

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985 c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS
ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH,
LLC

(the "Applicants")

MOTION RECORD OF THE APPLICANTS

(Returnable April 26, 2024 at 10:30am via Judicial Videoconference)

April 22, 2024

LOOPSTRA NIXON LLP
130 Adelaide St., West, Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix (LSO No.: 52650N)
Tel: (416) 748-4776
Fax: (416) 746-8319
Email: gphoenix@LN.law

Shahrazad Hamraz (LSO No.: 85218H)
Tel: (416) 748-5116
Fax: (416) 746-8319
Email: shamraz@LN.law

Lawyers for the Applicants

TO: ATTACHED SERVICE LIST

Service List
(as at April 22, 2024)

TO: **LOOPSTRA NIXON LLP**
130 Adelaide St. West, Suite 2800
Toronto, ON M5H 3P5

Attn: Graham Phoenix / Shahrzad Hamraz
Tel: (416) 748-4776 / (416) 748-5116
Fax: (416) 748-8319
Email: gphoenix@LN.law / shamraz@LN.law

Lawyers for the Applicants

AND TO: **DENTONS CANADA**
77 King St. West, Suite 400
Toronto, ON M5K 0A1

Attn: Ken Kraft / John Salmas / Sarah Lam
Tel: (416) 863-4374 / (416) 866-4737
Email: kenneth.kraft@dentons.com / john.salmas@dentons.com /
sarah.lam@dentons.com

Lawyers for Royal Bank of Canada

AND TO: **DELOITTE RESTRUCTURING CANADA INC.**
8 Adelaide St. West, Suite 200
Toronto, ON M5H 0A9

Attn: Jordan Sleeth / Richard Williams
Tel: (416) 819-2322 / (416) 258-8761
Email: jsleeth@deloitte.ca / richwilliams@deloitte.ca

Proposed Monitor

AND TO: **BORDEN LADNER GERVAIS**
Bay Adelaide Centre, East Tower
22 Adelaide St., West
Toronto, ON M5H 4E3

Attn: Roger Jaipargas
Tel: (416) 367-6266
Email: RJaipargas@blg.com

Lawyers for Deloitte Restructuring Canada, Proposed Monitor

AND TO: **SPETTER ZEITZ KLAIMAN**
100 Sheppard Ave., East, Suite 850
Toronto, ON M2N 6N5

Attn: Jason Spetter
Tel: (416) 789-0655
Email: jspetter@szklaw.ca

Lawyers for BDC Capital Inc.

AND TO: **Business Development Bank of Canada**
Attn: Margaret Bernat
Email: Margaret.BERNAT@bdc.ca

AND TO: **EXPORT DEVELOPMENT CANADA**
Attn: Jack Nesbitt
Email: JNesbitt@edc.ca

AND TO: **WELLS FARGO EQUIPMENT FINANCE COMPANY**
200 Meadowvale Blvd.
Mississauga, ON L5N 5P9

AND TO: **RCAP LEASING INC.**
5575 North Service Rd., Suite 300
Burlington, ON L7L 6M1
Email: rcap.collections@rcapleasing.com

AND TO: **ATTORNEY GENERAL OF CANADA**
DEPARTMENT OF JUSTICE
Ontario Regional Office, Tax Law Section
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Attn: Kelly Wayland
Tel: (647) 533-7183
Email: Kelly.SmithWayland@justice.gc.ca

Attn: Intake Office
Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

Lawyers for Canada Revenue Agency

AND TO: **HIS MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE**
Legal Services Branch
11-777 Bay Street
Toronto, ON M5G 2C8

Attn: Insolvency Unit
Email: Insolvency.Unit@ontario.ca

Lawyers for Province of Ontario

AND TO: **OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY**
25 St. Clair Avenue – East (6th Floor)

Toronto, ON M4T 1M2

Tel: (416) 973-6441

Fax: (416) 973-7440

Email: osbservice-bsfservice@ised-isde.gc.ca

AND TO: **ROYAL BANK OF CANADA**
20 King Street West 2nd Floor
Toronto, ON M5H 1C4

Attn: Nada Hamadi

Tel: (416) 974-3401

Email: nada.hamadi@rbc.com

AND TO : **AIRD & BERLIS LLP**
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attn: Shaun Parsons

Tel : (416) 637-7982

Email: sparsons@airdberlis.com

Attn: Vedran Simkic

Email: vsimkic@airdberlis.com

Lawyers for Allied Properties REIT

AND TO: **AIRD & BERLIS LLP**
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attn: Ian Aversa

Email: iaversa@airdberlis.com

Attn: Matilda Lici

Email: mlici@airdberlis.com

Lawyers for Disney

AND TO: **THORNTON GROUT FINNIGAN LLP**
100 Wellington St. West, Suite 3200
Toronto, ON M5K 1K7

Attn: Leanne M. Williams

Tel: (416) 304-0060

Email: lwilliams@tgf.ca

Attn: Rachel Nicholson

Email: rnicholson@tgf.ca

Lawyers for Warner Brothers Discovery Inc.

AND TO: **MCRBERTS LEGAL SERVICES INC.**
Sterling Tower Corporation
372 Bay St.
Toronto, ON M5H 2W9

Attn: Christine McRoberts
Email: cmcroberts@mcrobertslegal.com

Email Service List

gphoenix@LN.law; shamraz@LN.law; kenneth.kraft@dentons.com; john.salmas@dentons.com;
sarah.lam@dentons.com; jsleeth@deloitte.ca; richwilliams@deloitte.ca; RJaipargas@blg.com; jspetter@szklaw.ca;
Margaret.BERNAT@bdc.ca; JNesbitt@edc.ca rcap.collection@rcapleasing.com;
Kelly.SmithWayland@justice.gc.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; Insolvency.Unit@ontario.ca;
nada.hamadi@rbc.com; sparsons@airdberlis.com; vsimkic@airdberlis.com; iaversa@airdberlis.com;
mlici@airdberlis.com; lwilliams@tgf.ca; rnicholson@tgf.ca; cmcroberts@mcrobertslegal.com; osbservice-bsfservice@ised-isde.gc.ca

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985 c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS
ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH,
LLC

(the “Applicants”)

INDEX

TAB	DOCUMENT	PAGE #
1	Notice of Motion (returnable April 26, 2024)	8
1A	Draft Order re: Termination of CCAA	16
2	Affidavit of Michael Needham, sworn April 22, 2024	27
2A	Exhibit “A” – Initial Order of the Honourable Justice Conway, dated January 19, 2024	39
2B	Exhibit “B” – ARIO of the Honourable Justice Conway, dated January 29, 2024	60
2C	Exhibit “C” – Recognition Order	93
2D	Exhibit “D” – Affidavit of M. Needham sworn January 17, 2024 (without exhibits)	102
2E	Exhibit “E” – Copy of TGF’s letter dated April 18, 2024	142
2F	Exhibit “F” – the Second Report of the Monitor, dated April 18, 2024 (without appendices)	147

TAB 1

Court File No.: CV-24-00713128-0000

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985 c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS
ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH,
LLC

**NOTICE OF MOTION
(CCAA Comeback Motion)**

(returnable April 26, 2024 @ 10:30am via Judicial Videoconference)

SIMEX INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC (the “**Applicants**”) will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) on Friday April 26, 2024 at 10:30 a.m., or as soon after that time as the motion can be heard, which motion shall be heard virtually by judicial videoconference to be set by the Court office. A direct link will be circulated by email to those members of the Service List with known email addresses prior to the hearing.

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

THE MOTION IS FOR:

1. an order, substantially in the form attached hereto as Schedule “A”, *inter alia*:
 - (a) abridging the time for service and filing of the notice of motion and the motion record or, in the alternative, dispensing with the same;
 - (b) an order terminating these proceedings (the “**CCAA Proceedings**”), effective upon the filing of a certificate (the “**Discharge Certificate**”) by Deloitte Restructuring Inc. (“**Deloitte**”) as Court-appointed monitor in these proceedings

(in such capacity, the “**Monitor**”) certifying that all remaining matters in these CCAA Proceedings have been completed;

- (c) approving the pre-filing report of the Monitor dated January 18, 2024, the first report of the Monitor dated January 26, 2024, the second report of the Monitor dated April 18, 2024 and the third report of the Monitor, to be filed (the “**Third Report**”; and, collectively with each of the aforementioned Monitor’s reports, the “**Monitor’s Reports**”), and the activities of the Monitor therein;
- (d) approving the fees and disbursements of the Monitor and its counsel as set out in the Third Report and the fees affidavits of the Monitor and its counsel appended thereto;
- (e) authorizing the Monitor to file an assignment in bankruptcy for SimEx Inc. (“**SimEx**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”);
- (f) authorizing Deloitte to act as trustee of the bankruptcy estate of SimEx;
- (g) authorizing the Applicants to pay the amount of \$50,000 (USD) to Deloitte in respect of the costs of administration of the bankruptcy estate of SimEx.
- (h) authorizing the Applicants to cause each of Iwerks Entertainment, Inc. and SimEx Iwerks Mrytle Beach, LLC to commence Chapter 7 liquidation proceedings (“**Chapter 7 Proceedings**”) under the United States Bankruptcy Code (“**US Code**”), if same is deemed necessary;
- (i) authorizing the Monitor its capacity as foreign representative in the existing Chapter 15 proceedings under the US Code (the “**Chapter 15 Proceedings**”), to take such steps that it deems necessary and appropriate to dismiss the Chapter 15 Proceedings;
- (j) terminating and extinguishing the Directors Charge (as defined in the Amended and Restated Order made in these proceedings dated January 29, 2024 (the “**ARIO**”));

- (k) terminating and extinguishing the Administration Charge (as defined in the ARIO), effective upon the filing of the Discharge Certificate;
 - (l) confirming that the DIP Lender's Charge (as defined in the ARIO) shall continue in to apply to the assets of the Applicants, notwithstanding the filing of the Discharge Certificate and termination of the CCAA Proceedings;
 - (m) releasing Deloitte and its counsel from claims relating to the CCAA, upon filing of the Discharge Certificate; and
2. such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) the Applicants operate in the entertainment industry, specializing in “4D” motion rides and cinematic attractions – producing and licensing 4D movies, designing and installing 4D theatres and operating themed attractions, primarily in Canada and the United States;
- (b) the Applicants' business was heavily impacted by the COVID-19 pandemic and never fully recovered;
- (c) in consultation with its senior secured lender, Royal Bank of Canada (“**RBC**”), and Deloitte, the Applicants commenced these CCAA Proceedings with a view to marketing the business for sale or soliciting investment;

CCAA Proceedings

- (d) on January 19, 2024, the Applicants applied for and obtained an initial order under the CCAA, which as amended and restated on January 29, 2024;
- (e) pursuant to the initial order and the ARIO, among other things:
 - (i) the Applicants were granted relief under the CCAA;
 - (ii) the CCAA stay of proceedings was extended to May 3, 2024;

- (iii) the Administration Charge was established to secure payment of the professionals administering these proceedings;
- (iv) the Director's Charge as established to secure the Applicants' obligations to indemnify the directors and officers in respect of post-filing liabilities;
- (v) a debtor-in-possession credit facility (the "**DIP Facility**") was authorized to fund these proceedings, with RBC standing as the lender (the "**DIP Lender**"), and the DIP Lender's Charge was established secure obligations of the Applicants under the DIP Facility.
- (vi) a sale and investment solicitation process (the "**SISP**") was approved, to be administered by the Monitor;

Chapter 15 Proceedings

- (f) these proceedings were also subsequently recognized under Chapter 15 of the US Code and the Monitor confirmed as foreign representative of the Applicants therein;

SISP Fails to Generate Qualifying Offer

- (g) as detailed in the motion materials and the Monitor's Reports, despite considerable interest and an extension to the bid deadline, the SISP did not result in any qualifying offers;
- (h) only a non-binding letter of intent was received at the bid deadline, and it was subject to due diligence and conditions that were not acceptable;
- (i) additionally, as detailed in the motion materials and the Monitor's Reports, following failure of the SISP, management of the Applicants endeavoured to put together various management offers to acquire the assets of the Applicants but, ultimately, none could proceed;

CCAA has run its Course

- (j) in view of the above, there is no path forward for the Applicants as a going concern within the CCAA;
- (k) the CCAA stay of proceedings expires on May 3, 2024;
- (l) the DIP Lender is no longer prepared to continue funding the Applicants and these proceedings;
- (m) in consultation with the Monitor and RBC, the Applicants have determined the utility and viability of the CCAA is at an end and the CCAA Proceedings should be terminated;
- (n) the termination of the CCAA Proceedings shall take affect only upon the Monitor filing the Discharge Certificate;

CCAA Charges

- (o) all amounts secured by the Administration Charge shall be paid prior to the filing of the Discharge Certificate and termination to the CCAA Proceedings;
- (p) as at the date of the within motion, all known amounts secured by the Director's Charge shall be paid prior the return of this within motion;
- (q) all amounts secured by the DIP Lender's Charge shall be not paid prior to the filing of the Discharge Certificate and, accordingly, such charge should continue as against the assets of the Applicants following termination of the CCAA Proceedings;
- (r) the DIP Lender supports the foregoing;

Bankruptcy and US Proceedings

- (s) a bankruptcy of SimEx Inc. ("**SimEx**") and potential Chapter 7 Proceedings of the US Applicants, where appropriate, will facilitate the orderly liquidation of assets of the Applicants and distribution of any proceeds thereon, in accordance with any creditor's rights in the same;

- (t) Deloitte is prepared to act trustee of the bankruptcy estate of SimEx;
- (u) as stated, the Monitor is the recognized foreign representative in the Chapter 15 Proceedings and, accordingly, should be authorized to take such steps as it deems necessary to dismiss the Chapter 15 Proceedings;

Approval of Monitor's Reports; Professional Fees; and Discharge of Monitor

- (v) the Monitor's Reports fairly and accurately set out the activities of the Monitor and its counsel, as well as the remaining activities to be completed prior to the Monitor's discharge;
- (w) the fee affidavits of the Monitor and its counsel fairly and accurately set out the work undertaken by the Monitor and its counsel during these proceedings, and the rates of those individuals involved therewith;
- (x) when the Monitor's files the Discharge Certificate, its mandate will be complete, and it is appropriate that it be discharged;

Other Grounds

- (y) the Applicants have acted diligently and in good faith throughout these proceedings;
- (z) the Monitor supports the relief sought herein;
- (aa) RBC supports the relief sought herein;
- (bb) the other grounds set out in the affidavit of Michael Needham dated April 22, 2024 (the "**Needham Affidavit**");
- (cc) the other grounds set out in the report of Third Report of the Monitor;
- (dd) the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c C-36, as amended, and the inherent and equitable jurisdiction of this Court;
- (ee) Section 106 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;

- (ff) rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (gg) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Needham Affidavit and the exhibits thereto;
- (b) the Third Report and the appendices thereto;
- (c) the Fee Affidavits and the exhibits thereto; and
- (d) such further and other material as counsel may advise and this Honourable Court may permit.

