

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

RESPONDENT'S CROSS-MOTION RECORD

DATE: January 27, 2025

MANIS LAW

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La Pue International Inc.

TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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TAB 1

**ONTARIO
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- and -

LA PUE INTERNATIONAL INC.

Respondent

NOTICE OF CROSS-MOTION

THE RESPONDENT, La Pue International Inc., will make a cross-motion to a Judge presiding over the Superior Court of Justice, Commercial List, in writing.

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

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- by video conference, with Zoom details to be provided by the Court.

THE CROSS-MOTION IS FOR:

1. If necessary, an Order abridging the time for service and filing of this Notice of Cross-Motion and Cross-Motion Record such that the Cross-Motion is properly returnable on the date it is read and dispensing with further service thereof;
2. An Order dismissing the Receiver's motion, seeking to amend the Approval and Vesting Order of the Honourable Justice Dietrich dated January 7, 2025 (the "AVO");
3. An Order granting the Respondent leave to redeem the mortgage indebtedness owed to the Applicant and payout all associated costs of this receivership proceeding; and

4. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE CROSS-MOTION ARE:

Background

1. By order of Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 19, 2023 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of La Pue International Inc. (the “**Respondent**”), including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “**Property**”).
2. Three mid-rise buildings were to be constructed at the Property: a hotel, a residential condominium, and a mixed-use building (the “**Project**”). Prior to the issuance of the Receivership Order, the Respondent had signed over 350 pre-sale construction agreements with homebuyers.
3. On or about April 4, 2024, the Receiver entered into an Asset Purchase Agreement (the “**APA**”) with Lakeshore Luxe Design & Build Group (“**Lakeshore**”) for, among other things, the sale of the Property and the assumption of 359 pre-sale agreements entered into with homebuyers (the “**Original Transaction**”).
4. On June 11, 2024, Lakeshore assigned its interest in the APA and Property to 100835091 Ontario Inc. (the “**Purchaser**”). The Purchaser paid the Receiver a first deposit of \$500,000.00 (the “**First Deposit**”) but was unable to pay the second deposit.

5. Despite not having paid the second deposit, the Receiver obtained an approval and vesting order on June 21, 2024, to compel the Purchaser to complete the Original Transaction or forfeit the First Deposit.
6. The Original Transaction was scheduled to close on July 2, 2024. The Purchaser failed to pay the balance of the closing funds and the First Deposit was forfeited to the Receiver.
7. On July 12, 2024, the Receiver and Purchaser entered into a Reinstatement and Amending Agreement increasing the purchase price by \$50,000.00, requiring the second deposit to be paid and two additional deposits payable on July 22, 2024 and August 1, 2024. The Purchaser paid the second deposit but failed to pay the two additional deposits, thereby forfeiting the First Deposit and second deposit.
8. On or about October 8, 2024, the Receiver and Purchaser entered into a Second Reinstatement and Amending Agreement with the Purchaser. This transaction was terminated on or about October 24, 2024, once again as a result of the Purchaser's failure to pay deposits when due. The Property was subsequently relisted for sale.
9. On November 2, 2024, the Respondent's principal submitted an offer of \$20,500,000.00 to purchase the Property. Between November 2 and 21, 2024, the Respondent provided the Receiver with evidence of a firm unconditional commitment letter and proof of funds.
10. On November 22, 2024, the Receiver advised the Respondent that it had entered into a transaction for the sale of the Property. The Respondent later learned that the Receiver had entered into a third Reinstatement and Amending Agreement with the Purchaser, thereby reviving the Original Transaction.
11. On January 6, 2025, the Receiver's AVO motion was heard by the Honourable Justice Dietrich. On January 7, 2025, the AVO was granted.

