was implemented at The Pavilion whereby members using the fitness facilities signed the new waiver. Execution of the new waiver was tracked on the computer system so that turnstile access was automatically denied to individuals who had not yet signed the new waiver. Guests using the fitness facilities were also required to sign waivers on the same basis. Enforcement and tracking of waivers was done by the gym's reception under the guidance and supervision of the Facility Manager.
  82. Individuals utilizing the ice arena facilities, who were not part of an outside hockey league, were required to sign the new waiver before accessing the rink. With Hub's concurrence, outside hockey leagues were exempt from this requirement as they maintained their own liability insurance, proof of which was provided to the Receiver in the form of an insurance certificate. The Receiver ensured all certificates obtained included the Receiver as an additional insured. In the case of an outside community league, the Receiver also obtained and reviewed the form of waiver used by that community organization and obtained confirmation from Hub that the form of waiver used by that organization was satisfactory for the Receiver's purposes.
  83. Tenants of Aventura were required to have their employees and students (where applicable) sign the new waiver as these individuals had access to The Pavilion's facilities. Exceptions were made for the hair salon and Physiomed Chiropractor Clinic as their customers do not have access to the gym, pool or rink. The Receiver required that the schools sign an undertaking that they would obtain new waivers from their students and provide the signed waivers to the Receiver. The Receiver also obtained from all tenants an insurance certificate that included the Receiver as an additional insured.
  84. The Receiver obtained copies of the required insurance certificates and continued to obtain executed new waivers as additional individuals sought to use The Pavilion facilities.

## **VI.5 Liquor License**

85. Taps Bar & Grill ("**Taps**"), operated by PSFB, is a 110 seat restaurant/bar with a liquor license issued by Alcohol and Gaming Commission of Ontario ("**AGCO**") in the name of PSFB. As the Receiver could not serve alcohol unless the liquor license was issued in its name, Taps was required to suspend the serving of alcohol on the Appointment Date. As a stand-alone operation, Taps appeared to be unprofitable based on the accounting records maintained by the Debtors; however, the Facility Manager advised the Receiver of its view that operating a licensed establishment was critical to maintaining the revenue from the rink facility.
86. Shortly after its appointment, the Receiver submitted to the AGCO an application for a liquor license to be issued in its name, and on September 18, 2014 a one

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year non-renewable Temporary Transfer License was issued by AGCO to Collins Barrow Toronto Limited.

87. As set out earlier herein, Mr. Macey, was supervising the food and beverage operations at Taps for the Facility Manager.
88. The Facility Manager and Mr. Macey recommended that a new point-of-sale system be purchased in order to improve controls over the recording of transactions, revenue tracking, utilization of inventory and cash. The Receiver agreed to the purchase of a system for \$6,000 plus HST.
89. On or about April 24, 2015, Pollard obtained the liquor license in its name. Pending receipt of the license, and as the liquor license remained in the name of Collins Barrow Toronto Limited until on or about April 24, 2015, the Receiver received confirmation from the Facility Manager that Mr. Macey was continuing to manage and supervise the serving of alcohol at The Pavilion.

#### **VI.6 TD Merchant Services**

90. TD Merchant Services was the third party provider of merchant services for processing credit and debit card payments primarily for gym membership fees, rink rental fees and Taps food/drink purchases. The Debtors had set up seven merchant accounts with multiple terminals associated with each account. Transactions processed through all the merchant accounts were deposited directly into the PCI TD Bank Account one to three days after the transaction took place, depending on the credit card provider (Visa, MasterCard or Amex).
91. On September 11, 2014, the Receiver notified TD Merchant Services of the Receiver's appointment and requested that ongoing merchant account transactions be deposited to the Receiver's bank accounts at BMO. Three of the seven merchant accounts were not active during the year preceding the receivership and as a result were cancelled by the Receiver. Despite an extensive search, the terminals associated with the cancelled merchant accounts and one other terminal could not be located by the Receiver.
92. From September 11, 2014 to September 26, 2014, the Receiver engaged in numerous communications with the local branch, TD Merchant Services, TD's Bankruptcy Team and was required to escalate the matter to the legal department at TD Bank before TD Bank agreed to facilitate and expedite the setting up of new merchant accounts for the Receiver at TD Bank. The new merchant accounts in the name of the Receiver were established on September 26, 2014.

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## VI.7 Processing of Gym Membership Fees

93. Prior to the receivership, the majority of monthly fitness membership fees were paid via pre-authorized credit card or bank account debits. The Receiver was advised that these pre-authorized payments were managed by Karl and no other employees of The Pavilion had knowledge of the systems supporting these transactions. Aphelion, the fitness club membership database, contained the payment details for the pre-authorized payments, but the Receiver discovered that none of the continuing employees had a firm grasp of how Aphelion worked, how to generate reports, or how to extract the data required to process pre-authorized payments.
94. The Receiver quickly obtained an understanding of the information contained in Aphelion and how to extract the information required for processing payments. For ongoing credit card processing of fitness membership fees the Receiver continued to use the services of Beanstream, a third party provider of batch payment processing. This allowed the Receiver to process gym members' credit cards through TD Merchant Services in batches, which was more efficient than on a manual one by one basis.
95. Prior to the receivership, TD Bank was the provider of EFT services used to process monthly gym membership fees for members who preferred to pay via preauthorized bank debit. However, the Receiver was unable to obtain access to the software used to process the EFT payments due to privacy concerns raised by TD Bank. As a result, the Receiver contacted BMO and worked with BMO to set up a comparable EFT service with BMO.
96. In reviewing the results of the operations of the fitness facility, it became apparent to the Receiver that certain fitness revenues were not being received by PSCI. After further investigation, the Receiver determined that the fees of a significant number of members had to be manually posted in order for their fees to be included in the normal course billing cycle. The Receiver rectified the processing of these accounts such that all fitness members were being charged for their use of the fitness facilities.

## VI.8 Swimming Pool

97. As noted above, Kendal signed a Letter of Agreement ("**Kendal Agreement**") with PSCI on September 14, 2010 to lease the swimming pool facility, including the main pool, the whirlpool and the lap pool for a five year period. The Kendal Agreement gave Kendal the exclusive right to run all swim related programs at The Pavilion except for access by gym members with swimming pool access, PSCI's aqua fit classes/camps and access by UMCA. Kendal provided dedicated lifeguards for its swimming programs as did UMCA. Pursuant to the Kendal Agreement, Kendal was responsible for overseeing maintenance, swimming pool cleaning, checking chemistry levels, maintaining log records and reporting any issues to PSCI.