Date: April 22, 2024

LOOPSTRA NIXON LLP
130 Adelaide Street West – Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix
Tel: (416) 748 4776
Fax: (416) 746 8319
Email: gphoenix@LN.law

Shahrazad Hamraz
Tel: (416) 748-5116
Fax: (416) 746 8319
Email: shamraz@LN.law

Lawyers for the Applicants

TO: ATTACHED SERVICE LIST

TAB A

SCHEDULE "A"
CCAA TERMINATION ORDER

[see attached]

Court File No. CV-24-00713128-0000

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

THE HONOURABLE MADAM)	FRIDAY, THE 26TH
)	
JUSTICE CONWAY)	DAY OF APRIL, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS
ENTERTAINMENT, INC. AND SIMEX-IWERKS MYRTLE
BEACH, LLC (the "**Applicants**")

**ORDER
(TERMINATION OF CCAA)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for, *inter alia*, an order for various relief set-out in the Notice of Motion dated April 22, 2024, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the affidavit of Michael Needham sworn April 22, 2024 and the exhibits thereto, the Third Report of Deloitte Restructuring Inc., in its capacity as court-appointed monitor ("**Monitor**") dated April ●, 2024 (the "**Third Report**"), the Affidavit of Alex MacFarlane sworn April ●, 2024 (the "**MacFarlane Affidavit**") and the Affidavit of Jordan Sleeth sworn April ●, 2024 (the "**Sleeth Affidavit**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Royal Bank of Canada, counsel for BDC Capital Inc. and the other parties listed on the participant information form and no one appearing for any other party, although duly served, as appears from the affidavit of service of Amanda Adamo sworn April ●, 2024.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated January 18, 2024 (the “**Pre-Filing Report**”), the first report of the Monitor dated January 26, 2024 (the “**First Report**”), the second report of the Monitor dated April 18, 2024 (the “**Second Report**”) and the Third Report of the Monitor and the activities and conduct of the Monitor and its counsel described therein, be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, Borden Ladner Gervais LLP (“**BLG**”), as set out in the Third Report, the MacFarlane Affidavit and the Sleeth Affidavit, including the respective estimates to completion for each of the Monitor and BLG be and are hereby approved.
4. **THIS COURT ORDERS** that the Monitor is authorized and directed to file an assignment in bankruptcy (the “**Bankruptcy Proceedings**”) for SimEx Inc. (“**SimEx**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).
5. **THIS COURT ORDERS** that Deloitte Restructuring Inc. (“**Deloitte**”) is authorized to act as the trustee in bankruptcy (“**Trustee**”) of SimEx.
6. **THIS COURT ORDERS** that the Applicants are authorized to pay \$50,000 (USD) to Deloitte in respect of the costs of the administration of the Bankruptcy Proceedings.
7. **THIS COURT ORDERS** that the Applicants are authorized to cause each of IWerks Entertainment, Inc. and SimEx IWerks Mrytle Beach, LLC to commence Chapter 7 liquidation proceedings in the United States, if same is deemed necessary.
8. **THIS COURT ORDERS** that the Monitor is authorized in its capacity as foreign representative in the existing Chapter 15 proceedings to take such steps that its deems necessary and appropriate to terminate the Chapter 15 proceedings and or facilitate the conversion of such proceedings to Chapter 7 proceedings, if necessary.

9. **THIS COURT ORDERS** that the Director's Charge, as defined in the Amended and Restated Initial Order of Justice Conway dated January 29, 2024 ("ARIO"), be and is hereby terminated and extinguished.

10. **THIS COURT ORDERS** that the Administration Charge (as defined in the ARIO) shall be terminated and extinguished upon the filing of the certificate (the "**Discharge Certificate**") in the form attached as Schedule "A" to this Order.

11. **THIS COURT ORDERS** that the CCAA Proceedings shall be terminated upon the Monitor filing the Discharge Certificate.

12. **THIS COURT ORDERS** that upon the Monitor filing the Discharge Certificate with the Court certifying that it has completed the Remaining Matters, as defined and described in the Third Report, the Monitor shall be discharged, provided however that notwithstanding its discharge herein: (a) the Monitor shall remain Monitor with the performance of such incidental duties that may be required to complete the administration of the within proceedings, and (b) the Monitor shall continue to have the benefit of the provision of all orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte, in its capacity as Monitor.

13. **THIS COURT ORDERS AND DECLARES** that Deloitte is hereby released and discharged from any and all liability that Deloitte now has or may hereafter have by reason of, or in any way arising out of the acts or omissions of Deloitte, while in its capacity as Monitor herein, save and except for any gross negligence or misconduct on the Monitor's part, without limiting the generality of the foregoing, Deloitte is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or willful misconduct on the Monitor's part.

14. **THIS COURT ORDERS** that the Applicants and the Monitor may apply to this Court as necessary to seek further orders and directions to give effect to this Order.

15. **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 Applicant, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without any requirement for issuance and entry, provided that the Applicants' counsel is directed to have this Order issued and entered with the Court.

**SCHEDULE “A”
MONITOR’S DISCHARGE CERTIFICATE**

Court File No. CV-24-00713128-0000

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS
ENTERTAINMENT, INC. AND SIMEX-IWERKS MYRTLE
BEACH, LLC (the "**Applicants**")

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 19, 2024 (the “**Initial Order**”, as amended and restated on January 29, 2024), Deloitte Restructuring Inc. was appointed as monitor (the “**Monitor**”) of SimEx Inc., Iwerks Entertainment, Inc., and SimEx-Iwerks Myrtle Beach, LLC (the “**Applicants**”).

B. Pursuant to the Order of the Justice Conway of the Court dated April 26, 2024 (the “**CCAA Termination Order**”), *inter alia*, the Monitor is to be discharged as the Monitor of the Applicants upon the filing of a certificate confirming that certain Remaining Matters (as defined in the Third Report) have been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. All of the Remaining Matters (as defined in the Third Report) have been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at _____[TIME] on _____[DATE].

**DELOITTE RESTRUCTURING INC., solely in
its capacity as CCAA Monitor of the Applicants,
and not in its personal capacity**

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985
c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SIMEX
INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MONITOR'S DISCHARGE CERTIFICATE

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Tel: 416-367-6000
Fax: 416-367-6749

Roger Jaipargas – LSO No. 43275C

Tel: 416-367-6266
rjaipargas@blg.com

Lawyers for Deloitte Restructuring Inc.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985
c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SIMEX
INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(TERMINATION OF CCAA)

LOOPSTRA NIXON LLP

130 Adelaide Street West – Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix / Shahrzad Hamraz

Tel: (416) 748 4776 / (416) 748 5116

Fax: (416) 746 8319

Email: gphoenix@LN.law / shamraz@LN.law

Lawyers for the Applicants

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985
c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SIMEX
INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

Court File No. CV-24-00713128-0000

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable April 26, 2024 @ 10:30am)**

LOOPSTRA NIXON LLP
130 Adelaide Street West – Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix / Shahrzad Hamraz
Tel: (416) 748 4776 / (416) 748 5116
Fax: (416) 746 8319
Email: gphoenix@LN.law / shamraz@LN.law

Lawyers for the Applicants

TAB 2

Court File No.: CV-24-00713128-0000

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
AND SIMEX-IWERKS MYRTLE BEACH, LLC

(the “**Applicants**”)

**AFFIDAVIT OF MICHAEL NEEDHAM
(sworn April 22, 2024)**

LOOPSTRA NIXON LLP
130 Adelaide St. West, Suite 2800
Toronto, ON Canada M5H 3P5

Graham Phoenix LSO#: 52650N
gphoenix@LN.law
Tel: 416.748.4776

Shahrzad Hamraz LSO#: 85218H
shamraz@LN.law
Tel: 416.748.5116

Lawyers for the Applicants

Court File No.: CV-24-00713128-0000

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
AND SIMEX-IWERKS MYRTLE BEACH, LLC

(the “**Applicants**”)

**AFFIDAVIT OF MICHAEL NEEDHAM
(sworn April 22, 2024)**

I, MICHAEL NEEDHAM, of the City of Toronto, in the Province of Ontario, **MAKE**

OATH AND SAY AS FOLLOWS:

1. I am the President and a director of each of SimEx Inc. (“**SimEx**”), Iwerks Entertainment, Inc. (“**Iwerks**”) and SimEx-Iwerks Myrtle Beach, LLC (“**SIMB**”, and together with SimEx and Iwerks, the “**Applicants**”). I founded each of the companies and have been intimately involved with their business and operations since inception and, as such, I have knowledge of the matters hereinafter deposed to. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true.

I. OVERVIEW

2. On January 19, 2024, pursuant to the Initial Order of Justice Conway (the “**Initial Order**”) the Applicants were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”) and Deloitte Restructuring Inc. was

appointed as CCAA monitor (the “**Monitor**”). A copy of the Initial Order is attached hereto and marked as Exhibit “A”.

3. On January 29, 2024, pursuant to the Amended and Restated Initial Order of Justice Conway (the “**ARIO**”), *inter alia*, (a) the stay of proceedings in the CCAA Proceedings were extended to May 3, 2024; and (b) a sale and investment solicitation process in respect of the Applicants’ assets, undertakings and property was approved (the “**SISP**”). A copy of the ARIO is attached hereto and marked as Exhibit “B”.
4. On January 25, 2024, on the application of the Monitor, as foreign representative of the Applicants, the CCAA Proceedings were recognised under Chapter 15 of the US *Bankruptcy Code* (the “**Chapter 15 Proceedings**”). A copy of the recognition order is attached hereto and marked as Exhibit “C”.
5. Unfortunately, the SISP was not successful and, notwithstanding final efforts by the Applicants’ management team to present an alternative transaction, there is no path forward for the business.
6. Accordingly, I swear this affidavit in support of a motion by the Applicants for, *inter alia*, an order terminating the CCAA Proceedings. More specifically, the Applicants are seeking an order (the “**CCAA Termination Order**”), *inter alia*:
 - (a) terminating the CCAA Proceedings, upon the Monitor filing a certificate (“**Discharge Certificate**”) confirming that it has completed certain remaining matters;
 - (b) authorizing and directing the Monitor to file an assignment in bankruptcy for SimEx;

- (c) authorizing and directing the Monitor to act as the Trustee in bankruptcy of SimEx;
- (d) authorizing the payment by SimEx of \$50,000 (USD) to Deloitte Restructuring Inc. in respect of the costs of administering the SimEx bankruptcy;
- (e) authorizing the Applicants (i) to cause Iwerks to commence Chapter 7 liquidation proceedings in the United States; and, (iii) to cause SIMB to commence Chapter 7 liquidation proceedings in the United States, if same is deemed necessary;
- (f) authorizing the Monitor, in its capacity as foreign representative in the Chapter 15 Proceedings, to take such steps as it deems necessary and appropriate to dismiss the Chapter 15 Proceedings;
- (g) approving the pre-filing report of the Monitor dated January 18, 2024, the first report of the Monitor dated January 26, 2024, the second report of the Monitor dated April 18, 2024 (the “**Second Report**”) and the third report of the Monitor (the “**Third Report**”; and which each of the aforementioned reports, the “**Monitor’s Reports**”), to be filed with the Court;
- (h) approving the fees and disbursement of the Monitor and its counsel as detailed in the Third Report and the fee affidavits appended thereto;
- (i) Terminating and extinguishing the Director’s Charge (as defined in the ARIIO);
- (j) Terminating and extinguishing the Administration Charge (as defined in the ARIIO), upon the filing of the Discharge Certificate;
- (k) discharging the Monitor upon the Monitor filing the Discharge Certificate confirming that all of the Remaining Matters (as defined in the Third Report) are attended to in the CCAA Proceedings.

II. BACKGROUND

7. The Applicants operate a unique business enterprise in the specialized “4D” motion rides and cinematic attractions space – producing and licensing 4D movies, designing and installing 4D theatres and operating themed attractions, primarily in Canada and the United States. This industry was heavily impacted by the COVID-19 pandemic – losing almost all revenue for many months during various pandemic shut-downs and failing to return to pre-COVID-19 sale and revenue levels.
8. As part of these CCAA Proceedings, I previously swore an affidavit dated January 17, 2024 (the “**January 17 Affidavit**”), in connection with the Applicant’s application for the Initial Order. That affidavit included a detailed overview of the business of the Applicants, the corporate structure of the Applicants, the indebtedness and financial circumstances of the Applicants, and the need for CCAA relief. I repeat and rely on the facts set out in the January 17 Affidavit. A copy of the January 17 Affidavit (without exhibits) is attached hereto and marked as Exhibit “D”.
9. Facing financial distress, the Applicants consulted with their secured lender, Royal Bank of Canada (“**RBC**”), and the then-proposed Monitor and initiated these CCAA Proceedings and pursued the SISF, with the support of RBC as DIP Lender.

III. SISF FAILS TO GENERATE AN ACCEPTABLE OFFER

10. As approved in the ARIO, the SISF contemplated the following:
 - (a) an active, public launch of the marketing and sale process immediately following the issuance of the ARIO;
 - (b) solicitation of interest on an “as is, where is” basis;

- (c) a forty-five (45) day period for marketing and due diligence;
 - (d) an offer deadline of March 14, 2024;
 - (e) a potential auction where appropriate;
 - (f) negotiation of a final successful offer; and
 - (g) Court approval of the successful offer, recommended by the Monitor, and closing thereafter.
11. The SISP was to be administered by the Monitor, with the assistance of the Applicants, and contemplated an “outside” closing date of May 3, 2024.
12. Immediately following Court approval of the SISP, the Applicants worked diligently and in good faith with the Monitor to implement the SISP in accordance with the procedures approved by the Court.
13. A more detailed discussion of the results of the SISP is included in the Third Report; however, in summary:
- (a) approximately 50 potentially interested parties were identified and contacted (including both strategic/industry and financial parties);
 - (b) 13 interested parties signed non-disclosure agreements and accessed the dataroom;
 - (c) the Applicants and the Monitor had multiple meetings with interested parties;
 - (d) a number of parties were very active leading up to the bid deadline and, following the request of certain parties, the Monitor extended the bid deadline by one week, to March 21, 2024;

(e) unfortunately, at the revised bid deadline; no qualifying bid had been received.

14. One interested party did submit a non-binding letter of intent. However, as detailed in the Third Report, it was not a qualifying bid. Moreover, it was not binding, it was conditional on further diligence and included conditions precedent that could not be satisfied.

IV. MANAGEMENT UNABLE TO STRUCTURE AN ALTERNATIVE TRANSACTION

15. After the offer deadline, when it became apparent that the SISP would not result in an investment or sale transaction, certain members of senior management of the Applicants (including me) worked to structure an alternative transaction which would see the management group acquire substantially all of the assets of the Applicants. This is detailed in the Second Report.
16. But for the management group's effort, the Applicants would have sought to terminate the CCAA immediately following the failed SISP. Instead, the Applicants worked with the Monitor (who consulted with RBC as the key stakeholder and DIP Lender) to determine if a "last ditch" alternative to termination and liquidation would be achievable.
17. Throughout the management group's efforts, the Monitor was of great assistance. RBC remained open to considering all options, and it appears as though the principal elements of the deal were within reach. However, the management group was unable to confirm the support or interim support from Warner Brothers Discovery Inc. ("**Warner Brothers**"), a key licensor of intellectual property and large creditor of the Applicants.
18. The management group had proposed, among other things, certain go-forward working agreements with Warner Brothers. I was advised by the Applicants' counsel and do verily believe that, on April 17, 2024, Warner Brothers advised through its counsel that it was not

prepared to agree to the proposed working agreements and intended to seek to terminate the existing licensing agreements.

19. In management's view, a go-forward working agreement with Warner Brothers was critical to the success of any management offer within the CCAA Proceedings. Accordingly, the potential management offer was not viable and management could not proceed with the same.
20. Additionally, on April 18 2022, counsel for Warner Brothers sent a letter to counsel to the Applicants advising that because it understood that certain royalty payments were not anticipated to be made, Warners Brothers requested the consent of the Applicants and the Monitor to terminate the underlying licensing agreement and that upon such termination the Applicants must cease all use of Warner Brothers licensed products and properties and the same must be returned or destroyed (as the case may be). A copy of the aforementioned letter is attached hereto and marked as Exhibit "E".
21. I appreciate Warner Brothers' position, though I disagree with the proposition that the Applicants do not "intend" to pay royalties, as it is not a question of intention, but of ability. The Applicants are seeking a termination of the CCAA Proceedings and seeking to commence bankruptcy and liquidation proceedings. I understand from counsel to the Applicants that the claims of creditors will be administered in the subsequent insolvency proceedings referred to above. The Applicants are discussing the Warner Brothers request with the Monitor with a view to providing a response in short order.