Receiver's Motion to Amend AVO

12. On January 9, 2025, the Receiver advised that the Purchaser sought to amend the AVO for the purposes of assigning its right, title and interest in the Property to a third party.
13. On January 23, 2025, the Receiver brought a motion in writing to amend the AVO to reflect the assignment of the APA from the Purchaser to 1001082540 Ontario Inc. (“1001”).
14. The Notice of Assignment of Asset Purchase from the Purchaser to 1001, and the Assignee's Covenant signed by 1001, were both dated December 5, 2024, more than one month before the AVO was issued by the Court.
15. The AVO permits the Receiver to make minor amendments thereto. However, assigning the APA to 1001, an entirely new and unrelated corporation, after the AVO was issued by the Court, is not a minor amendment.
16. The provisions of the APA permit an assignment thereof until five days prior to the hearing date for a motion to obtain an approval and vesting order. The APA does not expressly provide that it may be assigned after the AVO is issued.
17. Amending the AVO and permitting the assignment of the APA to 1001 undermines the finality and certainty of the Court's approval process and fails to satisfy the *Soundair* principles.

Respondent's Cross-Motion

18. The Respondent seeks leave to exercise its right of redemption and payout all indebtedness owed to the Applicant and costs associated with this receivership proceeding. The Respondent has secured \$23,180,814.30 to satisfy the aforementioned indebtedness, in addition to the forfeited deposits paid by the Purchaser to the Receiver.

19. The Respondent's right of redemption will ensure that the interests of all stakeholders are considered and result in a more beneficial cost-recovery for all parties impacted by these receivership proceedings.
20. The Respondent ought to be given an opportunity to redeem the mortgage indebtedness before the Receiver is granted leave to amend the AVO and assign the APA to 1001 as this material change was known to the Receiver for weeks prior to the January 6, 2025 AVO hearing date.
21. Section 183 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3.
22. Bankruptcy and Insolvency General Rules (C.R.C., c. 368).
23. Rule 1.04., 2.01, 2.03, 3.02, 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
24. Such further and other grounds as counsel may advise and this Honourable Court permit.

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

1. The Affidavit of Pawel Fugiel, sworn January 27, 2025 and the exhibits thereto;
2. Such further and other material as counsel may advise and this Honourable Court may permit.

January 27, 2025

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MARSHALLZEHR GROUP INC.
Applicant

- and -

LA PUE INTERNATIONAL INC.
Respondents

CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings Commenced at TORONTO
(COMMERCIAL LIST)

**RESPONDENT'S NOTICE OF CROSS
MOTION**

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La Pue International Inc.

TAB 2

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

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Respondent

AFFIDAVIT OF PAWEL FUGIEL

I, Pawel Fugiel, of the City of Mississauga, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

- 1) I am the chief executive officer of the respondent corporation, La Pue International Inc. (“**La Pue**”), and as such have knowledge of the matters hereinafter deposed to. Where this information is based on information received from others, I state the source of that information and verily believe that information to be true.
- 2) I am swearing this affidavit in response and opposition to the Notice of Motion and Sixth Report of KSV Restructuring Inc. (the “**Receiver**” or “**KSV**”), seeking to amend the approval and vesting order issued by the Court on January 7, 2025 (the “**AVO**”).

Background

- 3) La Pue is a corporation engaged in real estate development and owns the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Property**”). La Pue acquired the Property for the purposes of developing and constructing three mid-rise buildings consisting of one mixed-use, one hotel and one residential building (collectively, the “**Project**”).

- 4) Prior to these receivership proceedings, La Pue had sold 359 condominium units (the “**Pre-Sale Units**”) and collected approximately \$31 million in deposits that are currently held in trust with a surety.
- 5) On or about October 19, 2023, KSV was appointed Receiver over the assets, undertakings and property of La Pue. On or about December 20, 2023, the Court issued an order approving the sale process of the Property.
- 6) On or about April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”) entered into an Asset Purchase Agreement (the “**APA**”) for, among other things, the sale of the Property and the assumption of 359 pre-sale agreements entered into with homebuyers (the “**Original Transaction**”). Attached hereto and marked as **Exhibit “A”** is a copy of the APA.
- 7) On June 11, 2024, Lakeshore assigned its right, title and interest in the APA to 1000835091 Ontario Inc. (the “**Purchaser**”) pursuant to an Assignment of Agreement of Purchase and Sale dated June 11, 2024 (the “**Assignment Agreement**”).
- 8) Lakeshore and the Purchaser are related entities, sharing common ownership. Anthony DeFrancesco executed the APA on behalf of Lakeshore and the Assignment Agreement on behalf of the Purchaser. DeFrancesco is the Purchaser’s sole officer and director.
- 9) The Purchaser paid the Receiver a first deposit of \$500,000.00 (the “**First Deposit**”) but was unable to pay the second deposit. Despite not having paid the second deposit, the Receiver obtained an approval and vesting order on June 21, 2024, to compel the Purchaser to complete the Original Transaction or forfeit the First Deposit.
- 10) The Original Transaction was scheduled to close on July 2, 2024. The Purchaser failed to pay the balance of the closing funds and the First Deposit was forfeited to the Receiver.