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98. On the date of the Appointment Order, the swimming pool was temporarily closed to all swimmers while the Receiver contacted Hub to ascertain the procedures or protections that needed to be put in place that would be satisfactory to its insurance company in order for continued operation of the swimming pool by the Receiver, particularly in light of an accidental drowning that occurred in the swimming pool in 2013. After further communications with Hub, Hub advised the Receiver of its requirements for continued use of the swimming pool by both tenants of the Pavilion, as well as for use of the swimming pool by fitness club members.
  99. The Receiver communicated Hub's requirements to both Kendal and UMCA, which were the two tenants which utilized the swimming pool as part of their tenancy with The Pavilion. After further communications by the Receiver with both Kendal and UMCA as to the Receiver's requirements, the Receiver allowed Kendal and later UMCA access to use the swimming pool.
  100. Based on the Receiver's discussions with Hub, the Receiver was not in a position to open the swimming pool to fitness club members until arrangements were made for lifeguards to be present at the swimming pool at all times that the swimming pool was open to fitness club members. While the Receiver acknowledged that there would be an additional cost to the Receiver for lifeguard services, after discussions with the Facility Manager and the listing agent retained by the Receiver, the Receiver proceeded to finalize arrangements for lifeguard services.
  101. Based on Kendal's knowledge and involvement with the swimming pool, the Receiver and Facility Manager entered into lengthy and protracted negotiations with Kendal for Kendal to provide the lifeguard services required. In order to reduce the costs of the lifeguard services and to facilitate Kendal's ability to recruit a sufficient number of lifeguards, it was agreed that the operating hours of the swimming pool would be reduced but would remain open during peak hours. On November 7, 2014 the Receiver finalized an agreement with Kendal and the main and lap swimming pools were open to the general gym membership on November 10, 2014. A copy of the agreement between the Receiver and Kendal is attached as Appendix "I".
  102. On October 9, 2014, prior to the Receiver finalizing an agreement with Kendal, two Inspectors from the Regional Municipality of York (the "**Inspectors**") attended at the swimming pool and closed it down. This was a result of issues identified by the Inspectors during their review relating to the lap pool and whirlpool that were not being used and also to the ceiling above the lap pool. While the Inspectors did not identify any issues with the main pool, they ordered that it also be closed as it shared the pool deck with the other two pools. The Receiver was advised by the Inspectors that these issues pre-dated the Receiver's appointment.

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103. The pool issues were remedied and the Inspectors re-opened the main pool on October 16, 2014, and Kendal and UMCA were then able to use the swimming pool.

#### **VI.9 Fixed Assets**

104. The Receiver did not locate a current fixed asset listing that may have been maintained by the Debtors. T&R compiled a detailed asset listing consisting of the fixed assets in the gym, rink and restaurant which were found on the premises when the Receiver took possession. The fixed asset listing did not include equipment or vehicles known or claimed to be owned by third parties, which are discussed later in the Final Report.
105. There is no registered security against any of the fixed assets and the Receiver was not able to locate any documentation to indicate that a third party owns the equipment in the gym, rink or restaurants. The fixed assets include surplus and damaged gym equipment owned by the Debtors.
106. On or about January 28, 2015, the Receiver received a claim from Alpine Specialty Chemicals Ltd. ("**Alpine**") for the return of a dishwasher pursuant to an equipment rental agreement that had been entered into between 1267692 Ontario Inc. o/a Chattanooga Pizza and Alpine. After reviewing with PV the documentation provided by Alpine, on February 11, 2015, the Receiver released the dishwasher to Alpine.

#### **VI.10 Maintenance and Repairs**

107. Since the date of the Appointment Order, the Receiver has addressed repairs and maintenance requirements at The Pavilion. In securing the required repairs, the Receiver has on a case-by-case basis used its discretion in deciding whether to obtain more than one quote for a specific repair.
108. Between September 8, 2014 and April 17, 2015 the Receiver attended to a number of issues requiring maintenance and/ or repairs including:

<b>#</b>	<b>Description</b>	<b>\$ Amount</b>
1	Repair to pool ceiling	4,500.00
2	Electrical repairs required for property to meet safety standards	17,450.00
3	Arena window repair	5,000.00
4	Pool and change room repairs	2,205.00
5	Repair to pool boiler	2,500.00
6	Zamboni repair	6,773.12
7	Repair to arena ceiling	3,100.00

8	Purchase of point of sale system	6,000.00
9	Repair to outdoor lighting	5,945.00
10	Repair to stairwell	2,250.00
11	Repair of rink compressors and rink condensers	14,105.00
12	Testing and repair of backflows	2,105.00
13	Repairs required to obtain permits for hair salon	2,500.00
14	Repairs to surveillance system including purchase of surveillance equipment	7,166.33
15	Repair re sprinkler system	3,616.33
16	Repairs due to pipe burst	4,915.50
17	Restoration of power due to outage	10,226.50
	<b>Total</b>	<b>\$100,357.78</b>

109. The Receiver addressed the regular repairs and maintenance requirements of The Pavilion.
110. In addition to the matters addressed by the Receiver, DUCA arranged for the following:
- (a) inspection of the roof and arrangements for contractors to perform a roof scan and to inspect the heating and air-conditioning units servicing the building; and
  - (b) inspection of a water damage problem in an emergency stairwell and arrangements for a contractor(s) to investigate the cause of the problem and to carry out the necessary repairs.

#### **VI.11 The Juice Bar Assets**

111. Ms. Loshtik was a tenant who signed a five year lease with Aventura to operate a snack bar called The Juice Bar inside the main lobby of the gym. The business was not operating on the date of the receivership. According to management, as a result of rent arrears, the Debtors turned off the electricity in or around June 2014 and therefore the tenant was forced to cease operations. According to Aventura's books and records, base rent had been paid, however additional rent (property taxes, electricity, etc.) was in arrears in the amount of \$7,826.58. The Receiver is not aware if Aventura took any formal steps to distraint on the assets.
112. Ms. Loshtik's lawyer contacted the Receiver requesting the return of the assets and provided documents to support the fact that she had purchased the assets.
113. The Receiver contacted its legal counsel who advised that Aventura's action of shutting off the hydro constituted termination of the lease and therefore Aventura had no right to distraint on the assets.

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114. Ms. Loshtik subsequently met with the Facility Manager and advised him that she did not want her assets back but was looking for monetary compensation.
  115. The Facility Manager had preliminary discussions with Ms. Loshtik as to a purchase price for The Juice Bar assets, but no agreement was reached.

#### **VI.12 Snow Plough Contract**

116. Prior to the receivership, The Pavilion's staff was responsible for clearing snow from walkways and entrances and ploughing the parking lot using a leased truck with a snow blade attached. The Receiver, however, was as set out earlier in this report, required by its insurance company to retain a professional snow removal contractor with liability insurance.
117. The Receiver sought quotes from four firms with experience in commercial ploughing, and entered into a contract with Quality Property Services Inc. ("QPS") to, effective from November 1, 2014, salt, plough and maintain the property in a safe condition. The total contract cost was \$46,000 (before HST).