V. MATERIAL ADVERSE CHANGE REPORT

22. Based on the foregoing, on April 18, 2024, the Monitor issued the Second Report and noted a material adverse change in the Applicants' affairs. A copy of the Second Report (*without appendices*) is attached hereto and marked as Exhibit "F".

VI. RELIEF REQUESTED

23. In view of circumstances above, there is no path forward for the Applicants as a going - concern.
24. Additionally, the CCAA stay of proceedings expires on May 3, 2024 and I understand from counsel, and do verily believe to be true, that RBC is not prepared to continue to fund these CCAA Proceedings. Therefore, the Applicants are not seeking a further extension of the CCAA stay of proceedings.
25. Accordingly, the Applicants request various relief from the Court to conclude these CCAA Proceedings and wind-down their business.

A. Termination of the CCAA Proceedings

26. As indicated above, the SISF did not result in a viable offer. Management's alternative transaction cannot proceed, and the DIP Lender is not prepared to continue to support these proceedings. The stay expires on May 3, 2024.
27. In consultation with the Monitor and RBC, the Applicants have determined that the utility and viability of CCAA process is at an end.
28. Accordingly, the Applicants are seeking the relief set out above. I understand that the Monitor will file the Third Report setting out its views and the remaining matters that need to be completed.

B. Approval of Monitor's Reports

29. The Monitor has issued three reports in these CCAA Proceedings. I have reviewed each of these to date. Subject to reviewing the final version of the Third Report, the Applicants are of the view the Monitor's Reports fairly and accurately represent the Monitor's activities throughout these CCAA Proceedings.
30. Accordingly, the Applicants are seeking an order approving the Monitor's Reports and the activities of the Monitor set out therein.

C. Approval of Professional Fees

31. The Applicants have received and reviewed copies of all invoices for the Monitor's fees and those of its counsel, to date as well as projected costs to complete all matters in these proceedings. I understand that the same must be approved by the Court. The Applicants are of the view that such invoices fairly and accurately represent the time and costs expended by the Monitor and its counsel, at rates that were made clear to the Applicants throughout.
32. Accordingly, the Applicants are seeking an order approving the professional fees and disbursements of the Monitor and its counsel.

D. Discharge of the Monitor

33. In connection with the conclusion of these CCAA Proceedings, the Applicants are requesting an order discharging the Monitor upon filing of the Discharge Certificate. I understand from counsel and do verily believe that the form of discharge and relief sought

is in accordance with standard insolvency practice and the model form of order used by the Commercial List.

VII. CONCLUSION

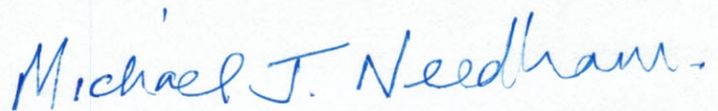
34. In view of the foregoing, these CCAA Proceedings have run their course. RBC is not prepared to advance further DIP funding. The Monitor has filed a Material Adverse Change report. Finally, I understand that the Monitor will recommend that these CCAA Proceedings be terminated and a bankruptcy and corresponding proceedings in the United States be initiated to realize on any assets of the Applicants and distribute the same to creditors (to the extent possible).
35. I swear this affidavit in support of an Order to, *inter alia*, terminate these CCAA Proceedings, substantially in the form as the draft order includes as Tab 1-A of the Applicants' motion record.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 22nd day of
April, 2024 in accordance with O. Reg.
431/20 Administering Oath or Declaration
Remotely



Commissioner for Taking Affidavits

Shahrzad Hamraz



MICHAEL NEEDHAM

TAB A

This is Exhibit "A" referred to
in the affidavit of MICHAEL NEEDHAM
subscribed and sworn to before me,
this 22nd day of April 2024.

A handwritten signature in black ink, appearing to read "J. Kelly", is written over a solid horizontal line.

A commissioner for taking affidavits.



Court File No. CV-24-00713128-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)
JUSTICE CONWAY)
FRIDAY, THE 19TH
DAY OF JANUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
SIMEX-IWERKS MYRTLE BEACH, LLC (the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Michael Needham sworn January 17, 2024, and the Exhibits thereto, the pre-filing report dated January 18, 2024, of the proposed monitor Deloitte Restructuring Inc. ("Deloitte"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Deloitte, counsel for Royal Bank of Canada, counsel for BDC Capital Inc. and the other parties listed on the participant information form and no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Adamo sworn January 17, 2024, and on reading the consent of Deloitte to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service 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.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are each a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) but for greater certainty excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by an Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

11. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicants shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. THIS COURT ORDERS that until and including January 29, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or

tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower an Applicant to carry on any business which such Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

15. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, sublicense, authorization or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of its current premises, 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct (the "D&O Indemnity").

20. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of USD \$300,000, as security for the indemnity provided in paragraph 20 of this Order, subject to the limited effect of the Director's Charge during the initial 10-days of these proceedings, prescribed by paragraph 44 hereof. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

21. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

22. THIS COURT ORDERS that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are

hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

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

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, US counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of USD \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings, subject to the limited effect of the Administration Charge during the initial 10-day Stay Period prescribed by paragraph 43 hereof. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

DIP FINANCING

31. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Royal Bank of Canada (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of USD \$600,000 unless permitted by further Order of this Court.

32. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender (the "Commitment Letter"), filed.

33. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “DIP Lender’s Charge”) on the Property, subject to the limited effect of the DIP Lender’s Charge during the initial 10-day Stay Period, as prescribed by paragraph 44 hereof, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon two (2) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of any of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or

any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD \$500,000);

Second – DIP Lender's Charge (to a maximum principal amount of USD \$600,000; and

Third – Directors' Charge (to the maximum amount of USD \$300,000),

in each case subject to such limitations during the initial 10-day Stay Period prescribed by paragraph 43 hereof.

38. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment.

40. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicants also obtains prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

41. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

LIMITATIONS ON DIP BORROWINGS & CHARGES DURING INTIAL STAY PERIOD

43. THIS COURT ORDERS that notwithstanding anything to the contrary herein, during the period from and after the effectiveness of this Order and the Comeback Hearing (*as defined below*) (the “Interim Period”), the Applicants’ ability to access funding under the Commitment Letter and the scope of the Charges is limited as follows:

- (a) during the Interim Period, advances under the Commitment Letter shall be limited to the principal amount of USD \$200,000 in the aggregate, which is the amount necessary to sustain operations in this Interim Period and to satisfy obligations for payroll and source deductions;
- (b) during the Interim Period, amounts secured by the Administration Charge shall be limited to USD \$390,000 in the aggregate, which is the amount required to fund the professional costs during the Interim Period;
- (c) during the Interim Period, amounts secured by the DIP Lender’s Charge shall be limited to USD \$200,000 in the aggregate, the amount necessary to sustain operations in this Interim Period and to satisfy obligations for payroll and source deductions; and
- (d) during the Interim Period, amounts secured by the D&O Charge shall be limited to USD \$230,000 in the aggregate, which is the amount required secure the potential D&O liability during the Interim Period,

and provided that in the event the Stay Period is not extended at the Comeback Hearing the permitted borrowings under the Commitment Letter and scope of the Charges shall be permanently restricted and limited as set out in this paragraph 43, pending further order of the Court.

COMEBACK HEARING

44. THIS COURT ORDERS that the comeback motion required in this CCAA proceeding shall be heard at 11:00am (Toronto time) on January 29, 2024 (the “Comeback Hearing”).

SERVICE AND NOTICE

45. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the National Post (National Edition) a notice containing the information prescribed under the CCAA, (ii)

within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

46. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) and paragraph 7 of the Guide, this Order shall constitute an order for substituted service pursuant to Rule 16.04. Subject to Rule 3.01(d) and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL www.insolvencies.deloitte.ca/en-ca/SimEx.

47. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

49. THIS COURT ORDERS that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

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

51. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

52. 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 Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1530, as amended.

54. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing, or at any other time, on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 38 and 40 hereof, and subject to the limitations in paragraph 44, with respect to any fees, expenses and disbursements (including amounts loaned to the Applicant pursuant to the Commitment Letter) incurred as applicable, until the date this Order may be amended, varied or stayed.

55. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without any requirement for issuance and entry.



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c.C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

Court File No.: CV-24-00713128-0000

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

Proceedings commenced at Toronto

Initial Order

LOOPSTRA NIXON LLP
130 Adelaide Street West – Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix / Shahrzad Hamraz
Tel: (416) 748 4776 / (416) 748 5116
Fax: (416) 746 8319
Email: gphoenix@LN.law / shamraz@LN.law

Lawyers for the Applicants

TAB B

This is Exhibit "B" referred to
in the affidavit of MICHAEL NEEDHAM
subscribed and sworn to before me,
this 22nd day of April 2024.

A handwritten signature in black ink, appearing to be 'S. P. King', written over a solid horizontal line.

A commissioner for taking affidavits.



Court File No. CV-24-00713128-0000

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

THE HONOURABLE MADAM)	MONDAY, THE 29TH
)	
JUSTICE CONWAY)	DAY OF JANUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985 c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS
ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH,
LLC (the "Applicants")

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the Initial Order in these proceedings (the "Initial Order") originally issued on January 19, 2024 (the "Initial Filing Date") was heard this day by judicial videoconference via Zoom.

ON READING the affidavits of Michael Needham sworn January 17, 2024 and January 24, 2024 and the Exhibits thereto, the consent of Deloitte Restructuring Inc. to act as Monitor (in such capacity, the "Monitor"), the pre-filing report of Deloitte Restructuring Inc. in its capacity as the proposed Monitor dated January 18, 2024 and the first report of the Monitor dated January 26, 2024, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Royal Bank of Canada, counsel for BDC Capital Inc. and the other parties listed on the participant information form and no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Adamo sworn January 24, 2024,

AMDENDMENT AND RESTATEMENT

1. THIS COURT ORDERS that the Initial Order shall be amended and restated with this Amended and Restated Order.

SERVICE

2. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are each a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the

Initial Filing Date but not required to be remitted until on or after the Initial Filing Date,
and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) but for greater certainty excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by an Applicant to any of its creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of their employees or temporarily lay off such of its employees as they deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicants shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing

herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including May 3, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower an Applicant to carry on any business which such Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, sublicense, authorization or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of its current premises, 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 Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct (the "D&O Indemnity").

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of USD \$300,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

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

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, US counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of USD \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Royal Bank of Canada (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of USD \$600,000 unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender (the "Commitment Letter"), filed.

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security

documents, guarantees and other definitive documents (collectively, the “Definitive Documents”), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “DIP Lender’s Charge”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 38 and 40 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon two (2) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of any of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD \$500,000);

Second – DIP Lender's Charge (to a maximum principal amount of USD \$600,000; and

Third – Directors' Charge (to the maximum amount of USD \$300,000).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the

Administration Charge or the DIP Lender's Charge, unless the Applicants also obtain prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SALE AND INVESTMENT SOLICITATION PROCESS

44. THIS COURT ORDERS that the sale and investment solicitation process appended hereto as **Schedule “A”** (the “SISP”) (subject to any amendments thereto that may be made in accordance with the terms thereof and with this Order) be and is hereby approved and the Applicants and the Monitor are hereby authorized and directed to carry out the SISP in accordance with its terms and the terms of this Order.

45. THIS COURT ORDERS that Applicants and the Monitor are hereby further authorized and directed to take such steps as each considers necessary or desirable in carrying out each of the respective obligations under the SISP, subject to the prior approval of this Court being obtained before the completion of any transition(s) under the SISP.

46. THIS COURT ORDERS that the Applicants and the Monitor and their respective affiliates, partners, directors, officers, employees, advisors, agents and representatives shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Applicants or the Monitor, as applicable, as determined by the Court.

47. THIS COURT ORDERS that the Applicants and Monitor may apply to this Court for advice and directions with respect to the SISP at any time.

PIPEDA

48. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants and the Monitor may 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 carry out the SISP and to attempt to complete a transaction or transactions pursuant to the SISP (each, a "Transaction"). Each prospective purchaser, bidder or investor 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 Transaction, and if it does not complete a Transaction, shall return all such information to the Applicants, or in the alternative destroy all

such information. The purchaser, bidder or investor in any Transactions shall be entitled to continue to use the personal information provided to it, and related to the Property involved in the Transaction, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

SERVICE AND NOTICE

49. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the National Post (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

50. THIS COURT ORDERS that the Guide Concerning Commercial List E-Service (the “Guide”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) and paragraph 7 of the Guide, this Order shall constitute an order for substituted service pursuant to Rule 16.04. Subject to Rule 3.01(d) and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL www.insolvencies.deloitte.ca/en-ca/SimEx.

51. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

53. THIS COURT ORDERS that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

54. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

56. 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 Applicant, the Monitor and their respective 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

Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

57. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1530, as amended.

58. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing, or at any other time, on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 38 and 40 hereof, and subject to the limitations in paragraph 44, with respect to any fees, expenses and disbursements (including amounts loaned to the Applicant pursuant to the Commitment Letter) incurred as applicable, until the date this Order may be amended, varied or stayed.

59. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without any requirement for issuance and entry.



SCHEDULE “A”
SISP TERMS AND CONDITIOINS

[see attached]

Sale and Investment Solicitation Process

SimEx Inc., Iwerks Entertainment Inc. and SimEx-Iwerks Myrtle Beach LLC

Introduction

1. On January 19, 2024, SimEx Inc., Iwerks Entertainment Inc., and SimEx-Iwerks Myrtle Beach LLC (together, the “**Applicants**”) obtained an initial order (that may be amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things:
 - a. Provides for a stay of all proceedings against the Applicants assets, properties and undertaking and their respective directors and officers (the “**Stay of Proceedings**”); and
 - b. Appoints Deloitte Restructuring Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”).
2. On January 29, 2024, the Court granted an amended and restated initial order (the “**ARIO**”) pursuant to which, among other things:
 - a. the Stay of Proceedings was extended to and including May 3, 2024; and
 - b. the Court approved, and authorized the Monitor to conduct, a sale and investment solicitation process (the “**SISP**”), as described herein, with the assistance of the Applicants. The SISP is intended to solicit interest in an acquisition or refinancing of the business, or a sale of the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, primary equity issuance, or other similar transaction. The Monitor intends to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

3. The SISP is intended to solicit interest in and opportunities for a sale of, or investment in, all or part of the Applicants’ assets and business operations (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Applicants as a going concern, or a sale of all, substantially all or one or more components of the Applicants’ assets (the “**Property**”) and business operations (the “**Business**”) as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
4. This document (the “**SISP Procedure**”) describes the SISP, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Applicants, the Property and the Business, how bids

involving the Applicants, the Property or the Business will be submitted to and dealt with by the Monitor and how Court approval will be obtained in respect of a Transaction.

5. The SISP contemplates a one-stage process that involves the submission by interested parties of binding offers by the Bid Deadline (as defined below).
6. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.
7. In the SISP, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in the SISP falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

Timeline

8. The following table sets out the key milestones under the SISP:

Milestone	Timeline	Targeted Deadline
Commencement date	Immediately following the approval of the SISP Process	January 29, 2024
Preparation of SISP materials (i.e., Teaser, Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR)	10 days (in advance, immediately after the Initial Order)	January 29, 2024
Bid Deadline	[45 days]	March 14, 2024
Auction Date (if applicable)	[1 day]	March 21, 2024
Finalize Transaction agreement	7 days	March 29, 2024
Sale Approval Motion (as defined below) in Court		April 19, 2024 (outside date)
Closing of the Transaction		May 3, 2024 (outside date)

9. The dates set out in the SISP may be extended by either: (i) further order of the Court; or (ii) the Monitor, with the consent of Royal Bank of Canada.