- 11) On July 12, 2024, the Receiver and Purchaser entered into a Reinstatement and Amending Agreement increasing the purchase price by \$50,000.00, requiring the second deposit to be paid and two additional deposits payable on July 22, 2024 and August 1, 2024. The Purchaser paid the second deposit but failed to pay the two additional deposits, thereby forfeiting the First Deposit and second deposit.
- 12) On or about October 8, 2024, the Receiver and Purchaser entered into a Second Reinstatement and Amending Agreement with the Purchaser. This transaction was terminated on or about October 24, 2024, once again as a result of the Purchaser's failure to pay deposits when due. The Property was subsequently relisted for sale.
- 13) Notwithstanding the Purchaser's inability to close the transaction on three separate prior occasions, the Receiver entered into a Third Reinstatement and Amending Agreement with the Purchaser on or about November 18, 2024.

Approval and Vesting Order Motion

- 14) On January 6, 2025, the Receiver brought a motion seeking to approve the APA, as assigned from Lakeshore to the Purchaser, and subsequently amended by: (1) the Reinstatement and Amending Agreement dated July 12, 2024; (2) the Second Reinstatement and Amending Agreement dated October 8, 2024; and (3) the Third Reinstatement and Amending Agreement dated November 18, 2024.
- 15) La Pue opposed the Receiver's AVO motion on several grounds, including, but not limited to: that La Pue had not been treated fairly throughout the sale process; La Pue was not provided a commercially reasonable opportunity to submit offers; La Pue was not provided a reasonable amount of time to provide proof of funds; that potentially 359 Pre-Sale Unit contracts would be terminated if the Purchaser did not obtain Home Construction

Regulatory Authority approval; and finally, that La Pue should be provided an opportunity to redeem the mortgage.

- 16) Despite La Pue's opposition, the Receiver's AVO motion was granted and the sales transaction contemplated in the APA was approved.

Receiver's Motion to Amend the AVO

- 17) On January 9, 2025, counsel for the Receiver sent an email to the Court advising that: "We have since been advised by the purchaser that an amendment to the order is required, as the sale agreement has been assigned to another party". Attached hereto and marked as **Exhibit "B"** is a copy of this email correspondence.
- 18) On January 23, 2025, the Receiver brought a motion in writing to amend the AVO. In of the Receiver's Sixth Report, dated January 22, 2025 (the "**Sixth Report**"), it states at paragraph 2.9 "Since the issuance of the AVO, a request was made to the Receiver that the AVO be amended to reflect the fact that the APA has been assigned by 1000835091 Ontario to 1001082540 Ontario Inc.", and attaches a copy of the notice of assignment as Appendix B.
- 19) However, the Notice of Assignment of Asset Purchase found at Appendix B of the Receiver's Sixth Report shows that the Purchaser had executed same in favour of 1001082540 Ontario Inc. ("**1001**") on December 5, 2024, more than one month before the Receiver's motion to approve the AVO was heard.
- 20) Similarly, 1001 had executed the Assignee's Covenant agreeing to be bound, assume, observe and comply with and be responsible for all the Purchaser's obligations with respect to the APA, on December 5, 2024. The Assignee's Covenant was executed by Giacomo Scivoletto on behalf of 1001.