### **VII. RESULTS OF THE PAVILION'S OPERATIONS SINCE SEPTEMBER 8, 2014**

118. For the period from September 8, 2014 to April 17, 2015, the Receiver continued substantially all of the operations of The Pavilion, which are summarized below:
  - The fitness club was open to members seven days per week from 5:00 am to 12:00 am and continued to sign up new members;
  - The ice arena continued to rent ice time to hockey leagues, a skating school and other groups. Hours of operation depended on ice bookings;
  - Taps Bar and Grill, a full service restaurant, offered service to patrons of the facility. Hours of operation were typically Monday to Friday from 4 p.m. to 12 a.m. and Saturday and Sunday from 10 a.m. to 11:30 p.m.
  - As landlord for commercial tenants, including two private schools whose students made use of the gym and rink for their programs.
119. The Receiver has prepared monthly summaries of The Pavilion's results of operations and forwarded them to BDC and DUCA, as applicable. The Receiver had not as of the date of the Substitution Order completed its compilation of the results for March. The Receiver asked Pollard whether it wishes for the Receiver to complete the March results and, pending a positive response from Pollard, will not complete those results in order to not incur the costs if the information is not required by Pollard.

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120. The Receiver has not, for purposes of this report, attached the results of The Pavilion's operations during the period of the receivership for the different operating areas of the facility as that information, if in the public domain, could be detrimental to The Pavilion.

## VIII. RECEIVER CERTIFICATES

121. As of April 17, 2015, the Receiver had borrowed \$400,000 by way of the issuance of four Receiver's Certificates in order to fund the Receiver's expenses. The Receiver Certificates issued are non-interest bearing.
122. Pursuant to Paragraph 6 of the Substitution Order, Pollard substituted the Receiver as the borrower under the terms of the four Receiver Certificates issued by the Receiver.

## IX. SECURED OR PRIOR CLAIMS

123. In addition to the secured lender claims noted earlier in the Final Report, the Receiver became aware of, and addressed, the below-noted claims.

### IX.1 Vehicles

124. Ford Credit Canada Leasing ("**Ford Leasing**") had registered security under the PPSA over two vehicles: a 2014 Ford Explorer and a 2010 Ford F250 Superduty pick-up truck. PV reviewed and confirmed to the Receiver the validity and enforceability of the security registrations. The Receiver confirmed these vehicles were insured under the Debtor's automobile insurance policy and secured the vehicles by removing the license plates and taking control of the keys and ownership.
125. The Ford Explorer was subject to a lease agreement with Ford Leasing. Upon determining that there was no residual value in the Ford Explorer, the Receiver arranged for Ford Leasing to pick up the vehicle on October 7, 2014.
126. The Ford truck was purchased by the Debtors pursuant to a sales contract under which there were three remaining monthly payments to be made totaling \$4,008. In addition to the amount owed to Ford Leasing, the Ministry of Finance ("**MOF**") had registered a lien against the vehicle in respect of outstanding provincial corporate taxes. The amount owed to MOF was \$670.01.
127. The Receiver obtained an estimate from Hilco which appraised the value of vehicle at between \$16,000 and \$18,000. As a result, the Receiver paid the



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amounts owed to Ford Leasing and MOF in order to purchase and obtain clear title to the vehicle.

128. As the Receiver did not require the truck for snow removal, the Receiver solicited offers to purchase the truck from three appraisers/liquidators. The truck was sold to the highest bidder, Canam-Appraiz Inc., for \$20,200 plus HST on October 31, 2014. As the selling price of the truck was below the \$100,000 threshold for a single transaction provided for in Paragraph 3(l)(i) of the Appointment Order, the Receiver did not seek the Court's approval of this transaction.
129. A review of the Debtors' automobile insurance policy indicated that there was a third vehicle covered under the policy, a 2007 Pontiac Montana. Druckmann had advised that this vehicle was seized by a lien claimant earlier in 2014. The Receiver obtained a Used Vehicle Information Package and confirmed that 1129054 Ontario Inc. ("**1129054**"), due to non-payment of a 2013 repair bill, had registered a lien against the vehicle in October 2013 and seized it in July 2014. The total amount owed to 1129054 was approximately \$6,000 and a search of autotrader.ca by the Receiver indicated a resale value of \$2,500 to \$6,000. As there appeared to be minimal equity, if any, in the vehicle and the vehicle was not required for operations, the Receiver took no action to redeem the vehicle, other than to require 1129054 to provide notice of intention to sell the vehicle in accordance with Section 15 of the RSLA, to provide an accounting for the proceeds of sale and to pay any surplus to the Receiver. On February 4, 2015, 1129054 forwarded to the Receiver a copy of its Notice of Intention to Retain as it had not received any offers over \$4,000 and had chosen to retain the vehicle in lieu of selling it.

## **IX.2 Centent Repossession of Goods Claim**

130. Centent Lighting Canada Inc. ("**Centent**") was retained by Aventura in or around August 2014 to replace all existing lighting on the Premises with LED lighting. A conditional sales contract between Aventura and Centent dated July 22, 2014 (the "**Centent Contract**") indicates that the total cost to Aventura to replace the existing lighting with more energy efficient LED lighting, including parts and installation, was \$308,097.83 which was to be paid in 38 monthly instalment payments. As at the date of the receivership, the installation was not completed.
131. Upon taking possession of the Premises on September 8, 2014, the Receiver discovered a quantity of boxed LED lighting parts and fixtures (the "**LED Lighting**"), as well as a quantity of lights and lighting fixtures that had been replaced by LED lighting fixtures, but had not yet been removed from the Premises by Centent (the "**Replaced Lighting Fixtures**").
132. Based on its knowledge of the Centent Contract, the Receiver instructed the Facility Manager to segregate all of the remaining uninstalled LED Lighting, and the Replaced Lighting Fixtures, in a locked area accessible only by the Receiver and its representatives. The Receiver conducted an inventory of the LED

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Lighting parts and fixtures and the Replaced Lighting Fixtures (the "**Centent Inventory**").

133. On September 12, 2014 representatives of Centent attended at the Premises and changed some lighting fixtures in the hair salon. The general manager of the gym advised Centent of the receivership and asked them to leave the Premises.
134. On September 18, 2014, Centent's counsel wrote to PV (the "**September 18th Letter**") and submitted a claim for Repossession of Goods under s.81.1 of the BIA with respect to the uninstalled LED Lighting that had been delivered to the Premises (the "**Centent s.81.1 Claim**"). The letter further requested that Centent be allowed to complete the work they had started for the Debtors under the Centent Contract, and stated that the current lighting system at the Premises contained a mix of voltages and was not safe.
135. As a result of the electrical safety issues raised in the September 18th Letter, the Receiver retained a qualified electrical contractor to conduct an assessment of the lighting system in order to identify any electrical safety issues. As a result of the electrical safety issues identified by this inspection, the Receiver obtained quotes from two certified electrical firms to bring the electrical system at the Premises into compliance with applicable electrical safety standards. The Receiver selected APJ Management Inc. ("**APJ**") to do the repair work. APJ completed the repair work by October 30th, 2014, and this electrical repair work was inspected and certified by the Electrical Safety Authority.
136. The Centent Contract provided that Centent would obtain approval from the relevant electrical authority, Powerstream Inc. ("**Powerstream**") and implement on behalf of Aventura, an application under the SaveOnEnergy rebate program (the "**SaveOnEnergy Program**") for an energy conservation retrofitting rebate of up to \$53,936 (the "**Rebate**").
137. Under the Centent Contract, Aventura assigned the Rebate to Centent, and agreed to pay any Rebate amounts to Centent upon their receipt by Aventura as a part of the payment of the contract price of \$308,097.83.
138. The SaveOnEnergy program, in order to issue the Rebate, required Centent (as an approved lighting supplier) to apply to the SaveOnEnergy Program on behalf of Aventura, and also required confirmation that Centent would receive the Rebate. Centent also was required to remove the Replaced Lighting Fixtures so that they could be delivered to an authorized recycler (as they were classified as hazardous waste), and in order to provide proof to the SaveOnEnergy program that the retrofitting had been completed and that the Replaced Lighting Fixtures had been properly disposed of.
139. The Receiver and its counsel reviewed the Centent s.81.1 Claim, as well as the Inventory and the supporting documentation provided by Centent. The Receiver