Solicitation of Interest: Notice of the SISP

10. As soon as reasonably practicable:

- a. the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, and (ii) local and international strategic and financial parties who the Applicants, in consultation with the Monitor, believe may be interested in a Transaction pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
- b. the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Applicants, considers appropriate) (the “**Notice**”) to be published in Insolvency Insider, the Monitor’s website, and any other newspaper or journal or industry website as the Applicants, in consultation with the Monitor, consider appropriate, if any; and
- c. the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicants and the Monitor and their respective counsel (an “**NDA**”).

11. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder and to any other Person who requests a copy of the Teaser Letter and NDA or who is identified to the Applicants or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

12. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), must provide to the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.

13. The Monitor, in consultation with the Applicants, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Monitor and provided information as to their financial ability, in the Monitor’s sole discretion, to close a transaction, such access to due diligence material and information relating to the Property and Business as the Applicants or the Monitor deem appropriate. Due diligence shall include access to an electronic data room (“**EDR**”) containing information about the Applicants, the Property and the Business, and may also include management presentations, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Applicants, in their reasonable business judgment and after consulting with the Monitor, may agree. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicants nor the Monitor will be obligated to furnish any

information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicants, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information. Neither the Applicants nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale of the Property and the Business.

14. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicants.

Formal Binding Offers

15. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business (a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Monitor and Applicants’ counsel at the addresses specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **5:00 PM (EST) on March 14, 2024** or as may be modified in the Bid process letter that may be circulated by the Monitor to Potential Bidders, with the approval of the Applicants (the “**Bid Deadline**”):

- a. the Bid must be either a binding offer to:
 - i. acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”); and/or
 - ii. make an investment in, restructure, reorganize or refinance the Business or the Applicants (an “**Investment Proposal**”); or
- b. carry out any combination of a Sale Proposal and an Investment Proposal;
- c. the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and is consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Bidders;
- d. the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- e. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount (the “**Purchase Price**”), together with all exhibits and schedules thereto;

- f. the Bid is accompanied by a deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the Purchase Price, investment amount or other consideration to be paid in respect of the Bid, to be held and dealt with in accordance with this SISP;
- g. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicants and the Monitor to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;
- h. the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licenses required to operate the business, if necessary;
- i. the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such bid;
- j. for a Sale Proposal, the Bid includes:
 - i. the purchase price in U.S. dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - iii. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - iv. a description of the conditions and approvals required to complete the closing of the transaction;
 - v. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - vi. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction.
- k. for an Investment Proposal, the Bid includes:
 - i. a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

- ii. the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in U.S. dollars.
 - iii. the underlying assumptions regarding the pro forma capital structure;
 - iv. a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
 - v. a description of the conditions and approvals required to complete the closing of the transaction;
 - vi. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - vii. any other terms or conditions of the Investment Proposal.
- l. the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- i. is completing the Transaction on an “as is, where is” basis;
 - ii. has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its Bid;
 - iii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - iv. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicants;
- m. the Bid is received by the Bid Deadline; and
- n. the Bid contemplates closing the Transaction set out therein immediately following the granting of an order by the Court approving the same.
17. Following the Bid Deadline, the Monitor will assess the Bids received. The Monitor, in consultation with the Applicants and Royal Bank of Canada and will designate the most competitive bids that comply with the foregoing requirements to be “**Qualified Bids**”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

18. The Monitor, in consultation with the Applicants and Royal Bank of Canada, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bids to be a Qualified Bid. The Monitor and the Applicants will be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
19. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate .
20. The Monitor may, in consultation with the Applicants, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

Evaluation of Competing Bids

21. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction(s), (iii) the proposed Transaction documents, (iv) factors affecting the speed, certainty and value of the Transaction, (v) the assets included or excluded from the bid, (vi) any related restructuring costs, (vii) the likelihood and timing of consummating such Transaction, each as determined by the Applicants and the Monitor and (viii) any other factor deemed relevant by the Monitor in consultation with the Applicants.

Auction

22. If the Monitor receives at least two Qualified Bids and determines, in consultation with the Applicants and Royal Bank of Canada that they are competitive, the Monitor will conduct and administer an Auction in accordance with the terms of this SISP (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, or in person, as determined by the Monitor, and will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
23. Only parties that provided a Qualified Bid by the Bid Deadline, as confirmed by the Monitor, (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (EST) on the day prior to the Auction, each Qualified Party must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

Auction Procedure

24. The Auction shall be governed by the following procedures:
 - a. **Participation at the Auction.** Only the Applicants, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM (EST) by no later than five (5) days after the

Bid Deadline. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 5:00 PM (EST) on the Business Day prior to the Auction;

- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor, in consultation with the Applicants (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD \$50,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference or otherwise, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim discussions between the Monitor and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded; and
- g. **Auction Procedures.** The Monitor shall be at liberty to set additional procedural rules at the Auction as it sees fit.

Selection of Successful Bid

25. Before the conclusion of the Auction, the Monitor, in consultation with the Applicants, will:

- a. review and evaluate each Qualified Bid, considering the factors set out in paragraph 16 and any other factor that the Applicants or the Monitor may reasonably deem relevant, provided that each Qualified Bid may be negotiated among the Monitor

in consultation with the Applicants and the Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations; and

- b. identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
26. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Monitor, in consultation with the Applicants, subject to the milestones set forth in paragraph 9.

Sale Approval Motion Hearing

27. At the hearing of the motion to approve any transaction with a Successful Party (the “**Sale Approval Motion**”), the Monitor or the Applicants shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Monitor and the Applicants on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

28. All discussions regarding a Sale Proposal, Investment Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
29. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Qualified Bidders.

Supervision of the SISP

30. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP Procedure and the ARIO and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
31. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants or the Monitor and any Potential Bidder, any Qualified Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

32. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Applicants, the DIP Lender, or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Monitor. By submitting a bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Monitor.
33. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
34. The Monitor, in consultation with the Applicants, shall have the right to modify the SISP Procedure (including, without limitation, pursuant to the Bid process letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Deposits

35. All Deposits received pursuant to this SISP shall be held in trust by the Monitor. The Monitor shall hold Deposits paid by each of the Bidders in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Monitor elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Monitor shall return the Deposit to that Person. In the event that the Successful Bidder defaults in the payment or performance of any obligations owed to the Monitor or the Applicants pursuant to any Final Agreement, the Deposit paid by the Successful Bidder, as applicable, shall be forfeited as liquidated damages and not as a penalty.

Schedule “1”

Address of Monitor

To the Monitor:

Deloitte Restructuring Inc.

8 Adelaide Street West, Suite 200
Toronto, ON, Canada, M5H 0A9

Attention: Jordan Sleeth and Richard Williams

Email:

jsleeth@deloitte.ca
richwilliams@deloitte.ca

with a copy to:

Borden Ladner Gervais LLP

Bay Adelaide Centre – East Tower
22 Adelaide Street West, Suite 3400
Toronto, Ontario M5H 4E3

Attention: Roger Jaipargas

Email: rjaipargas@blg.com

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

Court File No.: CV-24-00713128-0000

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

Proceedings commenced at Toronto

Amended and Restated Initial Order

LOOPSTRA NIXON LLP
130 Adelaide Street West – Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix / Shahrzad Hamraz
Tel: (416) 748 4776 / (416) 748 5116
Fax: (416) 746 8319
Email: gphoenix@LN.law / shamraz@LN.law

Lawyers for the Applicants

TAB C

This is Exhibit "C" referred to
in the affidavit of MICHAEL NEEDHAM
subscribed and sworn to before me,
this 22nd day of April 2024.

A handwritten signature in black ink, appearing to be "R. King", is written over a solid horizontal line. The signature is cursive and stylized.

A commissioner for taking affidavits.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SIMEX INC., et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 24-10083 (TMH)

(Jointly Administered)

Related Docket Nos. 4, 33

ORDER GRANTING PETITION FOR (I) RECOGNITION AS FOREIGN MAIN PROCEEDINGS, (H) RECOGNITION OF FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Upon consideration of the *Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (together with the form petitions filed concurrently therewith, the “Verified Petition”),² filed by the Foreign Representative as the “foreign representative” of the above-captioned debtors (collectively, the “Debtors”); and upon the hearing on the Verified Petition and this Court’s review and consideration of the Verified Petition, the Deloitte Declaration, and the Jaipargas Declaration;

IT IS HEREBY FOUND AND DETERMINED THAT³:

¹ The chapter 15 debtor incorporated in Canada and/or in the province of Ontario (the “Canadian Debtor”), along with the last four digits of the Canadian Debtor’s Canadian business number, is: SimEx Inc. (“SimEx”) (5222). The chapter 15 debtors incorporated in the United States (the “U.S. Debtors”), along with the last four digits of each U.S. Debtor’s federal tax identification number, are: Iwerks Entertainment, Inc. (“Iwerks”), (9361) and SimEx-Iwerks Myrtle Beach, LLC (“SIMB”) (8417). (The Canadian Debtor and the U.S. Debtors are referred to herein, collectively, as the “Debtors” or “SimEx”). The Debtors’ executive headquarters are located at: 210 King St East, 600, Toronto, Ontario, Canada, M5A 1J7.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Verified Petition.

³ The findings and conclusions set forth herein and in the record of the hearing on the Verified Petition constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

2. Venue is proper before this Court pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court may enter a final order consistent with Article III of the United States Constitution.

3. Appropriate notice of the filing of, and the Hearing on, the Verified Petition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

4. No objections or other responses were filed that have not been overruled, withdrawn, or otherwise resolved.

5. These Chapter 15 Cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

6. The Debtors have a domicile, principal place of business, and/or property in the United States, and the Debtors are each eligible to be a debtor in a chapter 15 case pursuant to, as applicable, 11 U.S.C. §§ 109 and 1501.

7. The Foreign Representative is a “person” pursuant to section 101(41) of the Bankruptcy Code and is the duly appointed “foreign representative” of the Debtors as such term is defined in section 101(24) of the Bankruptcy Code. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

8. The CCAA Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

9. The CCAA Proceedings are pending in Canada, where the Debtors have the “center of [their] main interests” as referred to in section 1517(b)(1) of the Bankruptcy Code. Accordingly, the CCAA Proceedings are “foreign main proceedings” pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

10. The Foreign Representative is entitled to all the relief provided pursuant to sections 1507, 1519, 1520, and 1521(a)(4) and (5) of the Bankruptcy Code without limitation, because those protections are necessary to effectuate the purposes of chapter 15 of the Bankruptcy Code and to protect the assets of the Debtors and the interests of the Debtors' creditors.

11. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on (to the extent necessary), the Verified Petition was given, which notice was deemed adequate for all purposes, and no further notice need be given.

12. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby in accordance with section 1522(a) of the Bankruptcy Code.

13. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and the interests of its creditors and other parties in interest, is in the interest of the public and international comity, is consistent with the public policy of the United States and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted. Absent the requested relief, the efforts of the Debtors and the Foreign Representative in conducting the CCAA Proceedings and the sale and investment solicitation process may be frustrated by the actions of individual creditors, a result contrary to the purposes of chapter 15.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

14. The Verified Petition is granted.

15. The CCAA Proceedings are recognized as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code and are entitled to the protections of 11 U.S.C. § 1520(a), including, without limitation, the application of the protection afforded by the automatic stay under 11 U.S.C. § 362 to the Debtors and to the Debtors' property that is within the territorial jurisdiction of the United States.

16. Deloitte Restructuring Inc. is the duly appointed foreign representative of the Debtors within the meaning of 11 U.S.C. § 101(24), is authorized to act on behalf of the Debtors in these Chapter 15 Cases and is established as the exclusive representative of the Debtors in the United States.

17. The Initial CCAA Order and the Amended and Restated Initial CCAA Order, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States, including, without limitation, staying the commencement or continuation of any actions against the Debtors or its assets (except as otherwise expressly provided herein or therein).

18. All objections, if any, to the Verified Petition or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

19. Upon entry of this order (this "Order"), the CCAA Proceedings and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States and, among other things:

- a. the protections of sections 361, 362, 364 and 365(e) of the Bankruptcy Code apply to the Debtors;
- b. all persons and entities are enjoined from taking any actions inconsistent with the CCAA Proceedings and the Sale Process, and from seizing, attaching, and enforcing or executing liens or judgments against the Debtors' property in the United States or from transferring, encumbering or otherwise disposing of or interfering with the Debtors' assets or agreements in the United States without the express consent of the Foreign Representative;
- c. all persons and entities are enjoined from commencing or continuing, including the issuance or employment of process of, any judicial, administrative or any other action or proceeding involving or against the Debtors or their assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative, or other judgment, assessment, order, lien or arbitration award against the Debtors or their assets or proceeds thereof;

- d. Section 364 of the Bankruptcy Code is applicable with respect to each of the Debtors and the property of each of the Debtors that is within the territorial jurisdiction of the United States;
- e. the Court recognizes the effectiveness of the Initial CCAA Order and the Amended and Restated Initial CCAA Order insofar as they (a) authorized the Debtors to obtain and borrow under the DIP Term Sheet and (b) granted liens and security interests in the Debtors' assets located within the territorial jurisdiction of the United States in respect of, and in accordance with, the Administration Charge, DIP Lender's Charge, and Directors' Charge (collectively, the "DIP Charges") provided that this Order does make any findings pursuant to Section 364(d)(1) of the Bankruptcy Code, or otherwise, with respect to the merits of the DIP Facility in these Chapter 15 Cases filed in the United States;
- f. all persons and entities are enjoined from commencing any suit, action, or proceeding against the Debtors, the Foreign Representative, or any of their respective successors, directors, officers, agents, employees, representatives, advisors, or attorneys in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with these Chapter 15 Cases, the CCAA Proceedings, and the SISF; and
- g. all persons and entities are enjoined from terminating or modifying an executory contract or unexpired lease at any time after the commencement of these Chapter 15 Cases solely because of a provision in such contract or lease that is conditioned upon the commencement of the CCAA Proceedings or a case under the Bankruptcy Code.

20. The Foreign Representative and the Debtors shall be entitled to the full protections and rights enumerated under section 1521(a)(4) and (5) of the Bankruptcy Code, and accordingly, the Foreign Representative:

- a. is entrusted with the administration or realization of all or part of the Debtors' assets located in the United States; and
- b. has the right and power to examine witnesses, take evidence or deliver information concerning the Debtors' assets, affairs, rights, obligations, or liabilities.

21. All parties who believe they have a claim against any of the Debtors are obligated to file such claim in, and only in, the CCAA Proceedings.

22. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors, the Foreign Representative, and the DIP Lender by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended, and that certain *Order Granting Provisional*

Relief Pursuant to Section 1519 of the Bankruptcy Code [Docket No. ____] (the “Provisional Relief Order”) shall remain in full force and effect, on a final basis. To the extent there is any inconsistency between this Order and the Provisional Relief Order, the language in this Order shall control.

23. The Foreign Representative is hereby established as the representative of the Debtors with full authority to administer the Debtors’ assets and affairs in the United States, including, without limitation, making payments on account of the Debtors’ prepetition and postpetition obligations.

24. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or Local Rules of this Court.

25. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the CCAA Proceedings, this Order, these Chapter 15 Cases, or any adversary proceeding herein, or contested matters in connection therewith, will be deemed to constitute a waiver of any immunity afforded the Foreign Representative, including without limitation pursuant to sections 306 or 1510 of the Bankruptcy Code.

26. The banks and financial institutions with which the Debtors maintain bank accounts or on which checks are drawn or electronic payment requests made in payment of prepetition or postpetition obligations are authorized and directed to continue to service and administer the Debtors’ bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether before or after the Petition Date and drawn on the Debtors’ bank accounts by respective holders and makers thereof and at the direction of the Foreign Representative or the Debtors, as the case may be.

27. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

28. This Order is without prejudice to the Foreign Representative requesting any additional relief in the Chapter 15 Cases, including seeking recognition and enforcement by this Court of any further orders issued in the CCAA Proceedings.