- 21) Evidently, the Purchaser and 1001 had agreed to assign the APA well in advance of the Receiver's January 6, 2025 AVO motion, yet this was not disclosed to the Court.
- 22) The Receiver was aware of this Notice of Assignment of Asset Purchase and Assignee's Covenant as early as December 19, 2024, yet proceeded on the January 6, 2025 motion date as if the APA would vest in the Purchaser, not 1001.
- 23) On December 19, 2024, the Receiver sent an email stating: "Thank you for your email. Can we arrange one more call. I'm copying the prospective purchaser which intends to undertake much of this work". Attached hereto and marked as **Exhibit "C"** is a copy of this email.
- 24) I received this email by way of a screenshot on the same date it was sent. Attached hereto and marked as **Exhibit "D"** is a copy of my text message correspondence evidencing receipt of the December 19, 2024 email regarding the new purchaser.
- 25) The recipients on the Receiver's December 19, 2024 email include, Jason Weck of HC Macon, the company undertaking shoring work at the Property, RWH acting as the monitoring engineer for the Property, Cecil Hayes, president of the Applicant and Jack Scivoletto on behalf of 1001.
- 26) Evidently, the December 19, 2024 email referring to the "prospective purchaser" was 1001, and "much of this work" is referring to shoring, excavation and other work necessary to be done at the Property. The Purchaser's sole officer and director, Anthony DeFrancesco was not copied on this email correspondence.
- 27) The December 19, 2024 email referenced above clearly demonstrates that the relevant parties to this proceeding were aware that the APA was going to be assigned to 1001.

However, this was not disclosed to the Court on January 6, 2025 when the AVO was issued in favour of the Purchaser.

- 28) Moreover, the January 9, 2025 email sent from Receiver's counsel to the Court implies that the assignment between the Purchaser and 1001 only became known to the Receiver **after** the AVO was issued. This email states: "**We have since been advised** by the purchaser that an amendment to the order is required, as the sale agreement has been assigned to another party" (emphasis added).
- 29) The Receiver's Sixth Report makes a similar suggestion, wherein at paragraph 2.9 it states "**Since the issuance of the AVO**, a request was made to the Receiver that the AVO be amended to reflect the fact that the APA has been assigned by 1000835091 Ontario to 1001082540 Ontario Inc." (emphasis added).
- 30) The December 19, 2024 email clearly shows that, as of that date, every relevant party was aware of the assignment between the Purchaser and 1001, yet the Receiver proceeded on January 6, 2025 to obtain the AVO in favour of the Purchaser.

Relief Sought by Receiver

- 31) Paragraph 2.10 of the Sixth Report states that the "APA provides an assignment right to the 1000835091 Ontario". Clause 47 of the APA states:

"47. ASSIGNMENT.

No Party may assign its rights or obligations under this Agreement without the **prior written consent** of the other Party. Notwithstanding the foregoing, the Purchaser shall have the right, **until five (5) Business Days before the hearing date for the motion to obtain the Approval and Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Purchased Assets herein to any company or companies affiliated** (as that term is defined in the Ontario *Business Corporations Act*) with the Purchaser, provided that such assignment shall not release the Purchaser from its obligations under this Agreement." (emphasis added).

- 32) Clause 47 of the APA requires the assignment to take place five (5) days prior the motion to obtain the Approval and Vesting Order. Clause 47 of the APA does not permit or authorize an assignment of same after the AVO is issued.
- 33) The Purchaser's right to assign the APA five (5) business days prior to the hearing date is a condition included to ensure that the identity of the purchaser is known when the Court exercises its discretion in deciding whether or not to grant an Approval and Vesting Order.
- 34) Similarly, no provision contained the January 7, 2025 AVO issued in this proceeding authorizes the Receiver or the Purchaser to make a subsequent assignment of the APA after the AVO is issued. Paragraph 2 of the AVO permits the Receiver to make "such minor amendments as the Receiver may deem necessary". Assigning the APA to an entirely new unrelated purchaser after the AVO is issued is clearly not a "minor amendment".
- 35) There is no evidence filed to suggest that the Purchaser and 1001 are related entities or share common ownership. Attached hereto and marked as **Exhibit "E"** is a copy of the corporate profile report for 1001, and attached as **Exhibit "F"** is a copy of the corporate profile report for the Purchaser, showing no common officers or directors.
- 36) La Pue opposes the relief sought by the Receiver in assigning the APA to 1001. This proposed amendment to the AVO effectively constitutes the approval of a new agreement with a new purchaser, which goes beyond the scope of the original AVO and the January 6, 2025 motion brought by the Receiver.
- 37) This fundamental change should not be permitted, when the Court has already approved the sale to the Purchaser. Allowing this amendment to substitute a new purchaser undermines the finality and certainty of the Court's approval process.