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and its counsel were of the view that the Centent s.81.1 Claim was valid and permitted Centent to repossess the LED Lighting described on the inventory.

140. As the Rebate under the SaveOnEnergy Program was only obtainable by Aventura or the Receiver with the involvement of Centent, and as the Receiver would incur costs to dispose of the Replaced Lighting Fixtures with an approved recycler of hazardous waste, the Receiver permitted Centent to remove the Replaced Lighting Fixtures and to make the Rebate application on behalf of Aventura. The Receiver and PV were also of the view that Centent was entitled to any Rebate paid and the Receiver agreed that the Rebate would be paid over to Centent when received.
141. On December 16, 2014 Centent attended at The Pavilion to pick up the LED Lighting and on December 17, 2014 Centent arranged for the Replaced Lighting Fixtures to be picked up by an approved recycler for proper disposal.
142. Centent submitted the rebate application to Powerstream on behalf of Aventura and the Rebate was approved by Powerstream on March 30<sup>th</sup>, 2015. The Receiver sent an invoice from Aventura to Powerstream for the amount of the Rebate of \$46,260.00, plus HST of \$6,013.80 for a total rebate amount of \$52,273.80.
143. The Rebate cheque from Powerstream was received by the Receiver on April 20, 2015 which was following the date that Pollard was appointed by the Substitution Order.
144. The Receiver forwarded the Rebate cheque received from Powerstream to Pollard on April 28<sup>th</sup>, 2015. The Receiver, and its counsel, provided to Pollard and its counsel the documentation relating to the issuance of the Rebate and their evaluation of the Centent claim to the Rebate. The Receiver also on April 28, 2015 informed Centent of the Substitution Order and that Centent would have to deal with Pollard in respect of this matter.
145. The Receiver is not aware whether Pollard has paid the Rebate to Centent.

### **IX.3 Claim by Superior Pool Spa & Leisure Ltd.**

146. The Receiver was contacted by Superior Pool Spa & Leisure Ltd. ("**Superior**") on September 16, 2014 with respect to five salt generators attached to the pool which Superior claimed as its property.
147. The Receiver determined that these generators were owned by Superior. As the generators were not in use by The Pavilion and The Pavilion did not need them, the Receiver agreed to release the generators to Superior.
148. On October 10, 2014, Superior attended at the Pavilion to remove the five salt generators.

#### IX.4 HST

149. On September 15, 2014, CRA issued trust claims in respect of PACI, PSII, PSFB and Aventura. In early October, CRA attended at The Pavilion to conduct an examination of the payroll and HST accounts. Following that attendance, on December 10, 2014, CRA issued an amended claim letter for Aventura, which reduced its HST claim from \$1,704,721.47 to \$636,432.22 as the result of a credit claim for approximately \$1.1 million that Aventura had filed on its return for the quarter ending June 30, 2014. The Receiver understands that the credit claim arises from bad debts that were written off in that quarter.
150. Set out below is a summary of the amounts being claimed by CRA to be outstanding on account of HST as at September 15, 2014 or, in the case of Aventura, December 10, 2014. The total payable will increase as penalty and interest accrues, however, only the HST Payable portion in the table below would be subject to a deemed trust claim.

	<b>HST Payable</b>	<b>Penalty &amp; Interest</b>	<b>Total Payable</b>
PACI	\$6,609.29	\$3,182.22	\$9,791.51
PSII	\$406.23	\$2.57	\$408.80
PSFB	\$8,579.43	\$168.16	\$8,747.59
Aventura	\$596,596.63	\$39,835.59	\$636,432.22
<b>Total</b>	<b>\$612,191.58</b>	<b>\$43,188.54</b>	<b>\$655,380.12</b>

151. The Receiver received a request from CRA to file outstanding HST returns for the period from July 1 to September 8, 2014 (the “**Stub Period HST Returns**”) for Aventura, PSCI, PSFB, PSII, 188 and 168. The Receiver reviewed the Debtors’ QuickBooks files for Aventura, PSCI, PSII and PSFB and was able to extract the information required to prepare Stub Period HST Returns for these accounts. Based on the Debtors’ books and records, which were not audited or verified by the Receiver, Stub Period HST Returns were filed on November 24, 2014. As noted earlier, 188 and 168 were non-operating companies used to record payroll and nil returns were filed by the Receiver for 188 and by CRA for 168.
152. The Receiver set up CRA sub accounts for Aventura, PSCI, PSII and PSFB, and filed HST returns covering operations from September 8, 2014 to December 31, 2014. Filings are due quarterly and the returns for the periods ended September 30, 2014 and December 31, 2014 have been filed with any HST payable remitted accordingly. The Receiver forwarded to Pollard the HST Electronic Filing Information Forms to permit Pollard to file the HST returns for the quarterly period ending March 31, 2015.

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## IX.5 Source Deductions

153. CRA has submitted trust claims in respect of unremitted payroll deductions as follows:

	<b>Total Liability</b>	<b>Trust Claim</b>
168	\$115,621.60	\$78,801.33
188	\$88,576.08	\$59,914.22
PSCI	\$60,095.45	\$3,594.77
<b>Total</b>	<b>\$264,293.13</b>	<b>\$142,310.32</b>

154. The Receiver notes that as of the date of the Appointment Order, 168 did not have a bank account and the Receiver is not aware of any assets of that company. On September 8, 2014, 188 had a balance in its bank account of \$19,065.91, which funds were subsequently transferred by the Receiver to its bank account.
155. The Receiver set up new payroll accounts for ongoing remittances by the operating entities. Remittances are made by Ceridian and are payable on the 15th of the following month. As at the date of the Substitution Order, the Receiver is current on its payroll obligations.
156. The Receiver understands that Pollard has arranged for the transfer to Pollard of the CRA sub accounts in respect of source deductions and HST.