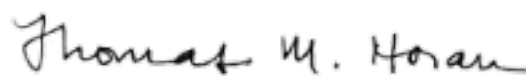
29. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

30. A copy of this Order shall be served within five business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by U.S. mail, overnight or first-class postage prepaid, upon the Core Notice Parties (as defined in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

31. This Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any requests for additional relief or any adversary proceeding brought in and through these Chapter 15 Cases, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

32. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

33. This Order applies to all parties in interest in these Chapter 15 Cases and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.



Dated: February 20th, 2024
Wilmington, Delaware

THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

TAB D

This is Exhibit "D" referred to
in the affidavit of MICHAEL NEEDHAM
subscribed and sworn to before me,
this 22nd day of April 2024.

A handwritten signature in black ink, appearing to read "J. Kelly", is written over a solid horizontal line.

A commissioner for taking affidavits.

Court File No.: <*>

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
SIMEX-IWERKS MYRTLE BEACH, LLC

(the “Applicants”)

**AFFIDAVIT OF MICHAEL NEEDHAM
(sworn January 17, 2024)**

January 17, 2024

LOOPSTRA NIXON LLP
130 Adelaide St. West, Suite 2800
Toronto, ON Canada M5H 3P5

Graham Phoenix LSO#: 52650N
gphoenix@LN.law
Tel: 416.748.4776

Shahrazad Hamraz LSO#: 85218H
shamraz@LN.law
Tel: 416.748.5116

Lawyers for the Applicants

CONTENTS

	Page
I. OVERVIEW	1
II. URGENT NEED FOR RELIEF	3
III. OVERVIEW OF THE APPLICANTS	4
A. Background	4
B. Corporate Structure	5
C. Places of Business and Facilities	8
D. Employees	11
E. Customers	12
F. Key Suppliers	12
G. Cash Management & Accounting	13
IV. FINANCIAL CIRCUMSTANCES AND CASH FLOW FORECAST	15
A. Assets	16
B. Liabilities	17
C. Cash Flow Forecast	18
V. The Applicants' Creditors	18
A. Secured Creditors	18
B. No Other PPSA and UCC registrations; RBC ranks First	24
C. Crown Obligations and Priority Claimants	25
D. Unsecured Creditors	25
VI. CCAA PROCEEDINGS AND RELIEF SOUGHT	25
A. Need for CCAA Proceedings and Eligibility	25
B. Appointment of Monitor	26
C. Administration Charge	27
D. DIP Loan and DIP Lender's Charge	28
E. Directors' and Officers' Charge	30
F. SISP	32
G. Stay of Proceedings	33
H. Relief to be Sought at Comeback Hearing	34
VII. CONCLUSION	34

Court File No.: ●

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
SIMEX-IWERKS MYRTLE BEACH, LLC

(the “**Applicants**”)

AFFIDAVIT OF MICHAEL NEEDHAM
(sworn January 12, 2024)

I, **MICHAEL NEEDHAM**, of the City of Toronto, in the Province of Ontario, **MAKE**

OATH AND SAY AS FOLLOWS:

I. OVERVIEW

1. I am the President and a director of each of SimEx Inc. (“**SimEx**”), Iwerks Entertainment, Inc. (“**Iwerks**”) and SimEx-Iwerks Myrtle Beach, LLC (“**SIMB**”; and together with SimEx and Iwerks, the “**Applicants**”). I founded each of the companies and have been intimately involved with their business and operations since inception and, as such, I have knowledge of the matters hereinafter deposed to. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true.
2. I swear this affidavit in support of, among other things, an application by the Applicants for protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”).

3. More specifically, the Applicants are seeking an initial order (the “**Initial Order**”) for, *inter alia*:
- (a) a declaration that the Applicants are companies to which the CCAA applies;
 - (b) an initial stay of proceedings through to January 29, 2024 (the “**Stay Period**”);
 - (c) approval of the appointment of Deloitte Restructuring Inc. as monitor of the Applicants in the within proceedings (in such capacity, the “**Proposed Monitor**”);
 - (d) approval of an administration charge of USD \$500,000 (the “**Administration Charge**”), as detailed herein – including prescribed limitations during the initial Stay Period;
 - (e) approval of an interim loan facility (the “**DIP Loan**”) on terms of the interim loan agreement (the “**Dip Term Sheet**”) between the Applicants, as borrowers, and Royal Bank of Canada (“**RBC**”), as interim lender (the “**DIP Lender**”); and, an DIP financing charge in the amount of USD \$600,000 (the “**DIP Lender’s Charge**”), all as detailed herein – including prescribed limitations during the initial Stay Period;
 - (f) approval of a charge in favour of the current directors and officers of the Applicants in the amount USD \$300,000 (the “**D&O Charge**”), as detailed herein – including prescribed limitations during the initial Stay Period; and
 - (g) approval of a sale and investment solicitation process in respect of business and assets of the Applicants (a “**SISP**”), as detailed herein – including prescribed limitations during the initial Stay Period.

4. If the Initial Order is granted, the Applicants intend to return to Court on January 29, 2024 (the “**Comeback Hearing**”) to request an amended and restated initial order (the “**ARIO**”) that would:
 - (a) extend the Stay Period to allow the Applicants to fully implement the SISP and return to Court for approval of transaction(s) and/or the filing of any resultant plan.
5. For the reasons set out herein, I do verily believe that the Applicants are insolvent and are companies to which the CCAA applies.

II. URGENT NEED FOR RELIEF

6. The Applicants operate a unique business enterprise in the specialized “4D” motion rides and cinematic attractions space – producing and licensing 4D movies, designing and installing 4D theatres and operating a themed attraction. The Applicants are not in the business of “retail movies” (e.g., Hollywood releases at multiplex theatres) but, instead, operating in the “theatre attractions” space (e.g., customized 4D movies and theatres for particular attractions – such as museums, aquariums, libraries, government facilities, and themed attractions). These “theatre attractions” or “motion rides” rely heavily, if not exclusively, on tourism.
7. In past years, the Applicants have suffered losses primarily due to the COVID-19 pandemic (“**COVID**”), which crippled the industry during lockdowns and resulted in a slower-than-expected return to pre-COVID business levels. More problematic, however, was that immediately prior to COVID, the Applicants had invested significant time and effort in various projects that have been delayed or terminated coming out of COVID. Accordingly.

investments immediately prior to and early in COVID did not ripen into anticipated revenue streams. These projects are either “on hold” or amount to costs “thrown away”.

8. Presently, the Applicants are experiencing a liquidity crisis and, without the protections afforded by the CCAA and access to interim financing will be unable to satisfy payroll, rent, licensing and royalty fees and other go-forward obligations.
9. The Applicants have consulted with their senior secured lender, RBC, and the Proposed Monitor and determined that the best path towards an optimal outcome for all stakeholders will be achieved by entering creditor protection afforded by a stay of proceedings under the CCAA and accessing interim funding through RBC to stabilize the business and pursue a Court-supervised SISP.

III. OVERVIEW OF THE APPLICANTS

A. Background

10. As stated, the Applicants operate in the “4D” movie and theatre industry. This industry features custom formatted movies, typically for immersive screen viewing, and customized theatres which feature extra-sensory experiences (e.g., from embedded speakers to “rumble seats” to wind, water or other environmental elements). The aim of a “4D” movie and theatre is to make the audience feel like they are “in” the film.
11. SimEx was one of the founding members of this industry when I formed the company with Moses Znaimer in 1984. The company’s first project was the “Tour the Universe” Ride at the CN Tower.

12. In 2002, SimEx acquired California-based Iwerks Entertainment, Inc., centralising management in Canada and maintaining Iwerks as a wholly-owned operating subsidiary of SimEx in the US, based in Los Angeles and Baltimore.
13. In 2016, the Applicants incorporated SIMB, as a special purpose, wholly-owned operating subsidiary of Iwerks in South Carolina (discussed below).
14. The Applicants' products are featured in theatres and motion rides at tourist attractions in Canada and the US, as well as other places in the world. The Applicants have produced 4D films and have an active catalogue of more than 125 films available for license. The Applicants design and build theatre attraction facilities under contract. The Applicants also manage and operate theatre attraction facilities.

B. Corporate Structure

15. A copy of the Applicants' management organizational chart is attached hereto as **Exhibit "A"**.
 - i. SimEx*
16. SimEx is the parent company and directs all activities of the business enterprise. I am the president and sole director of SimEx.
17. SimEx is incorporated under the laws of the Province of Ontario. A corporation profile report for SimEx is attached hereto as **Exhibit "B"**.
18. SimEx is the production, design and manufacturing arm of the business enterprise. SimEx carries out three following primary functions:

- (a) **4D Film Production** – SimEx produces 4D film content for theatre attractions, by utilizing existing works under license which SimEx edits and formats for immersive experiences;
- (b) **Attraction Design, Manufacturing & Support** – SimEx designs all elements of its theatre attractions, each of which is tailored to suit the particular customer’s demands and limitations. SimEx then fabricates and installs all elements of the attractions and provides replacement service and support. SimEx provides attraction, design, manufacturing and support to customers around the world; however, the majority of these attractions are in North America and China; and
- (c) **Graphic Design** – SimEx provides tailored graphic design, production and support services for theatre attractions it has helped to design and build, for theatre attractions using its licensed films or, more rarely, for attraction operators simply requesting custom graphic design services.

19. All of SimEx’s services are marketed and sold directly, but also through Iwerks. In the latter case, the ultimate customer is a third-party and Iwerks acquires products and services from SimEx, who invoices and collects from Iwerks.

ii. Iwerks

20. Iwerks is a wholly-owned subsidiary of SimEx. I am the President and sole director of Iwerks.

21. Iwerks is incorporated under the laws of the State of Delaware. A corporate search for Iwerks is attached hereto as **Exhibit “C”**.

22. Iwerks is the sales and service arm of the business enterprise. Iwerks carries out three primary functions:

- (a) *Attraction Co-Ventures* – Iwerks partners with a theatre attraction owner/operator and provides all of the required equipment and the owner/operator provides and funds all other requirements (e.g., premises leases, insurance, employees). Attraction co-ventures typically proceed under a revenue sharing agreement with the owner/operator, but some are fixed fee agreements, paid over time;
- (b) *Licensing 4D Films* – Iwerks licenses 4D films to various attraction owner/operators in exchange for royalty revenues; and
- (c) *Customer Services* – Iwerks provides service and repairs, and tech services to co-venture partners and licensees.

23. Iwerks relies on SimEx for all its attraction equipment and 4D films, which SimEx invoices for and Iwerks, in turn, charges to its customers. Iwerks is wholly reliant on SimEx to continue its business.

iii. SIMB

24. SIMB is a wholly-owned subsidiary of Iwerks. I am the President and sole director of SIMB.

25. SIMB is incorporated under the laws of the State of South Carolina. A corporate search for SIMB is attached hereto as **Exhibit “D”**.

26. SIMB was incorporated for a single purpose. Iwerks had an opportunity to develop and operate a top-tier theatre attraction *without* a co-venture partner. Accordingly, SIMB was created to pursue this opportunity.
27. SIMB operates a licensed attraction in Myrtle Beach, South Carolina known as “The Simpsons in 4D”. The attraction comprises a theatre and convenience store/gift shop created to provide visitors with a 4D immersive movie and physical attraction experience based on “The Simpsons” cartoon series.
28. Like Iwerks, SIMB relies on SimEx for all its attraction design services, equipment and film content, for which SimEx invoices. SIMB is wholly reliant on SimEx to continue its business.

iv. Other Subsidiaries

29. In addition to Iwerks and SIMB, SimEx also has four (4) other subsidiaries – namely: 6618391 Canada Inc., 6618359 Canada Inc., Cinema 4D Inc. and SimEx Santa’s Late Inc. However, these subsidiaries were incorporated for specific film production projects which were completed or aborted. These subsidiaries are inactive. These subsidiaries (the “**Non-Applicant Subsidiaries**”) are not Applicants in these proceedings.

C. Places of Business and Facilities

30. The Applicants operate out of five leased facilities located in Canada and the US.

i. Corporate Office

31. Head office functions are largely conducted out of a 16,033 square-foot office space located at 210 King Street East Suite #600, Toronto, Ontario (the “**Corporate Office**”).

The Corporate Office functions primarily as a workspace for the Company's accounting and executive functions, including myself, the Chief Financial Officer and other members of the finance and management team. The graphic design team is also based in the Corporate Office. Prior to COVID, the Corporate Office also housed engineering, project management, architecture and sales teams. These teams have evolved to split time between the Production Facility (*as defined below*) and work-from-home. The Corporate Office is leased from Allied Properties by SimEx under a lease agreement dated October 14, 2017. SimEx pays rent for the Corporate Office of CAD \$68,671 per month, plus HST, and the lease term ends on March 31, 2028.

32. SimEx is currently one month in arrears under the Corporate Office lease.

ii. Production Facility

33. The design and production of attraction hardware and installations is conducted out of a warehouse located at 2299 Drew Rd, Mississauga, ON L5S 1A3 (the "**Production Facility**"). The Production Facility is a 28,512 square-foot warehouse and production facility with some office spaces. The Production Facility is leased from Desjardins Financial by SimEx under a lease agreement, most recently amended on July 16, 2020. SimEx pays rent for the Production Facility of CAD \$28,536 per month, plus HST, and the lease term ends on June 30, 2024.

34. SimEx is currently one month in arrears (CAD \$28,536 + HST) under the Production Facility lease.

iii. Distribution and Technical Services Office

35. The acquisition of film rights, the distribution and licensing of 4D films and attraction services is conducted by Iwerks out of an office located at 25030 Avenue Tibbitts, Suite F, Santa Clarita, California (the “**Distribution Office**”). The Distribution Office is a 4,320 square-foot office. The Distribution Office is leased from Rediger Investment Corporation by Iwerks under a lease agreement dated April 1, 2022. Iwerks pays rent for the Distribution Office of USD \$5,780 per month, plus applicable taxes. The lease term ends on February 28, 2025.
36. Iwerks is currently one month in arrears (USD \$5,780 + applicable taxes) under the Distribution Office lease.

iv. Attraction Co-Venture Office

37. The attraction co-venture division is conducted by Iwerks out of an office located at 600 Red Brook Boulevard, Suite 440, Owings Mills (Baltimore), Maryland (the “**ACV Office**”). The ACV Office is a 3,353 square-foot office. The ACV Office is leased from 600 Red Brook, LLC by Iwerks under a lease agreement dated June 2, 2021. Iwerks pays rent for the ACV Office of USD \$6,147 per month, plus applicable taxes. The lease term ends on July 31, 2026.
38. Iwerks is currently one month in arrears (USD \$6,147 + applicable taxes) under the ACV Office lease.

v. Attraction Site

39. The Simpson 4D experience is operated by SIMB from a rented property located at 1199 Celebrity Circle, Myrtle Beach, South Carolina (the “**Attraction Site**”). The Attraction Site

is an 8,800 square foot facility featuring an attraction site comprising a movie theatre and convenience store/gift shop. The Attraction Site is leased from Broadway at the Beach, Inc. (Burroughs & Chapin) by SIMB under a lease agreement dated May 12, 2017. SIMB pays rent for the Attraction Site of USD \$35,456 per month, plus applicable taxes. The lease term ends on June 28, 2028.

40. SIMB is currently two months in arrears (USD \$70,912) under the Attraction Site lease.

D. Employees

41. The Applicants currently employs seventy-six (76) individuals.
- (a) forty-seven employees work for SimEx, all are full-time;
 - (b) sixteen employees work for Iwerks, all are full-time;
 - (c) thirteen employees work for SIMB, including five full-time and eight part-time employees.
42. Employees are paid biweekly in arrears. The Applicants are current on all payments to employees except for expense reports that may not yet have been submitted. However, as stated above, without access to the interim DIP funding sought in these proceedings, the Applicants will be unable to fund payroll for the week of January 22, 2024.
43. None of the employees are unionized or otherwise subject to a collective bargaining agreement in connection with their employment with any Applicant.
44. The Applicants do not sponsor, administer or otherwise have any registered or unregistered pension plans for any Canadian or American employees. SimEx offers Canadian employees an RRSP contribution program. Iwerks offers a 401k plan administration to its American employees (extended to one salaried employee of SIMB). All payments under such plans are current.