- 38) The Receiver failed to disclose the existence of the assignment agreement and its knowledge of the proposed purchaser during the January 6, 2025 motion. This lack of full and frank disclosure undermines the integrity of the approval process. I am advised by my counsel and verily believe that the Court follows the *Soundair* principles in assessing the granting of an AVO and, based on my understanding of same as it was explained to me, I do not believe that the circumstances surrounding the entire sale process conducted by the Receiver meet those criteria and hence, the amendment to the AVO is a further example of the unfair manner in which we have been treated and justification for the Court to deny the relief sought in the Receiver's motion.
- 39) Moreover, the information provided to the Court for the January 6, 2025 disclosed that the Applicant is funding the Purchaser however, there is no indication whatsoever asserted by the Receiver in the within motion as to how the prospective purchaser is funding the transaction.
- 40) On the other hand, I have secured financing to redeem the debt and security owed to the Applicant in full. Attached hereto and marked as **Exhibit "G"** is a true copy of the email received from counsel for the lender, confirming that it has \$19,255,160.00 in its trust account and is awaiting receipt of an additional \$2,500,000.00 from my lender.
- 41) In addition to those funds, I have an additional \$1,455,654.28 as Soft Costs Reserve for the Property. These funds remain held in the trust fund of Schneider Ruggiero Spencer Milburn LLP, as evidenced in the Statement of Advance attached hereto and marked as **Exhibit "H"**.
- 42) I propose that from the loan proceeds we would pay the Applicant in full (net of funds on hand with the Receiver as a result of the forfeited deposits paid by the Purchaser), the

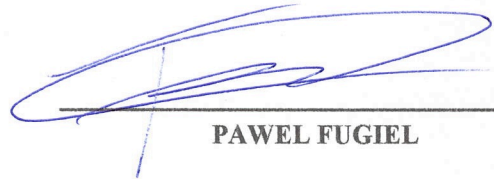
Receiver's fees and disbursements and make satisfactory arrangements with the lien claimants so that the interests of all stakeholders are satisfactorily addressed.

- 43) Granting the Respondent leave to redeem the mortgage indebtedness owed to the Applicant and all other creditors will undoubtedly result in a more beneficial outcome than assigning the APA and amending the AVO in favour of 1001.
- 44) Granting leave to amend the AVO without first permitting the Respondent an opportunity to redeem the mortgage indebtedness would undoubtedly have an impact on the integrity of the Court approved sales process as this effectively constitutes a new sale to a new purchaser, after Court approval was granted.
- 45) Moreover, the Receiver's proposed amendment to the AVO is an unusual and exceptional circumstance which should only be permitted if the Respondent is first given an opportunity to redeem. This will ensure that the interests of all the relevant stakeholders are considered.
- 46) I swear this affidavit in support of the relief sought by the Respondent and in response and opposition to the Receiver's motion to amend the AVO and for no other or improper purpose.

SWORN remotely by PAWEL FUGIEL stated)
to be at the City of Mississauga in the Province)
of Ontario before me at the City of Toronto, in)
the Province of Ontario on January 27, 2025 in)
accordance with O.Reg. 431/20, Administering)
Oath or Declaration Remotely.)



Commissioner for Taking Affidavits



PAWEL FUGIEL

Exhibit "A"
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits

ASSET PURCHASE AGREEMENT

THIS AGREEMENT dated the 4th day of April, 2024.