## IX.6 Property Taxes

157. A Statement of Unpaid Taxes from the City of Vaughan dated January 12, 2015 indicated that Aventura owed \$1,329,869.49 in outstanding property taxes, including penalties and interest. The balance reflects unpaid property taxes since 2011. The Receiver, due to insufficient funds on hand, did not make any payments to the City of Vaughan for outstanding property taxes for both the pre-receivership and post-receivership periods.
158. DUCA has since paid the property tax arrears and ongoing property taxes.

## X. MARKETING PROCESS

159. Pursuant to Paragraph 3(k) of the Appointment Order, the Receiver was authorized "to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate..."

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160. In view of the unique nature of The Pavilion facility, the Receiver was of the view that it would be more effective for the Property to be listed for sale with a realtor, as opposed to the Receiver conducting its own marketing process.
161. Commencing on September 22, 2014, the Receiver requested proposals to list The Pavilion for sale from five major realtors. The realtors contacted were Avison-Young Inc., CBRE Limited, Colliers MacAulay Nicolls (Ontario) Inc. ("**Colliers**"), Cushman & Wakefield Ltd. and Jones Lasalle. Each of the realtors was asked to include, as part of their proposal, a timetable that included the number of days between (i) the date of the realtor's engagement and the date that the property would be listed for sale, (ii) the date the property is listed for sale and the deadline date for offers, and (iii) the deadline date for offers and the closing date of the sale.
162. The Receiver received listing proposals from each of CBRE Limited, Colliers and Cushman & Wakefield Ltd. The Receiver provided the listing proposals to BDC and DUCA and requested that they advise the Receiver which of the realtors would be acceptable to both lenders. The Receiver was advised by DUCA on October 8, 2014 that BDC and DUCA did not reach an agreement to select a realtor and that both lenders agreed to disagree.
163. Accordingly, after considering the proposals received, the Receiver selected Colliers as the listing agent. After negotiations between Colliers and the Receiver, the Receiver and Colliers executed a listing agreement dated as of October 15, 2014. The essential points of the Listing agreement included that (i) a commission rate of 1.75% of the purchase price would be payable to Colliers if a sale is consummated to a buyer introduced to The Pavilion by the listing team, and a commission rate of 2.5% of the purchase price would be payable to Colliers if the buyer is introduced to The Pavilion by a co-operating broker, and (ii) the agreement expires on February 15, 2015. A copy of the listing agreement is attached hereto as Appendix "J".
164. A summary of Colliers' marketing process is described below:
- (a) Colliers distributed to its contact base, and to parties which had expressed their interest in the property to the Receiver, an html email describing The Pavilion, a copy of which is attached as Appendix "K". The email was distributed to approximately 2,600 parties by Colliers;
  - (b) Colliers established a data room containing certain information relating to The Pavilion including financial information and information on the property, etc. The data room was made accessible to twenty-eight parties which executed a confidentiality agreement;
  - (c) Advertisements setting out the property for sale were published in the Globe and Mail newspaper on November 6, 2014 and November 18, 2014;

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- (d) Six formal tours of The Pavilion were conducted for several interested parties requesting same;
  - (e) A form of Bill of Sale prepared by and acceptable to the Receiver was posted to Colliers' website in order that interested parties would be aware of the terms and conditions of sale and to facilitate the comparison of offers received; and
  - (f) Offers were requested to be provided to Colliers by noon on December 5, 2014.
165. On December 5, 2014, Colliers presented a summary of the offers received to the Receiver and representatives of DUCA and BDC. After reviewing the offers received, Colliers was instructed by the Receiver to go back to the offerors to give them an opportunity to clarify certain aspects of their respective offers and to revise their offers by December 11, 2014.
166. On December 11, 2014, Colliers provided to the Receiver and to representatives of DUCA and BDC a summary of the updated offers received which were irrevocable by the purchasers to 5:00 p.m. on December 17, 2014.
167. On December 16, 2014, DUCA informed the Receiver that the highest offer received was not acceptable to DUCA.
168. Late in the afternoon on December 17, 2014, counsel to DUCA confirmed to PV that none of the offers were acceptable to the Lenders.
169. In the evening of December 17, 2014, Colliers informed those parties which submitted offers that the Receiver was rejecting all offers which had been submitted.
170. As it appears from the information below, Druckmann seemed to be negotiating and accepting offers even after the appointment of the Receiver.
171. The Receiver advises that during the course of the sales process conducted by Colliers, counsel to the Debtors presented an offer to the Receiver dated October 30, 2014 (the "**October 30 Offer**") which the Debtors wished the Receiver to accept on the basis that the October 30 Offer could result in the repayment of the Debtors' indebtedness to DUCA and BDC. The October 30 Offer contained a number of conditions including that the offer was conditional for 15 days from acceptance "upon the Buyer completing a lease with Johny Druckmann or his nominee to the Buyer's sole and unfettered discretion." The October 30 Offer was irrevocable by the purchaser until November 14, 2014.
172. The same offer had initially been presented to Druckmann just after the appointment of the Receiver. This offer was retained by Druckmann and delivered to counsel for the Receiver after the offer had already expired. Accordingly, the Receiver was unable to consider this original offer.

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173. On November 12, 2014, counsel to the Debtors forwarded "as a courtesy" to PV a draft notice of motion of the Debtors returnable November 13, 2014 which, among other things, sought an Order from the Court to compel the Receiver to accept the October 30 Offer.
  174. The Receiver was concerned that if the October 30 Offer was accepted, termination of the Receiver's/Colliers' sales process in effect at that time could negatively impact on parties' interest in the property in the event the October 30 Offer was not concluded and the sales process had to resume at a later date.
  175. The Receiver understood that the potential purchaser was not willing to participate in the sales process conducted by Colliers. In order to obtain a better understanding of the prospective purchaser's due diligence to that date in respect of the property so as to help the Receiver assess the offer submitted, the Receiver and Colliers participated in a telephone conference call on November 13, 2014 with a representative of the purchaser and its real estate agent.
  176. Based on the information obtained during that conference call, and after obtaining Colliers' recommendation in respect of that offer, the Receiver, with the concurrence of BDC and DUCA, did not accept the October 30 Offer. The information obtained suggested to the Receiver and Colliers that the proposed purchaser had conducted almost no due diligence.
  177. The Receiver and Colliers were of the view that this proposed purchaser was highly unlikely to close the proposed purchase at the price set out in the offer, if at all.
  178. Counsel for the Debtors scheduled a 9:30 am appearance on November 13, 2014 before Justice Patillo to obtain a motion hearing date on an expedited basis for November 14, 2014. The Receiver attended on the scheduling appointment to present its views and the request for a motion hearing date was vigorously contested by counsel for the Lenders. Justice Patillo declined to provide a hearing date and ordered that the Receiver's sale process should be allowed to continue.
  179. The listing agreement with Colliers expired on February 15, 2015 and was not renewed by the Receiver.
  180. On or about February 19, 2015, PV was advised that DUCA had identified a party which was prepared to make an offer to purchase the assets of the Debtors.
  181. On February 19, 2015, PV was provided with an offer to purchase. The Receiver provided its comments on the offer to purchase to both counsel for DUCA and the purchaser. Any substantive changes to the offer to purchase were negotiated between the purchaser and DUCA.