45. The Company provides a standard group benefit plan to its employees that covers extended health care, dental care, life insurance, and accidental death and dismemberment insurance.
46. Additionally, the Applicants have several contactors and agents operating around the world. Agents are paid on a commission basis for sales.
47. The Applicants were forced to drastically reduce their staff during COVID. Once re-opening began, the Applicants began to rehire, but at a very conservative rate. The Applicants are presently operating at a minimal staffing levels and do not believe there is any more room for staff reductions, without imperiling the business and the prospect of a successful SISP.

E. Customers

48. The Applicants have a diverse set of customers which license and operate theatre attractions, in some cases for their own facilities and in other cases as service providers to third-parties. Although we have longstanding relationships with various customers, in the majority of cases, each film/project is the subject of a stand alone agreement for one or more of the services the Applicants provide. Equally, payment and license terms are on a case-by-case basis. In the case of most of Iwerks' co-ventures, the co-venture partner is obligated to license the Applicants' films for the duration of the co-venture agreement.

F. Key Suppliers

49. The Applicants have longstanding relationships with different film studios as suppliers of intellectual property. These dealings can be categorized broadly as follows:
- (a) *Licensing of Existing Films* – The Applicants will license from studio's existing films (often back catalogue titles) and edit such films to suit a 4D theatre attraction.

This includes both enhancing thematic elements of such films and shortening them for the purposes of a theatre attraction “ride”. In turn, the Applicants sublicense such films to end-users and pay royalties to the subject studio; and

- (b) *Original Licensed Content* – Although not as common as the licensing of existing films, the Applicants will from time to time create original content.

- 50. The Applicants key studio partners included Warner Brothers and Disney, each of whom are owed royalties.

G. Cash Management & Accounting

- 51. All finance and accounting functions of the business enterprise are directed by SimEx and, specifically, SimEx’s CFO.

- 52. In the ordinary course of business, the Applicants maintain accounts for SimEx through RBC in Canada, including a CAD Account, USD Account and distinct foreign exchange account for other currencies. In the US, independent accounts are maintained for Iwerks and SIMB through Wells Fargo.

- 53. All accounts are administered by SimEx’s finance department, headed by the CFO in Toronto, Ontario, including:

- (a) collection of accounts receivable from third parties;
- (b) administration of intercompany receivables (“**Intercompany Receivables**”);
- (c) disbursements to fund payroll and benefits, capital expenditures, maintenance costs, payments to inventory vendors and other service providers; and

(d) intercompany cash transfers and accounts amongst various Applicant entities (**“Intercompany Transfers”**).

54. Intercompany Receivables are amounts due and owing between the Applicants. Nearly all Intercompany Receivables are due to SimEx by Iwerks (with indirect receivables due from SIMB to Iwerks and, in turn, to SimEx). SimEx is not only the parent company and seat of control for the business enterprise but also the supplier of all products and services provided by its subsidiaries. SimEx has funded all the attraction equipment design, manufacturing and installation for Iwerks’ co-ventures and for the SIMB attraction, and the overwhelming proportion of films licensed by Iwerks. The costs of these supplies are recorded as intercompany accounts receivable/payable on the Applicants’ respective accounting records. SimEx also receives regular management fees, accounting fees and graphic design fees from its subsidiaries.
55. Intercompany Transfers are payments made by one Applicant to another. Intercompany Transfers are made on an “as needed” basis to ensure that each Applicant has sufficient working capital and liquidity to meet its needs. Intercompany Transfers are only recorded in the Applicants’ financial statements and are not recorded via promissory notes or other debt instruments.
56. The Applicants utilize five operating bank accounts. SimEx banks with the RBC in Canada. Iwerks and SIMB bank with Wells Fargo in the US (collectively, the **“Bank Accounts”**). An overview of the Bank Accounts is as follows:

- (a) RBC Canadian dollar account owned by SimEx (the “**RBC CAD Account**”). The RBC CAD Account receives CAD payments to SimEx, whether from Iwerks or a third-party, as well as to fund payroll, vendor payments, production costs and taxes;
- (b) RBC American dollar account owned by SimEx (the “**RBC USD Account**”). The RBC USD Account receives USD payments to SimEx, whether from Iwerks or a third-party, as well as to fund payroll, vendor payments and taxes;
- (c) RBC foreign exchange account owned by SimEx (the “**RBC Forex Account**”). The RBC Forex Account is used to receive foreign currency payments (i.e., non-CAD or non-USD) and converts the same into USD or CAD as required by SimEx;
- (d) Wells Fargo USD account owned by Iwerks (the “**Iwerks Account**”). The Iwerks Account is used to collect customer payments to Iwerks, as well as to fund payroll, vendor payments and taxes; and
- (e) Wells Fargo USD account owned by SIMB (the “**SIMB Account**”). The SIMB Account is used to fund SIMB payroll, vendor payments and taxes.

57. The Applicants propose to continue its existing cash management practices and use the Bank Accounts in the ordinary course during these proceedings, subject to the cash flow forecasts discussed herein and the oversight of the Proposed Monitor.

IV. FINANCIAL CIRCUMSTANCES AND CASH FLOW FORECAST

58. The Applicants’ fiscal year end is December 31st. Attached hereto as **Exhibit “E”** are the Applicants’ consolidated audited financial statements for the fiscal years ended 2021 and

2022, (collectively, the “**Financial Statements**”). In each year during such period, the Applicants have recorded annual losses of approximately USD \$3,000,000.

59. Financial statement for fiscal year 2023 are not complete. Attached hereto as **Exhibit “F”** is the most recently completely internal consolidated monthly statement for October 2023, which includes a year-to-date annual loss of approximately USD \$2,600,000.

60. The Applicants have insufficient funds to pay their obligations as they come due.

A. Assets

61. As at October 31, 2023, the Applicants, on a consolidated basis, had total assets of approximately USD \$26,500,000, consisting of approximately USD \$4,500,000 of current assets (accounts receivable, prepaid expenses and deposits, inventories, and HST refunds recoverable) and approximately USD \$26,500,000 of non-current assets (advanced royalties, property and equipment, attraction programs, product design and development, and intangible assets). Attached hereto as **Exhibit “G”** is a copy of the Applicants consolidated balance sheet as at October 31, 2023.

62. The following shows a breakdown of the Applicants’ assets as at October 31, 2023:

Oct 31, 2023	
(unaudited)	
ASSETS	
Current	
Receivables	2,814,740
Inventories	903,427
Work in progress	71,800
Prepays	446,347
Current portion of advanced royalties	300,000
Total current assets	4,536,314
Long-term assets	
Advanced royalties	31,348
Property and equipment	12,627,994
Attraction programs	2,694,532
Product design and development	478,421
Goodwill	6,180,950
Total assets	26,549,559

B. Liabilities

63. As at October 31, 2023 the Applicants, on a consolidated basis, had liabilities totalling approximately USD \$29,600,000 consisting of approximately USD \$18,700,000 of current liabilities (bank indebtedness, accounts payable, lease liabilities, and current loan payables) and approximately USD \$10,800,000 of non-current liabilities (lease liabilities and long-term loan payables).
64. The following shows a breakdown of the Applicants' liabilities as of October 31, 2023:

LIABILITIES AND SHAREHOLDERS' EQUITY	
Current	
Bank indebtedness	5,593,038
Payables and accruals	6,912,578
Income taxes payable	282,960
Deferred revenue	1,290,196
Current portion of bank term loans	1,391,245
Current portion of BCAP/HASCAP term loans	1,817,387
Current portion of BDC term loan	1,400,000
Total current liabilities	18,687,404
Long-term liabilities	
Bank term loans	3,562,299
BCAP/HASCAP term loans	2,236,671
BDC term loan	-
Other long-term liabilities	5,096,146
Total liabilities	29,582,520

C. Cash Flow Forecast

65. The Applicants, with the assistance of the Proposed Monitor, have prepared a projected, extended cash flow forecast (the “**Cash Flow Forecast**”) for the period ending May 3, 2024 that is premised on, among other things, the assumption that the Applicants will be granted CCAA protection and access to immediate DIP funding. I believe that the Cash Flow Forecast is a reasonable forecast of the Applicants’ cash flow for the next 15-week period. A copy of the Cash Flow Forecast is attached hereto as **Exhibit “H”**.

V. THE APPLICANTS’ CREDITORS

A. Secured Creditors

66. As of January 12, 2024, the Applicants’ have aggregate secured debt obligations of approximately USD \$16,100,000 summarized as follows:

- (a) approximately CAD \$6,757,555 due to RBC;
- (b) approximately USD \$9,633,782 due to RBC; and
- (c) approximately USD \$1,400,000 due to BDC Capital (*as defined below*)

i. RBC

67. RBC is the Applicants’ senior secured creditor, holding a senior secured interest against each of the Applicants’ assets, property and undertakings in Ontario, as well as in the US.

68. SimEx has banked with RBC for many years, amending its debt and security documents from time to time. Most recently SimEx, as borrower, executed an amended and restated loan agreement (the “**RBC Loan Agreement**”) with RBC dated March 31, 2023. A copy of the RBC Loan Agreement is attached hereto as **Exhibit “I”**.

69. Pursuant to the RBC Loan Agreement, the previous lending agreement was amended and restated and RBC agreed to provide four (4) credit facilities to SimEx:

- (a) a revolving demand facility in the maximum amount of USD \$6,000,000 by way of (i) CAD loans at an interest rate of RBC prime + 2.00%; (ii) USD loans at an interest rate of RBC US Base Rate + 2.00%; (iii) letters of credit in CAD and USD with fees on a transaction-by-transaction basis; and, (iv) letter of guarantee in CAD of USD with fees on a transaction-by-transaction basis;
- (b) a revolved facility in the maximum amount of USD \$5,500,000, available by way of series of loans, at an interest rate of RBC US Base Rate + 1.00%;
- (c) a multi-draw term loan in the maximum amount of CAD \$6,250,000, accessible by (i) RBC prime rate based loans at RBC prime + 2.00% and (ii) fixed term rate loans (with rates determined at time of conversion); and
- (d) a non-revolving term loan in the amount of CAD \$3,125,000, at any interest rate of 9.01%.

The facilities above are in addition to any leases or foreign exchange forward contracts outstanding with RBC, at any time. As well, the third and fourth facilities listed above were made possible with the support of the Export Development Canada (“**EDC**”) Business Credit Availability Program. I understand under this program EDC has guaranteed payment of these facilities (the “**EDC-Backed Facilities**”), subject to certain conditions. I also understand from discussion with our counsel, the Proposed Monitor and the bank, that RBC has consulted with EDC as concerns this filing and it is supportive. Each of the

Applicants (as well as the Non-Applicant Subsidiaries) were existing guarantors of SimEx's obligations to RBC and executed the RBC Loan Agreement confirming the continued validity and effectiveness of their respective guarantees.

70. The RBC Loan Agreement is governed by and is to be construed and interpreted in accordance with the laws of the Province of Ontario.
71. As security for the obligations under the RBC Loan Agreement, the Applicants reaffirmed all existing first-ranking security granted to RBC, including, among other things:
- (a) Iwerks' guarantee of all of SimEx's obligations to RBC dated June 29, 2018;
 - (b) Iwerks' specific guarantee of June 29, 2018, of the financing advanced under the EDC-Backed Facilities up to USD \$12,000,000 (I understand this was required under the applicable EDC program);
 - (c) SIMB's guarantee of all of SimEx's obligations to RBC, dated June 29, 2018;
 - (d) Iwerks' specific guarantee of June 29, 2018, of the financing advanced under the EDC-Backed Facilities up to USD \$12,000,000 (I understand this was required under the applicable EDC program);
 - (e) the Applicants' previously executed general security agreements in favour of RBC, granting to RBC a first-ranking charge on all of their present and after-acquired property;
 - (f) the existing assignment of insurance dated June 29, 2018, from SIMB in favour of RBC; and

- (g) the existing securities pledge dated February 14, 2007, pursuant to which SimEx pledged all of the shares in its subsidiaries to RBC (collectively, the “**RBC Security**”).

Copies of each document comprising the RBC Security are attached hereto as **Exhibit “J”**.

There are additional security documents relating to the Non-Applicant Subsidiaries but they same have been excluded here as such parties are not Applicants, not operating and have no assets.

72. As at January 12, 2024, the Applicants are jointly and severally indebted to RBC under the RBC Loan Agreement, secured by the RBC Security, in the approximate amounts of CAD \$6,757,555 and USD \$9,633,782.
73. In addition to the foregoing, on July 20, 2021, SimEx entered into a credit facility agreement with RBC in connection with the Business Development Bank of Canada’s Highly Affected Credit Availability Program (the “**HASCAP Credit Agreement**”), pursuant to which SimEx borrowed CAD \$1,000,000 at an annual interest rate of 4.0%, with monthly payments of principal and interest commencing thirteen months after drawdown and repayable in full on July 31, 2026. A copy of the HASCAP Credit Agreement is attached hereto as **Exhibit “K”**.
74. The obligations of SimEx under the HASCAP Loan Agreement are secured by the RBC Security.
75. The RBC Security is registered against SimEx and Iwerks in Ontario, under the *Personal Property Security Act* (“**PPSA**”) and against SimEx and SIMB in the US, under the *Uniform Commercial Code* (“**UCC**”).

76. As discussed below, RBC has a first-ranking security interest in respect of each of the Applicants, by reason of its registrations and intercreditor agreement with Applicants' other secured lender, BDC Capital Canada, a wholly-owned subsidiary of Business Development Bank of Canada ("**BDC Capital**").

RBC Demand

77. As of January 8, 2024 there is CAD \$6,758,710.52 and USD \$9,767,838.15 outstanding under the RBC Loan, plus costs continuing to accrue.
78. On January 12, 2024, RBC formally noted the Applicants in default and issued demand for repayment and notices of intention to forces security under Section 244 of the Bankruptcy and Insolvency Act. Copies of RBC's demand and notices are collectively attached and marked as **Exhibit "L"**.
79. Notwithstanding the forgoing, RBC has been supporting the Applicants. Since January 2, 2024, the Applicants have been in default of their payment obligations on the RBC Loan. And, as discussed herein, RBC is prepared to provide interim financing to facilitate the Applicants CCAA Proceedings.

ii. BDC CAPITAL

80. On June 15, 2018, SimEx, as borrower, entered into a commitment letter with BDC Capital as lender, which was further amended by letter agreement dated June 27, 2018 (collectively, the "**BDC Loan**"). Pursuant to the BDC Loan, BDC Capital agreed to advance USD \$2,500,000 in two tranches, at either (a) a floating interest rate of BDC Capital's USD floating base rate + 7.50% or (b) a fixed rate following the final advance, at the borrower's request, with interest rates to be determined at the time. The maturity date

was June 1, 2022. The purpose of the loan was to fund SimEx's construction of "The Simpson" 4D theatre attraction Myrtle Beach, SC, operated by SIMB, which was sold to SimEx's subsidiaries and recorded as intercompany receivables. Attached hereto as **Exhibit "M"** is a copy of the BDC Loan.