BETWEEN:

KSV RESTRUCTURING INC., in its capacity as Court-appointed receiver of La Pue International Inc., and not in its personal or corporate capacity and without personal or corporate liability
(the "**Vendor**")

- and -

Lakeshore Luxe Design & Build Group (the "**Purchaser**")

RECITALS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 19, 2023 (the "**Receivership Order**"), the Vendor was appointed as receiver over all property, assets and undertakings of La Pue International Inc. ("**La Pue**"), including, without limitation, the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario and bearing the legal description described in Schedule "B" hereto;
- B. Pursuant to an Order of the Court dated December 20, 2023, the Receiver was authorized and directed to conduct a process for the sale of the Property; and
- C. Subject to the Court issuing the Approval and Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the right, title, and interest of the Debtor in and to the Purchased Assets on the terms and conditions set out herein.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. DEFINITIONS.

In this Agreement, including the Recitals, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) "**Acceptance Date**" means the date that this Agreement is executed by each of the Parties;
- (b) "**Agreement**" means this asset purchase agreement, including the attached Schedules to this Agreement, as it or they may be amended or supplemented from time to time;
- (c) "**Applicable Laws**" means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Government Authority;
- (d) "**Application**" has the meaning ascribed to it in Subsection 14(b)(i);
- (e) "**Approval and Vesting Order**" means an order made by the Court approving the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances (except for Permitted Encumbrances), in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably;
- (f) "**Assignment Order**" has the meaning ascribed to it in Section 11;
- (g) "**Assumed Agreements of Purchase and Sale**" means the Existing Agreements of Purchase and Sale as may be specifically assumed by the Purchaser on Closing in accordance with the provisions of Subsection 10(a);
- (h) "**Assumed Contracts**" means the Contracts as may be specifically assumed by the Purchaser on Closing in accordance with the provisions of Subsection 10(b);
- (i) "**Assumed Liabilities**" has the meaning ascribed to it in Subsection 9(a);
- (j) "**Business Day**" means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday, or statutory holiday recognized in the Province of Ontario;

- (k) **"Cash Collateral"** means all cash security deposited by or on behalf of the Debtor with the City of Niagara Falls and/or Tarion or with a financial institution, as required by the City of Niagara Falls and/or Tarion in connection with the development and construction of the Project;
- (l) **"Closing"** has the meaning ascribed to it in Section 13;
- (m) **"Closing Date"** has the meaning ascribed to it in Section 13;
- (n) **"Contracts"** means all contracts, agreements, leases and arrangements to which the Debtor is bound or affected in connection with the Purchased Assets and/or the Project;
- (o) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (p) **"Cure Costs"** means all monetary Liabilities of the Debtor under the Purchased Assets up to and including the date of assignment that must be paid or otherwise satisfied to cure all monetary and other defaults under the Purchased Assets;
- (q) **"Debtor"** means La Pue International Inc.;
- (r) **"Deposit"** means collectively, the First Deposit and the Second Deposit;
- (s) **"DRA"** has the meaning ascribed to it in Subsection 14(a);
- (t) **"Due Diligence Deliveries"** has the meaning ascribed to it in **Schedule "E"** attached hereto;
- (u) **"Due Diligence Inspection Condition"** means the Purchaser's due diligence inspection condition in **Schedule "E"** attached hereto;
- (v) **"Due Diligence Period"** has the meaning ascribed to it in **Schedule "E"** attached hereto;
- (w) **"Due Diligence Deadline"** has the meaning ascribed to it in **Schedule "E"** attached hereto;
- (x) **"Encumbrances"** means any and all security interests, mortgages, charges, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, Work Orders, rights of way, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not same have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;
- (y) **"Environmental Laws"** means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;
- (z) **"ETA"** means the *Excise Tax Act* (Canada);
- (aa) **"Excluded Assets"** has the meaning ascribed to it in Section 12;
- (bb) **"Existing Agreements of Purchase and Sale"** means the existing agreements of purchase and sale entered into by the Debtor with respect to the purchase and sale of condominium units within the Project;
- (cc) **"First Deposit"** has the meaning ascribed to it in Subsection 5(a);
- (dd) **"Government Authority"** means any Person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal governments having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction and/or one or both of the Parties;
- (ee) **"HST"** has the meaning ascribed to it in Section 28(a);
- (ff) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any **"Contaminants"**, **"Dangerous Substances"**, **"Hazardous Materials"**, **"Hazardous Substances"**, **"Hazardous Wastes"**, **"Industrial Wastes"**, **"Liquid Wastes"**, **"Pollutants"** and **"Toxic Substances"**, all as defined in, referred to or contemplated in federal, provincial and/or

municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;

- (gg) **"Indemnitees"** has the meaning ascribed to it in Subsection 20(a);
- (hh) **"Lands"** means the lands and premises legally described in **Schedule "B"** attached hereto;
- (ii) **"Liabilities"** means any and all claims, actions, causes of action, suits, proceedings, applications, complaints, costs, expenses, charges, debts, liabilities, losses, damages, orders, judgments, demands, fines, penalties, and obligations of any nature of kind whatsoever, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise;
- (jj) **"Party"** means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **"Parties"** means collectively the Vendor and the Purchaser;
- (kk) **"Permits"** means all authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Government Authority in respect of the Structure, the Lands or the Project;
- (ll) **"Permitted Encumbrances"** means those Encumbrances listed in **Schedule "C"** attached hereto and without duplication those encumbrances, easements and restrictive covenants listed or to be listed on Schedule "D" to the Approval and Vesting Order;
- (mm) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (nn) **"Prepaid Expenses and Deposits"** means all prepayments, prepaid charges, deposits, security deposits, sums and fees in any way related to the Purchased Assets, but excluding the Cash Collateral;
- (oo) **"Project"** means the two (2) residential buildings and one (1) mixed-use building to have been developed and constructed by the Debtor on the Lands;
- (pp) **"Project Documents"** means all plans, designations, drawings, designs, agreements, and specifications in connection with the Project that are in the possession or control of the Vendor (it being acknowledged that the Vendor is under no obligation to incur additional expense to obtain such plans, designs and specifications);
- (qq) **"Purchase Price"** has the meaning ascribed thereto in Section 4;
- (rr) **"Purchased Assets"** means all of the Debtor's right, title and interest in the following assets:
 - (i) the Assumed Agreements of Purchase and Sale, if any;
 - (ii) the Assumed Contracts;
 - (iii) the Cash Collateral;
 - (iv) the Lands;
 - (v) the Permits;
 - (vi) the Prepaid Expenses and Deposits;
 - (vii) the Project Documents;
 - (viii) all Rights under or pursuant to all warranties, representations and guarantees, express, implied, or otherwise of or made by suppliers to the Debtor in connection with the Purchased Assets; and
 - (ix) the Structure,
 and in each case, other than the Excluded Assets;
- (ss) **"Purchaser"** has the meaning ascribed to it on page 1 above;

- (tt) **"Purchaser's Solicitors"** means the firm of ●;
- (uu) **"Receiver"** means KSV Restructuring Inc. in its capacity as receiver of the Debtor appointed pursuant to the Receivership Order;
- (vv) **"Receiver's Certificate"** means the certificate attached as a schedule to the Approval and Vesting Order confirming *inter alia* that the Receiver has received the Purchase Price and all conditions to Closing, if any, have been satisfied or waived by the Parties;
- (ww) **"Receivership Order"** has the meaning ascribed to it in the Recitals;
- (xx) **"Rights"** has the meaning ascribed to it in Section 11;
- (yy) **"Second Deposit"** has the meaning ascribed to it in Subsection 5(b);
- (zz) **"Statement of Adjustments"** has the meaning ascribed to it in Subsection 24(a)(iii);
- (aaa) **"Structure"** means the structure(s) situated on the Lands, including all improvements thereto and all fixtures forming a part thereof;
- (bbb) **"TERS"** has the meaning ascribed to it in Subsection 14(d)(iii);
- (ccc) **"Transaction"** means the transaction contemplated by this Agreement;
- (ddd) **"Vendor"** has the meaning ascribed to it in the Recitals;
- (eee) **"Vendor's Solicitors"** means the firm of Chaitons LLP, 5000 Yonge Street, 10th Floor, Toronto, Ontario (Attention: Mark Willis-O'Connor), E-mail: markw@chaitons.com; and
- (fff) **"Work Orders"** means, collectively, all work orders issued by a Government Authority, notices of violation issued by a Government Authority, and other matters of non-compliance with zoning and other requirements of a Government Authority relating to the Lands, the Structure and/or the Project.