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182. Following continued negotiations, the purchase agreement, dated March 3, 2015, was executed by the Receiver. As of the date of the Substitution Order, the due diligence condition of the purchase agreement had not been waived.
  183. On April 22, 2015, the Receiver executed a Direction authorizing PV to deliver to Pollard's counsel the purchase agreement, an amendment agreement and the deposit defined in the purchase agreement.

### **Colliers**

184. By letter dated March 23, 2015, Colliers wrote to the Receiver in respect of the listing agreement that it had entered into with the Receiver and, in particular, the holdover provisions referred to therein. In its letter, Colliers requested that the Receiver provide Colliers with information regarding the agreement of purchase and sale that had been entered into by the Receiver.
185. On March 30, 2015, the Receiver answered certain of Colliers' enquiries and advised Colliers that counsel to DUCA had advised that Colliers' representatives were at liberty to contact him to discuss how and when the purchaser came into contact with DUCA. In that letter, the Receiver requested that PV as well as DUCA's counsel include Colliers on the service list for any motions that may be made to the Court in respect of the sale of The Pavilion property.
186. On April 17, 2015, the Receiver provided to Colliers a copy of the Substitution Order.

### **Building Condition Report and Phase I Environmental Review**

187. In order for potential purchasers and the Receiver to understand potential costs of repair and/or other issues with respect to The Pavilion property, the Receiver sought quotes from two parties to conduct a Phase 1 environmental review and a Building Condition Assessment. After reviewing the proposals received, the Receiver engaged Pinchin Ltd. ("**Pinchin**") to prepare both reports.
188. Pinchin completed the Phase 1 environmental review and the Building Condition Assessment. Both reports were posted to the Colliers data room and were accessible to potential purchasers.

### **Outstanding Building Permits and Related Matters**

189. The Receiver determined that there were three open building permits with the City of Vaughan, namely that the City of Vaughan required the final review letters from the architect, the structural engineer and the mechanical (HVAC) engineer, which letters are typically prepared contemporaneously or nearly contemporaneously with the occupancy inspection. PV attempted to address these issues in order for the open building permits to be closed.

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190. In addition to the above open building permits, there was one outstanding permit with respect to plumbing for the building which required the delivery of a test report for back flow preventers for the drains. The Receiver caused the test report for back flow preventers to be conducted and the appropriate documentation to be filed with the City of Vaughan, thereby resolving this issue.
  191. PV advised that the City of Vaughan notified it of two additional open permits, however, these permits were "owned" by two of The Pavilion's tenants and the City of Vaughan was to deal directly with those tenants.
  192. The Receiver was unable to locate the Fire Safety Plan for The Pavilion on the Premises. A copy was obtained from the City of Vaughan; however, it was prepared in 2009 and was required to be updated. The Receiver retained APJ to update the Fire Safety Plan and ensure that The Pavilion is compliant with all other requirements related thereto. As of April 13, 2015, APJ advised the Receiver that according to the Fire Prevention Office, the Fire Safety Plan prepared by APJ was in for final review and approval.

#### **XI. SUBSTITUTION OF THE RECEIVER**

193. On March 9, 2015, DUCA delivered a letter to the Receiver setting out DUCA's request that the Receiver make an application to the Court, without delay, for the approval of its fees and its discharge as receiver and manager and that contemporaneously, DUCA would be moving to substitute Pollard as receiver and manager.
194. In its letter, DUCA sets out its concerns with the Receiver's administration of the receivership, including (i) the quantum of the fees charged by the Receiver (ii) the time and resources the Receiver has dedicated to this matter (iii) the poor manner in which the original sales process was run which yielded wholly unacceptable offers and the lack of meaningful reporting to stakeholders. A copy of DUCA's letter is attached as Appendix "L".
195. On March 19, 2015, the Receiver responded to DUCA'S letter. A copy of the Receiver's letter to DUCA is attached hereto as Appendix "M".
196. On April 13, 2015, DUCA served its motion record for the substitution of the Receiver and on April 17, 2015, the Substitution Order was granted.
197. In order to assist with the transition of the receivership administration to Pollard, the Receiver and its counsel has co-operated with DUCA and Pollard and has provided to DUCA and/or Pollard information that has been requested of the Receiver.

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## **XII. RECEIVER'S CASH RECEIPTS AND DISBURSEMENTS**

198. Attached as Appendix "N" is the Receiver's Statement of Receipts and Disbursements from September 8, 2014 to April 17, 2015 for the Receiver's general account. As indicated, the net cash on hand in the Receiver's general account totals approximately \$8,354 after taking into account the \$400,000 advanced by way of Receiver's Certificates and the payment of certain accounts of the Receiver, Monitor and PV. The Statement of Receipts and Disbursements does not reflect the cash on hand in the Receiver's trust bank accounts maintained for The Pavilion's operations.
199. As set out earlier herein, the detailed results of operations are not included in the above as disclosure of such information could negatively affect The Pavilion's competitive position.

## **XIII. PROFESSIONAL FEES**

200. 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 amount of \$660,901.52.
201. The accounts of the Receiver's counsel, PV, total \$262,268.07 in fees and disbursements (after fee reduction) and \$34,078.34 in HST for a total of \$296,346.41 for the period ending April 17, 2015.
202. In addition to the above amounts, the Receiver and PV continue to incur fees in respect of the transition of the administration of the Receiver to Pollard and the finalization of the Receiver's and the Monitor's reports to the Court.

## **XIV. RECEIVER'S REQUEST TO THE COURT**

203. The Receiver respectfully requests that this Court issue an Order:
- (a) approving the Final Report (and all appendices and Supplements thereto) and the Receiver's conduct and activities for the period from September 8, 2014 to April 17, 2015;
  - (b) approving the Receiver's receipts and disbursements for the period September 8, 2014 to April 17, 2015;
  - (c) approving the fees and disbursements of the Receiver and its legal counsel for the period from September 3, 2014 to April 17, 2015;

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- (d) approving the activities of CBTL and its legal counsel for the period from April 18, 2015 to May 15, 2015 in respect of matters relating to the transition to Pollard of the receivership administration and the finalization of matters by the Receiver in respect of its administration; and
- (e) discharging CBTL as Receiver.