81. As security for the obligations under the BDC Loan, *inter alia*:
- (a) Iwerks executed a guarantee of all of SimEx's obligations to BDC Capital dated June 29, 2018;
 - (b) SIMB executed a guarantee of all of SimEx's obligations to BDC Capital dated June 29, 2018
 - (c) the Applicants each granted BDC Capital a charge on all of their present and after-acquired property, via general security agreements executed June 29, 2018; and
 - (d) an assignment of certain life insurance held by the Applicants in respect of my life; (collectively, the "**BDC Capital Security**"). Copies of each document comprising the BDC Capital Security (other than the assignment of life insurance, which I cannot locate at this time and was perhaps cancelled when I reached a certain age) is collectively attached hereto as **Exhibit "N"**.
82. As at January 12, 2024, the Applicants are jointly and severally indebted to BDC Capital under the BDC Loan, secured by the BDC Capital Security, in the approximate amount of USD \$1,410,000. As discuss below, BDC Capital has subordinated its security in favour of RBC.

iii. Equipment Financiers

83. In addition to the foregoing, the Applicants were also party to two secured equipment financings as follows:

(a) SimEx had financed the acquisition of certain office equipment (e.g., printers, 3D printers, digital presses, etc.) with Wells Fargo Equipment Finance Company, which financing was registered under the PPSA in respect of the subject equipment – however, SimEx previously returned this equipment and is not longer making payments to Wells Fargo Equipment Finance Company and, as such, this registration is of no effect and should be deleted; and

(b) SimEx had financed the acquisition of certain photocopier equipment with RCAP Leasing Inc., which was registered under the PPSA in respect of the subject equipment – however, SimEx previously returned this equipment and is no longer making payments to RCAP Leasing Inc. and, as such, this registration is of no effect and should be deleted;

84. SimEx is a party to an office equipment lease with De Lage Landen Financial Services Canada; however, to the best of my knowledge, they do not have any security interest.

85. As of the date of this affidavit, the Applicants are current on it equipment finance obligations.

B. No Other PPSA and UCC registrations; RBC ranks First

86. Aside from RBC and BDC Capital, there are no other parties with registered general security interests against any of the Applicants under the Ontario PPSA or the UCC.

Copies of the PPSA and UCC search reports in respect of each of the Applicants are collectively attached and marked as **Exhibit “O”**

87. On June 29, 2018, the Applicants, Non-Applicant Subsidiaries, RBC and BDC Capital executed an intercreditor agreement pursuant to which BDC Capital agreed to subordinate its security against the Applicants in favour of RBC, save and except for BDC Capital's interest in a corporate life insurance policy held by the Applicants, insuring my life. Attached hereto as **Exhibit “P”** is a copy of the intercreditor agreement.

C. Crown Obligations and Priority Claimants

88. SimEx is current on HST payments through to January 12, 2024.
89. Going forward, HST remittances will be paid as reflected in the projected cash flow.
90. The Applicants are also current on all source deductions and they are funded to the Applicants' payroll providers as part of the normal payroll cycle. However, if the Applicants cannot access immediate DIP funding, they will be unable to meet payroll obligations during the week of January 24, 2024.
91. The Applicants are current on all US source and tax obligations.

D. Unsecured Creditors

92. The Applicants have unpaid trade and other unsecured debt accrued in the normal course of business. As of January 12, 2024, the Applicants' accounts payable and accrued unsecured liabilities in excess of USD \$7,000,000.

VI. CCAA PROCEEDINGS AND RELIEF SOUGHT

A. Need for CCAA Proceedings and Eligibility

93. As indicated in the Cash Flow Forecast, without interim financing, the Applicants will be unable to operate in the ordinary course and payroll obligations will not be met, to the detriment of their stakeholders.
94. In consultation with their advisors and RBC, the Applicants have determined that the CCAA process is the most beneficial plan of action to maximize value for the Applicants' stakeholders.
95. The Applicants have, on a consolidated basis, liabilities in excess of \$5,000,000.

B. Appointment of Monitor

96. The Applicants seek the appointment of Deloitte Restructuring Inc. ("**Deloitte**") as monitor of the Applicants in these CCAA proceedings. Deloitte has reviewed, and assisted in the preparation of, the Cash Flow Forecast and has provided guidance and assistance in the commencement of these CCAA proceedings.
97. As a result, Deloitte has developed critical knowledge about the Applicants, their business operations, financial challenges, strategic initiatives and restructuring efforts to date.
98. Deloitte has consented to act as the monitor, subject to Court approval. Attached as **Exhibit "Q"** hereto is a copy of Deloitte's consent to act as monitor.
99. Deloitte, in its capacity as Proposed Monitor, will be filing a report with the Court to provide additional information to support the relief sought.

Anticipated Chapter 15 Proceedings in USA

100. As detailed above, the Applicants operate an integrated business enterprise in Canada and the US, with centralised management in Canada and operating US subsidiaries. The

proposed SISP (detailed below) contemplates the marketing of investment and acquisition opportunities for the entirety of the business enterprise.

101. I understand from counsel that this will require recognition of these proceedings in the US, so as to efficiently facilitate the SISP. I also understand from counsel that such recognition must be sought under Chapter 15 of the United States *Bankruptcy Code* by a “foreign representative” of the Applicants.
102. The Applicants intend to request the Proposal Monitor seek standing in the US as such foreign representative for the purposes of obtaining such recognition, provided that in such capacity, the Proposed Monitor shall consult with the Applicants and their counsel in all respects.

C. Administration Charge

103. The Applicants seek a super-priority charge over the Applicants’ Property (as defined in the Initial Order) in favour of the monitor, counsel to the monitor and counsel to the Applicants (the “**Professionals Group**”), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order. The proposed Administration Charge being sought is for a maximum amount of USD \$500,000
104. It is contemplated that the Professionals Group will have extensive involvement during the CCAA proceedings. The Professionals Group have contributed and will continue to contribute to the Applicants’ restructuring efforts and will ensure that there is no unnecessary duplication of roles among them.
105. I also understand from counsel that the initial amount secured by the Administration Charge is limited by law to that amount required during the initial 10-day Stay Period. As

set out in the Cash Flow Forecast, the Applicants will require \$390,000 to fund professional fees during the initial Stay Period. Accordingly, although the Applicants are seeking approval of the full Administration Charge, the requested form of Initial Order will limit the Administration Charge to \$390,000 until the Comeback Hearing

106. I believe the quantum of the Administration Charge sought, both in respect of the initial 10-day Stay Period and for the expected duration of these proceedings, is reasonably necessary to secure the professional fees of the Professionals Group.

107. The Administration Charge will rank in priority ahead of all other claims.

D. DIP Loan and DIP Lender's Charge

108. As detailed above, the Cash Flow Forecast demonstrates that the Companies will require an immediate injection of funds to enable them to carry-on business during the restructuring process and fund working capital and the costs of these proceedings. Without immediate access to interim funding, the Applicants will be unable to meet payroll and satisfy imminent working capital needs.

109. RBC has agreed to provide debtor-in-possession financing to the Applicants substantially in accordance with the DIP Term Sheet, conditional on the Court approving the DIP Term Sheet and granting the DIP Lender's Charge. A copy of the proposed DIP Term Sheet is attached hereto and marked as **Exhibit "R"**. A summary of the salient provisions of the DIP Term Sheet is as follows:

- (a) a maximum principal amount of USD \$600,000 shall be made available under the DIP Term Sheet;

- (b) funding advanced under the DIP Term Sheet shall bear interest at a rate of RBC Prime + 2%;
- (c) advances under the DIP Term Sheet shall be made in response to written requests issued by the Applicants, provided that such request must (i) supported by the Proposed Monitor and (ii) in accordance with the Cash Flow Forecast (and any revised forecast);
- (d) any funding request representing any major deviation from the established cash flow forecast or as a result of an extraordinary event shall require the consent of RBC;
- (e) the DIP Terms Sheet is conditional on the Court approving and authorizing the same and granting a super-priority DIP Lender's Charge against the assets, property and undertakings of the Applicant to secure all obligations of the Applicants under the DIP Term Sheet, which shall rank subordinate only the Administration Charge (*as defined below*), but in priority to all other claims and encumbrances.; and
- (f) the DIP Term Sheet shall mature and be fully repayable upon, *inter alia*, default, in the event the stay of proceedings under the CCAA is lifted without the DIP Lender's consent, which shall not be unreasonably withheld; or, the proceedings under the CCAA are terminated.

110. In addition to the forgoing, the availability of funding under the DIP Term Sheet is conditional on (a) the commencement of the SISF immediately following the issuance of

the Initial Order and (b) satisfaction of the milestones set out in the SISP, which are detailed in Part VI, Section G below.

111. I understand from counsel that such terms are consistent with prevailing practices in insolvency proceedings. The Applicants believe that the terms of the DIP Term Sheet are reasonable, necessary and appropriate in the circumstances, and should be approved. In the absence of the DIP funding, the Applicant will not be able to conduct the SISP and will be forced to shut down the business and commence a liquidation of its assets, resulting in the loss of value and jobs detrimental to all of the Applicants creditors and stakeholders.
112. I also understand from counsel that the Applicants' initial access to funding under the DIP Term Sheet is limited by law to that amount required during the initial 10-day Stay Period. As set out in the Cash Flow Forecast, the Applicants will require USD \$600,000 in DIP funding during this initial Stay Period. Accordingly, although the Applicants are seeking approval of the full amount of the proposed borrowings under the DIP Term Sheet and DIP Lender's Charge, the requested form Initial Order will limit access to interim funding to \$200,000 until the Comeback Hearing.
113. The DIP Lender's Charge will rank in priority ahead of all other claims, but behind the Administration Charge.

E. Directors' and Officers' Charge

114. To ensure the ongoing stability of the Applicants during this CCAA proceeding, they require the continued participation of their officers and directors. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful path forward.

115. The Applicants' have a director's insurance policy which I understand provides coverage for certain claims and liabilities that may arise. However, the policy contains exclusions and exceptions to such coverage. The Applicants' ordinary course operations give rise to potential director or officer liability, including payroll and sales tax. To address legitimate concerns with respect to their potential exposure, the directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period.
116. Accordingly, to ensure the continued participation of their officers and directors, the Applicants are seeking a super-priority D&O Charge over all of the assets, property to and undertakings in the maximum amount of USD \$300,000, to secure the Applicants' obligation to indemnify the directors against certain claims. The quantum of the proposed D&O Charge was developed in consultation with the Proposed Monitor and is based on three weeks of Canadian payroll costs and two weeks of American payroll costs, plus outstanding vacation pay. I understand from counsel that this consistent with prevailing insolvency practice. In the circumstances, I believe is the approval of the D&O Charge, and the quantum of the same, is necessary and appropriate.
117. I understand from counsel that the Applicants initial amount secured by a D&O Charge is limited by law to that amount required during the initial 10-day Stay Period. In consultation with the Proposed Monitor, the Applicants have determined that such amount is approximately \$230,000 – which covers payroll during such time. Accordingly, although the Applicants are seeking approval of the full D&O Charge, the requested form of Initial Order will limit the D&O Charge to \$490,000 until the Comeback Hearing.

118. The D&O Charge will rank in priority ahead of all other claims, but behind the Administration Charge and the DIP Lender's Charge.

F. SISP

119. In consultation with counsel, RBC and the Proposed Monitor, the Applicants have determined that, given the severely underfunded nature of Applicants, in order to maximum its change of successful SISP, the same must begin immediately following the granting of the Initial Order.

120. For this reason, the Applicant is seeking approval of the SISP in the Initial Order. However, activities during the first 10 days of the SISP, corresponding with the initial Stay Period under the CCAA, will be limited to preparation of all necessary diligence materials and identification of potentially interested parties, in order to be in a position to launch the SISP immediately following the Comeback Hearing, assuming the Stay Period is extended to permit the same.

121. A hereto and marked as **Exhibit "S"** are the proposed SISP procedures and milestones. A summary of the key provisions of the SISP is a follows:

- (a) immediate preparatory steps following the issuance of the Initial Order, including identification of potentially interested investors and potentially interested purchasers;
- (b) an active, public launch of the process immediately following the issuance of the ARIO;
- (c) solicitation of interest on an "as is, where is" basis;
- (d) a forty-five (45) day period for marketing and due diligence;
- (e) a target offer/bid deadline of March 14, 2024;
- (f) a potential auction where there appropriate;

- (g) negotiation of a final successful offer; and
- (h) Court approval of the successful offer, recommended by the Monitor, and closing;

122. The following is a summary of the anticipated material milestones, projected timelines and targeted deadlines of the SISP:

Milestone	Timeline	Targeted Deadline
Commencement date	Immediately following the approval of the SISP Process	January 19, 2024
Preparation of SISP materials (i.e., Teaser, Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR)	10 days	January 29, 2024
Bid Deadline	45 days	March 14, 2024
Auction Date (if applicable)	1 day	March 21, 2024
Finalize Transaction agreement	7 days	March 29, 2024
Sale Approval Motion (as defined below) in CCAA Court		April 19, 2024 (outside date)
Closing of the Transaction		May 3, 2024 (outside date)

Notwithstanding the foregoing, the SISP contemplates that the above deadlines may be extended, where the Monitor believes the same to be appropriate.

123. The SISP has been developed with the Proposed Monitor and has the support of all key stakeholders. I understand from counsel that the terms of the SISP are consistent with prevailing insolvency practices and will provide a transparent process to maximize value of the stakeholders. The Applicants believe that, in the circumstances, the SISP is appropriate and reasonable.

G. Stay of Proceedings

124. Given the challenges faced by the Applicants described herein, the Applicants require a stay of proceedings to maintain the status quo and to give the Applicants the breathing space they require to develop a restructuring plan in consultation with their advisors and the Monitor.

H. Relief to be Sought at Comeback Hearing

125. If the Initial Order is granted, then the Applicants propose to return to this Court for a comeback hearing on January 29, 2024.

126. At the Comeback Hearing, the Applicants intend to seek the Court's approval of an Amended and Restated Initial Order. For the benefit of this Court and the Applicants' stakeholders, this section highlights that, at the Comeback Hearing, the Applicants shall only seek an extension to the Stay Period for a sufficient length of time to allow the Applicants to implement the SISP and return to Court for approval of transaction(s) or the filing of any resultant plan.

127. The Applicants may seek additional relief if determined to be necessary or advisable.

VII. CONCLUSION

128. The Applicants, with the assistance of their legal advisors, and in consultation with RBC and the Proposed Monitor, have determined that the proposed CCAA proceedings represent the best available strategy to maximize value for the Applicants' stakeholders.

129. I swear this affidavit in support of an Application under the CCAA for an Initial Order in the form contained at Tab 1-A of the Application Record, and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 17th day of
January, 2024 in accordance with O. Reg.
431/20 Administering Oath or Declaration
Remotely



Commissioner for Taking Affidavits

Shahrzad Hamraz



MICHAEL NEEDHAM

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., 1985, c. C-36, AS AMENDED

Court File No.: <*>

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
SIMEX-IWERKS MYRTLE BEACH, LLC

ONTARIO
SUPERIOR COURT OF JUSTICE –
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AFFIDAVIT OF MICHEAL NEEDHAM
(SWORN JANUARY 17, 2024)

LOOPSTRA NIXON LLP
130 Adelaide St. West, Suite 2800
Toronto, ON Canada M5H 3P5

Graham Phoenix LSO#: 52650N
gphoenix@LN.law
Tel: 416.748.4776

Shahrazad Hamraz LSO #: 85218H
shamraz@LN.law
Tel: 416.748.5116

Lawyers for the Applicants

TAB E

This is Exhibit "E" referred to
in the affidavit of MICHAEL NEEDHAM
subscribed and sworn to before me,
this 22nd day of April 2024.

A handwritten signature in black ink, appearing to be "J. P. [unclear]", written over a solid horizontal line.

A commissioner for taking affidavits.

April 18, 2024

VIA EMAIL

Loopstra Nixon LLP
135 Queens Plate Drive
Suite 600
Toronto ON M9W 6V7

Attention: Graham Phoenix

Dear Sir:

Re: In the Matter of SimEx Inc., Iwerks Entertainment, Inc., SimEx-Iwerks Myrtle Beach, LLC Court File No. CV-24-00713128-0000

As you are aware, we are counsel for Warner Bros. Discovery Inc. (“**WBD**”) in the above noted matter. We refer to the Licensing and Distribution Agreement among Warner Bros. Consumer Products, Inc., as Licensor, and SimEx, Inc. and Iwerks Entertainment Inc. (together, the “**Distributor**”) dated February 27, 2018 (as amended, the “**Agreement**”). We also refer to the above-mentioned court proceedings, in which the Distributor filed for creditor protection pursuant to an Initial Order dated January 19, 2024 (as amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”), as subsequently recognized under Chapter 15 of Title 11 of the United States Bankruptcy Code by the Bankruptcy Court in District of Delaware.

We also refer to the amounts that accrued and were payable to WBD under the Agreement prior to the date of the Initial Order, in the amount of approximately \$1.7 million (the “**Pre-Filing Arrears**”).

Acts of Anticipatory Breach and Acts of Default by the Distributor

Pursuant to sections 9 and 10 of the Agreement, the Distributor’s Earnings Statement and concurrent payment of Royalties¹ are due and payable within thirty days after the end of each calendar quarter. As at the date of this letter, Royalties in respect of Q1 2024 are due by no later than April 30, 2024 (the “**Q1 Royalties**”).

¹ Capitalized terms not otherwise defined herein have the meanings attributed to them in the Agreement.

During my discussion in early February with Deloitte Restructuring Inc. in its capacity as Court-appointed Monitor (the “**Monitor**”), the Monitor confirmed that the Distributor’s cash flow forecast provided for and contemplated payment in respect of the Q1 Royalties on or before April 30, 2024. Further, since the commencement of the CCAA proceedings, the Distributor has maintained the benefit of revenues in respect of WBD’s licensed intellectual property under the Agreement.

We have been advised that the Distributor does not intend to pay the required Q1 Royalties. The Distributor’s refusal and/or failure to undertake to make payment as required by the Agreement is an act of anticipatory breach. If the Distributor fails to meet its Royalty and Earning Statement obligations due April 30, 2024, such act or omission constitutes a default under the Agreement which gives rise to WBD’s right to terminate the Agreement. To date, we are not aware of any steps or intention of the Distributor to disclaim the Agreement.

Considering the circumstances and the admission that the Distributor does not intend to pay the Q1 Royalties, WBD hereby seeks the consent of the Distributor and the Monitor to immediately terminate the Agreement in accordance with the Initial Order. If such consent is not imminently provided, we will take steps to seek leave of the Court to do so. We hope that this will not be necessary.

Consequences of Termination of the Agreement

We confirm that, upon the termination of the Agreement, all Exhibition Agreements are likewise terminated immediately pursuant to s. 17(d) of the Agreement. Further, the Agreement requires the Distributor to promptly provide WBD with all original and complete or partial copies of the Simex Attractions, all Advertising Materials and any related materials in its possession furnished by WBD.

The Distributor shall immediately cease any use, advertising, marketing, sublicensing, reproduction or distribution of the Simex Attractions. Therefore, WBD requires all materials and intellectual property in the possession and/or control of the Distributor to be delivered immediately to WBD (c/o Dana Lira. Email: dana.lira@wbd.com). Where the materials or intellectual property cannot be delivered due to the nature of its format, WBD requires (i) a detailed list of such items, (ii) a description of its current state, and (iii) the immediate destruction of such materials and confirmation of same to safeguard against improper use and/or improper retention of confidential materials (including all intellectual property) belonging to WBD.

Withholding Taxes

We also request your confirmation that any Withholding Taxes as payable under the Agreement have been paid to the applicable taxing authority along with satisfactory evidence of such payment.



We look forward to your cooperation in this matter and your position on the termination of the Agreement. For greater clarity, WBD reserves and preserves all of its rights and remedies in respect of the Pre-Filing Arrears, Q1 Royalties, and additional amounts that have accrued or are accruing and payable under the Agreement.

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'R. Nicholson'.

Rachel A. Nicholson

RAN/IF

cc. Roger Jaipargas, *Borden Ladner Gervais LLP*
Jordan Sleet, *Deloitte Restructuring Inc.*
Richard Williams, *Deloitte Restructuring Inc.*

TAB F

This is Exhibit ____"F"____ referred to
in the affidavit of MICHAEL NEEDHAM
subscribed and sworn to before me,
this 22nd day of April 2024.

A handwritten signature in black ink, appearing to read "S. Kelly", is written over a solid horizontal line.

A commissioner for taking affidavits.

Court File No.: CV-24-00713128-0000

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
SIMEX INC., IWERKS ENTERTAINMENT INC., AND
SIMEX-IWERKS MYRTLE BEACH LLC**

**SECOND REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR**

April 18, 2024

TABLE OF CONTENTS

INTRODUCTION AND PURPOSE	3
TERMS OF REFERENCE	4
SISP UPDATE.....	5
Results of the SISP	6
Monitor’s Comments on the SISP	6
The Management Offer	7
MATERIAL ADVERSE CHANGE AND ITS EFFECT ON THE CCAA PROCEEDINGS	8
CONCLUSIONS AND RECOMMENDATIONS	9

APPENDICES

APPENDIX "A"	Initial Order dated January 19, 2024
APPENDIX "B"	Amended and Restated Initial Order dated January 29, 2024
APPENDIX "C"	Pre-Filing Report dated January 18, 2024
APPENDIX "D"	First Report dated January 26, 2024
APPENDIX "E"	SISP Procedures

INTRODUCTION AND PURPOSE

1. On January 19, 2024 (the “**Filing Date**”) SimEx Inc. (“**SimEx**”), Iwerks Entertainment Inc. (“**Iwerks**”) and Simex-Iwerks Myrtle Beach LLC (“**SIMB**” and, together with SimEx and Iwerks, the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”) granting, *inter alia*, a stay of proceedings in favour of the Applicants until January 29, 2024 (the “**Initial Stay Period**”) and appointing Deloitte Restructuring Inc. as monitor (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”. A copy of the Initial Order is attached hereto as **Appendix “A”**.
2. On January 29, 2024 the Applicants sought and obtained an amended and restated initial order (the “**ARIO**”). The ARIO, among other things, extended the Initial Stay Period to May 3, 2024 (the “**Stay Period**”); confirmed the maximum amounts to be secured by priority charges; and approved a sales and investment solicitation process (the “**SISP**”). A copy of the ARIO is attached hereto as **Appendix “B”**.
3. The Monitor filed a Pre-filing Report dated January 18, 2024 (the “**Pre-Filing Report**”) with the Court prior to the commencement of the CCAA Proceedings. The Monitor filed its First Report dated January 26, 2024 (the “**First Report**”) in connection with the Applicants’ comeback and stay extension hearing on January 29, 2024. The Pre-Filing Report and the First Report are available on the Monitor’s Website at www.insolvencies.deloitte.ca/en-ca/SimEx. Copies of these reports, without appendices, are attached hereto as **Appendices “C”** and “**D**”, respectively.

4. Capitalized terms not otherwise defined herein shall have the respective meanings attributed to them in the Initial Order, the ARIIO, the Pre-Filing Report and/or the First Report, as applicable.
5. The purpose of this report (the “**Second Report**”) is to provide the Court with information on a material adverse change (the “**MAC**”) in the Applicants’ financial circumstances and the anticipated effects of the MAC on the CCAA Proceedings.

TERMS OF REFERENCE

6. In preparing this Second Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and information prepared by the Applicants, and discussions with management of the Applicants (“**Management**”) (collectively, the “**Information**”).
7. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. 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 Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
8. The Monitor has prepared this Second Report to provide background to the Court for its consideration in respect of the MAC, and the Second Report should not be relied on for any other purpose.

9. Future orientated financial information reported or relied on in preparing this Second Report is based on the assumptions of Management regarding future events; actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars, the Applicants' reporting currency.

SISP UPDATE

11. The Monitor and the Applicants were authorized and directed to conduct the SISP pursuant to the ARIO. A copy of the sale and investment solicitation process as approved pursuant to the ARIO (the "**SISP Procedures**") is attached hereto as **Appendix "E"**. The Monitor solicited interest from approximately 50 parties, both strategic and financial during the SISP. The Monitor also published an advertisement with respect to the SISP in the Insolvency Insider newsletter as required by the ARIO.
12. Thirteen parties executed a non-disclosure agreement and were provided with a confidential information memorandum ("**CIM**") and were invited to an electronic data room that had been populated by the Applicants, with the assistance of the Monitor.
13. The Monitor and the Applicants held multiple meetings with interested parties in order to respond to due diligence questions and provide additional, specific information to bidders on request. The Monitor and the Applicants worked closely together throughout the process to address information requests.
14. The Monitor provided regular updates to Royal Bank of Canada ("**RBC**"), as a senior secured lender of the Applicants, on the SISP, including the number of potential bidders that expressed continued interest in the SISP.

Results of the SISP

15. The deadline established by the SISP Procedures for the submission of binding offers was 5:00 pm EST on March 14, 2024 (the “**Bid Deadline**”). In advance of the Bid Deadline, a number of interested parties advised the Monitor that, while they remained interested, they would require additional time to submit a bid.
16. After discussing the request for additional time with the Applicants and RBC and, pursuant to the SISP, obtaining RBC’s consent to an extension, the Monitor advised interested parties that the Bid Deadline had been extended to 5:00 pm EST on March 21, 2024 (the “**Revised Bid Deadline**”).
17. The SISP did not yield any Qualified Bids (as defined in the SISP). A non-binding letter of intent (the “**LOI**”) was submitted by one interested party, but as it was not a binding offer, it did not qualify as a Qualified Bid. Additionally, the LOI was conditional on additional diligence and included conditions precedent that could not be met by the Applicants or the Monitor.

Monitor’s Comments on the SISP

18. The Monitor is of the view that the business and assets of the Applicants have been adequately exposed to the market through the SISP, and that the SISP provided for a process that was fair and reasonable in the circumstances. In the Monitor’s view, the duration of the SISP was sufficient to allow interested parties to perform diligence and evaluate whether to submit a bid. The Monitor notes that it received no requests for an extension of the bid deadline beyond the Revised Bid Deadline on March 21, 2024. While the SISP generated robust interest from potential bidders, the SISP ultimately did not yield a Qualified Bid.

The Management Offer

19. Following the expiry of the Revised Bid Deadline, the Monitor received a draft offer from Michael Needham, who is part of existing management of SimEx, on behalf of a company to be incorporated (the “**Needham Offer**”). The Needham Offer, in addition to being submitted after the Revised Bid Deadline, was conditional on obtaining financing, and therefore did not satisfy the requirements of a Qualified Bid as set out in the SISP Procedures.
20. The Monitor reviewed both the LOI and the Needham Offer with RBC. The Monitor did not find either offer to be compliant with the terms of the SISP, or had the likelihood of providing sufficient value and / or certainty of closing.
21. On April 4, 2024 RBC received an email from Loopstra Nixon LLP (“**Loopstra**”), counsel to the Applicants, providing details of a proposed offer from Management (the “**MBO**”) pursuant to which a newly incorporated company (“**Newco**”) would purchase certain assets of the Applicants.
22. The Monitor worked with Loopstra and RBC on an urgent basis to explore whether there was a viable transaction that could be pursued, subject to Court approval. Late in the day on April 17, 2024, it became apparent that the MBO would not be advanced any further.
23. While not an explicit condition of the MBO, the Monitor understands that the future viability of Newco and the economic logic of the MBO were highly dependent on the willingness of Warner Bros. Discovery Inc. (“**WB**”) to consent to the assignment to Newco of contracts (the “**WB Contracts**”) between WB and the Applicants.

24. Between April 4 and 17, 2024, the Monitor and RBC reviewed various iterations of the MBO with Management, and the Monitor participated in discussions between WB and Management to discuss the MBO and WB's position on the assignment of the WB Contracts to Newco.
25. On April 17, 2024, WB advised Management (through counsel) that it would not continue discussions in respect of the assignment of WB Contracts, and that it intended to take steps to terminate the WB Contracts. Consequently, Management in turn advised RBC that it would not submit a binding offer in respect of the MBO and would instead move to terminate the CCAA Proceedings.

MATERIAL ADVERSE CHANGE AND ITS EFFECT ON THE CCAA PROCEEDINGS

26. Based on the withdrawal of the MBO, the Monitor has considered whether the lack of a viable Bid arising from the SISP and the failure of the MBO constitute a MAC. To determine if a MAC has occurred, the Monitor has considered the Standards of Professional Practice (the "**Standards**") of the Canadian Association of Insolvency and Restructuring Professionals. The Standards require the following to be considered:
 - a) Whether the change has a significant adverse effect on the projected cash flow;
 - b) Whether the change significantly impairs, or is reasonably expected to significantly impair, the debtor's financial circumstances or the ability of the debtor to carry on operations;
 - c) Whether the change significantly impairs the likelihood of success of a proposal or Plan of Compromise or Arrangement; or

- d) Whether the change significantly prejudices the rights or interests of one or more classes of creditors.
27. The possible termination of the WB Contracts would eliminate the Applicants' largest source of revenue, resulting in a material impact on projected cash flow and the Applicants' ability to carry on business.
28. The possible termination of the WB Contracts has also resulted in the withdrawal of the MBO, resulting in the lack of any viable offer for the purchase of the assets and/or the business of the Applicants, in addition to the lack of Qualified Bids pursuant to the SISP. As such, in the Monitor's view, there is little chance of a viable Plan of Compromise or Arrangement.
29. Furthermore, the Applicants anticipated that the payment of post-filing film royalties would be made from the proceeds of a successful Bid. In the absence of a successful Bid, the Applicants no longer have the ability to satisfy post-filing film royalty obligations in the estimated amount of \$415,000. The continuing non-payment of such post-filing film royalty obligations prejudices the rights and interests of a number of creditors.
30. Based on the foregoing, the Monitor is of the view that the results of the SISP, the failure of the MBO, the anticipated termination of the WB Contracts and the Applicants' inability to meet ongoing post-filing film royalty obligations, satisfy several of the criteria set out above with respect to the Standards and as such, a MAC has occurred.

CONCLUSIONS AND RECOMMENDATIONS

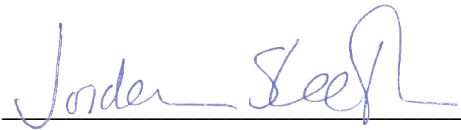
31. As noted above, the Applicants have advised the Monitor that they intend to bring a motion to terminate the CCAA Proceedings and various other ancillary relief. The Monitor will

review the materials prepared and filed by the Applicants and provide a further report to this Court thereafter.

All of which is respectfully submitted at Toronto, Ontario this 18th day of April, 2024.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-Appointed Monitor
of SimEx Inc., Iwerks Entertainment Inc.
and Simex-Iwerks Myrtle Beach LLC
and without personal or corporate liability

Per:

A handwritten signature in blue ink that reads "Jordan Sleeth". The signature is written in a cursive style and is positioned above a horizontal line.

Jordan Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., 1985, c. C-36, AS AMENDED

Court File No.: CV-24-00713128-0000

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC.
AND SIMEX-IWERKS MYRTLE BEACH, LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHEAL NEEDHAM
(SWORN APRIL 22, 2024)

LOOPSTRA NIXON LLP
130 Adelaide St. West, Suite 2800
Toronto, ON Canada M5H 3P5

Graham Phoenix LSO#: 52650N
gphoenix@LN.law
Tel: 416.748.4776

Shahrzad Hamraz LSO #: 85218H
shamraz@LN.law
Tel: 416.748.5116

Lawyers for the Applicants

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SIMEX INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

Court File No.: CV-24-00713128-0000

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

Proceedings commenced at Toronto

MOTION RECORD OF THE APPLICANTS

**(returnable April 26, 2024 at 10:30am via Judicial
Videoconference)**

LOOPSTRA NIXON LLP

130 Adelaide Street West – Suite 2800
Toronto, ON M5H 3P5

R. Graham Phoenix / Shahrzad Hamraz

Tel: (416) 748 4776 / (416) 748 5116

Fax: (416) 746 8319

Email: gphoenix@LN.law / shamraz@LN.law

Lawyers for the Applicants