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

**COLLINS BARROW TORONTO LIMITED**

In its capacity as former Court-appointed Receiver  
and Manager 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.**

**Forza Fitness Ltd.**

and not in its personal capacity

Per:



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

## APPENDIX A

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE **McEWEN**

) MONDAY, THE 8<sup>TH</sup> DAY  
)  
) OF SEPTEMBER, 2014

BETWEEN:

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

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

Respondents

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

**RECEIVERSHIP ORDER**

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

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

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

#### **SERVICE**

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

#### **APPOINTMENT**

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

#### **RECEIVER’S POWERS**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **NO INTERFERENCE WITH THE RECEIVER**

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

### **CONTINUATION OF SERVICES**

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

### **RECEIVER TO HOLD FUNDS**

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

## **EMPLOYEES**

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

## **PIPEDA**

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

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

#### **RECEIVER’S ACCOUNTS**

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

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

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

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

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

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

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



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

#### **GENERAL**

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

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

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

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

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

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

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

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

ENTERED AT / INSERIE A TORONTO  
ON / SOUS NO:  
LE / DANS LE REGISTRE NO.:

SEP 0 0 2014

MB



**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

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

1. **THIS IS TO CERTIFY** that Collins Barrow Toronto Limited, the receiver and manager (in such capacities, the "**Receiver**") of all of the assets, undertakings and properties of Aventura II Properties Inc., Pavilion Sports Clubs Inc., Pavilion Sports Ice Inc., Pavilion Sports Food and Beverage Inc., Pavilion Aquatic Club Inc., Pavilion Clubs Inc. and 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 8<sup>th</sup> day of September, 2014 (the "**Order**") made in an action having Court file number CV-13-10285-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

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

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

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

Name: Daniel Weisz

Title: Senior Vice-President

**BUSINESS DEVELOPMENT BANK OF CANADA**  
Applicant

- and -

**AVENTURA II PROPERTIES INC., et al.**  
Respondents  
Court File No. CV-13-10285-00CL

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

Proceedings commenced at Toronto

**RECEIVERSHIP ORDER**

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*Lawyers for Business Development Bank of Canada*

## APPENDIX B

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM )  
JUSTICE CONWAY ) FRIDAY, THE 17<sup>th</sup>  
DAY OF APRIL, 2015



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 RE SUBSTITUTION OF RECEIVER**

THIS MOTION, made by DUCA Financial Services Credit Union Ltd. ("DUCA") for an Order substituting Pollard & Associates Inc. ("Pollard") for Collins Barrow Toronto Limited ("CBTL") as court appointed receiver and manager of the property, assets and undertaking ("Property") of the Respondents, as well as of Pavilion Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd. (collectively, the "Debtors") was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the Affidavit of Timothy R. Dunn sworn April 13, 2015 and on hearing the submissions of counsel for DUCA and CBTL, CBTL not opposing the relief sought, no one else appearing although duly served as reflected on the Affidavit of Service of Karen Fox sworn April 13, 2015, and on reading the Consent of Pollard,

**SUBSTITUTION OF POLLARD FOR CBTL**

1. THIS COURT ORDERS that, effective as at the date of this Order, and pending the approval of the activities, fees and disbursements of CBTL as will be described in the final reports of CBTL and CBTL obtaining its final discharge as Monitor and Receiver:

- (a) Pollard be and is hereby substituted and appointed as receiver and manager of all the Property of the Debtors, for and in place of CBTL, and shall be subject to the terms of the Receivership Order of the Honourable Mr. Justice McEwan in this matter dated September 8, 2014 (the “**Receivership Order**”),
- (b) Pollard is substituted, for and in place of CBTL with respect to any duties and responsibilities of CBTL under all other Orders of this Court granted in relation to the Debtors and persons and entities related to the Debtors , including the Receivership Order and the Order of the Honourable Mr. Justice Brown in this matter dated October 24, 2013 appointing CBTL as Monitor (the “**Monitorship Order**”) (collectively, the “**Orders**”);



- (c) Pollard shall have all of the duties, responsibilities and powers, as well as the benefit of all protections, previously granted to CBTL under the terms of any of the Orders, including under the terms of the Receivership Order;
- (d) Notwithstanding the substitution of Pollard for CBTL under the terms of the Orders, including as Receiver and Manager under the terms of the Receivership Order, all protections granted to CBTL under the terms of any of the Orders, including but not limited to those protections described in paragraphs 7, 9, 13, 14, 15, 16, 17, 18, 19, 20, 25 and 31 of the Receivership Order shall continue to apply and extend to CBTL until such time as CBTL has been finally discharged as Receiver and Monitor under the Monitorship Order (the “**Monitor**”) by further Order of this Court, in accordance with the schedule described below.

### **TRANSITIONAL ISSUES**

2. THIS COURT ORDERS that CBTL shall forthwith deliver up possession to Pollard of the Property of the Debtors in its possession and control, save and except for any funds remaining in any accounts established by the Receiver for the Receivership of the Debtors.
3. THIS COURT ORDERS that CBTL shall deliver up possession of any funds remaining in any accounts established by the Receiver for the Receivership after a reconciliation of the accounts is completed by CBTL and after payment of the accounts of the Monitor and the Receiver and its counsel up to January 12, 2015, subject to taxation, and after the final discharge of CBTL is obtained (the “**Remaining Funds**”).

4. THIS COURT ORDERS that the Receiver shall, as soon as possible, deliver up to Pollard possession of all books and records of the Debtors, and all books and records and other documentation obtained under the terms of any of the Orders, now in the possession of the Receiver, to be held by Pollard under the same terms and conditions as CBTL (the “**Books and Records**”).
  
5. THIS COURT ORDERS that CBTL and its counsel, Pallett Valo LLP (“**PV**”) shall retain the benefit of the Receiver’s Charge granted pursuant to paragraph 17 of the Receivership Order as security for the payment of any fees and disbursements of CBTL and PV, including those fees and disbursements incurred with respect to the implementation of this Order, the transition of the receivership to Pollard and CBTL’s motion for the approval of its activities, fees and disbursements, until approval and payment of these fees and disbursements and the final discharge of CBTL as Receiver and Monitor.
  
6. THIS COURT ORDERS that Pollard shall be substituted as the borrower, and CBTL is hereby released from any obligations as the borrower, under the terms of the Receiver’s Certificates No. 1 (dated September 16, 2014), No. 2 (dated September 16, 2014), No. 3 (dated November 27, 2014) and No. 4 (dated November 27, 2014) issued by the Receiver, as well as under the provisions of the Receiver’s Borrowing Charge granted in Paragraphs 20 - 22 of the Receivership Order.
  
7. THIS COURT ORDERS that the Receiver’s Borrowing Charge contained in paragraph 20 – 22 of the Receivership Order be and is hereby increased from \$500,000.00 to \$1,000,000.00 to enable Pollard to act as Receiver and that Pollard be and is hereby authorized to borrow funds and issue Receiver’s Certificates for and in place of CBTL.

8. THIS COURT ORDERS that Pollard be substituted as the Vendor in connection with all of the duties and obligations of the Vendor set out in an agreement of purchase and sale and any ancillary agreements entered into by CBTL as Receiver for the sale of all or substantially all of the Property (the “**Sale Agreement**”).

9. THIS COURT ORDERS that upon the payment to Pollard or Pollard’s legal counsel, of any funds or other security deposited with CBTL by the purchaser under the terms of the Sale Agreement, CBTL shall be released of any further duties and any and all existing and future liability arising from, and in connection with, any duties and obligations imposed upon CBTL, pursuant to the Sale Agreement (and any ancillary agreements), or under any Sale Process described in any of the Orders.

10. THIS COURT ORDERS that Pollard be substituted as the contracting party in connection with all of the duties and obligations of CBTL as Receiver with respect to any other agreements entered into by the Receiver after the date of its appointment relating to the administration of the Property (collectively the “**Agreements**”) and that CBTL shall be released of any further duties under, and any and all existing and future liability arising from, and in connection with, any duties and obligations imposed upon CBTL, pursuant to the Agreements.

11. THIS COURT ORDERS that Pollard shall be substituted for and in place of CBTL in respect of any and all insurance policies in place for the Debtors and the Property, and that Pollard is authorized and directed to take all such steps as are necessary to effect such substitution with the insurers.

12. THIS COURT ORDERS that, notwithstanding the substitution of Pollard for CBTL as Receiver of the Debtors and the Property, CBTL shall remain as Receiver for the purposes of

maintaining the Liquor Sales Licence issued to CBTL for Tap's Bar & Grill on or about on September 18, 2014 (the "Liquor Sales Licence"), until the Liquor Sales Licence is transferred to Pollard, or a new Liquor Sales Licence is issued in the name of Pollard.

13. THIS COURT ORDERS that DUCA shall indemnify and hold CBTL harmless in respect of any liability which CBTL may incur in respect of CBTL maintaining the Liquor Sales Licence from and after the date of this Order, until the transfer of the Liquor Sales Licence to Pollard, or the issuance of a new Liquor Sales Licence in the name of Pollard.

14. THIS COURT ORDERS that upon the delivery of the Property, Remaining Funds and Books and Records by CBTL to Pollard, and the transfer of the Liquor Sales Licence to Pollard or the obtaining of a new Liquor Sales License by Pollard, CBTL shall be discharged and relieved from any further rights, powers, obligations, liabilities, responsibilities or duties in its capacity as Receiver of the Debtors and the Property, including in relation to the Liquor Sales Licence.

15. THIS COURT ORDERS that CBTL shall have no liability for any of the acts or activities of Pollard as Receiver from and after the date of this Order.

16. THIS COURT ORDERS that CBTL shall apply for its final discharge and release in accordance with the following schedule:

- (a) Service of Final Report of CBTL as Receiver and as Monitor under the Monitorship Order, and the affidavits of CBTL and PV, on or before May 15, 2015 or such other date as may be agreed between DUCA and CBTL;
- (b) Following service of the Final Report, the parties shall agree to a schedule for the remaining steps required to obtain the discharge of CBTL as

Receiver and Monitor and the approval of the activities and fees of CBTL  
and its counsel;

- (c) Failing agreement, any party may arrange a 9:30 Court appointment for the  
setting of a schedule.

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APR 17 2015



BETWEEN

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial list**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for DUCA Financial Services Credit Union Ltd.

## APPENDIX C

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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).

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### **Terms of Monitor Order**

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

### **Terms of Reference**

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

## **II. BACKGROUND**

### **a) The Debtors**

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

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(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 Erlih. Druckmann is the president, secretary, and treasurer of PACI. PACI's registered office is at the Premises. As a result of the cancellation of its Certificate of Incorporation in November 2010, PACI was wound up into PSCI.
14. Details of the operations of the Debtors are set out in this First Report.

**b) The Premises**

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

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

**c) Secured Lenders**

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

**III. APPOINTMENT OF THE MONITOR**

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

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

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

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

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

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

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

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

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

**OPERATIONS**

30. PSCI operates the fitness club which currently has approximately 3,000 members. Members sign an annual contract and pay membership fees on a monthly basis or prepay membership fees for the year in advance. As of October 31, 2013, there were 163 prepaid memberships. Alternatively, members can choose to pay a higher monthly fee without signing an annual contract. Monthly membership fees are typically processed via credit card payments or electronic funds transfer on the first (1<sup>st</sup>) or fifteenth (15<sup>th</sup>) day of the month. On November 1, 2013, approximately \$121,000 was billed of which approximately \$49,000 was "declined". On October 15, 2013, approximately \$33,000 was billed of which approximately \$10,000 was "declined".
31. PSII operates the two ice rinks at the Pavilion and has currently entered into 39 rental contracts. The contracts usually require a 15% deposit with the balance of the rental fee being paid monthly during the term of the contract. The contracts are expected to generate monthly income of approximately \$95,000 during the peak period from October 2013 to March 2014. As of October 30, 2013, payments on 2 of the 39 contracts are in arrears.
32. PSFB operates the onsite restaurant "Tap's Bar and Grill" which primarily services the rink clientele. The restaurant is open weekdays from 4 p.m. to approximately midnight or 1 a.m. and on weekends when the rinks are being rented. The liquor license for the restaurant is in the name of PSFB.
33. The people working at the Pavilion consist of salaried employees as well as independent contractors. Both the salaried employees and the contractors are employed or retained by 188722 Ontario Ltd. ("188"). Payments to employees and contractors are processed in-house semi-monthly. For the pay period ending October 24, 2013, the net payment was \$52,334 consisting of \$7,615 for six employees and \$44,719 for eighty contractors.
34. 188 is an Ontario corporation incorporated in December 2012. Its registered office is located at the Premises and Druckmann is the President while Henryk Karl is the Director. The independent contractors who enter into a contract for services with 188 are paid on an hourly basis, submit an invoice for their

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

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

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

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

### INSURANCE

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



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### WEEKLY RECEIPTS AND DISBURSEMENTS

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

## TENANTS

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

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

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

## PRIORITY CREDITORS

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

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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.

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

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**VII. CONCLUSION**

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

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

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

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

Per: 

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

## APPENDIX D

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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 16<sup>th</sup> day of January, 2014.

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

Per:



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

## APPENDIX E

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

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

Respondents

**THIRD REPORT OF THE MONITOR**

**August 5, 2014**



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**Affidavit of Alex Ilchenko sworn August 1, 2014 ..... N**

## 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 ("**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".

#### **PURPOSE OF THIRD REPORT**

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

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

## II. BACKGROUND

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

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

#### ACTIVITIES OF THE MONITOR

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

#### PAVILION CLUBS INC.

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



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

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

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

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

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

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

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

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

#### **FITNESS CLUB MEMBERSHIPS**

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

#### **WEEKLY RECEIPTS AND DISBURSEMENTS**

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

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

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

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

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

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

### PSII HST REFUNDS

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

### TRANSFER OF FUNDS FROM PCI TO PSII

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

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

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

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

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

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

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

**CORPORATE TAX RETURNS**

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

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

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

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

#### **PRIORITY CREDITORS**

##### *HST*

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

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

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



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

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

#### *Payroll*

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

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

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

#### *Property Taxes*

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

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

### III. SALES PROCESS

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

#### **IV. POSSIBLE RECEIVERSHIP OF THE DEBTORS**

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

#### **V. INFORMATION DISCLOSED TO SECURED CREDITORS**

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

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

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

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

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

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

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

## VII. CONCLUSION

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

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

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

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

Per:



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