2. SCHEDULES.

The following schedules are appended to this Agreement:

- Schedule "A" Assumed Agreements of Purchase and Sale
- Schedule "B" The Lands
- Schedule "C" The Permitted Encumbrances
- Schedule "D" Assumed Contracts
- Schedule "E" Purchaser's Due Diligence Inspection Condition

3. AGREEMENT TO PURCHASE AND SELL.

On the Closing Date, the Vendor shall sell the Purchased Assets and assign the Assumed Liabilities and the Purchaser shall purchase the Purchased Assets and assume the Assumed Liabilities, upon and subject to the terms of this Agreement.

4. PURCHASE PRICE.

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be the sum of [REDACTED] Dollars (the "**Purchase Price**").

5. SATISFACTION OF PURCHASE PRICE.

The Purchase Price shall be paid and satisfied as follows:

- (a) a first deposit in the amount of [REDACTED] Dollars (the "**First Deposit**"), to be paid by the Purchaser to the Vendor in trust within one (1) Business Day following the Acceptance Date;
- (b) a second deposit in the amount of [REDACTED] Dollars (the "**Second Deposit**"), to be paid by the Purchaser to Vendor in trust within one (1) Business Day following the satisfaction or waiver by the Purchaser of the Due Diligence Inspection Condition;
- (c) the balance of the Purchase Price, subject to the adjustments contemplated in this Agreement, shall be paid by the Purchaser to the Vendor on the Closing Date; and

- (d) by the assumption of the Assumed Liabilities effective as of the Closing Date.

The Deposit and the balance due on Closing shall be paid by way of certified cheque, bank draft or wire drawn on or issued by a Canadian chartered bank. The Vendor and the Purchaser acknowledge and agree that they shall each make their own allocations of the Purchase Price between the Purchased Assets for the purposes of the *Income Tax Act* (Canada) and any filings in accordance with the provisions thereof.

6. DEPOSIT.

The Deposit shall be held in trust by the Vendor in a non-interest bearing trust account and shall be:

- (a) credited on account of the Purchase Price on the Closing Date if the Transaction is completed;
- (b) refunded to the Purchaser, without deduction, if the Transaction is not completed, provided that the Purchaser is not in default under this Agreement; or
- (c) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Agreement and at law.

7. APPROVAL AND VESTING ORDER.

Within Five (5) Business Days following the satisfaction or waiver by the Purchaser of the Due Diligence Inspection Condition the Vendor will seek an appointment with the Court for a motion to be heard within thirty (30) days, or otherwise as soon as reasonably possible, to seek the Approval and Vesting Order. The Purchaser shall, at its sole cost and expense, promptly provide to the Vendor all such information and assistance as the Vendor may reasonably require to obtain the Approval and Vesting Order. In the event that the Court does not grant the Approval and Vesting Order, the (i) Vendor covenants and agrees to return the Deposit to the Purchaser without deduction and/or interest in accordance with the provisions of this Agreement and (ii) Purchaser acknowledges and agrees that it shall have no further rights or remedies against the Vendor arising out of the termination of this Agreement.

8. CLOSING ADJUSTMENTS.

Adjustments shall be made, as of 12:01 a.m. on the Closing Date, for all operating costs, realty taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, security deposits and interest thereon (if any), utilities, and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. The day of Closing shall be for the account of the Purchaser. Other than as provided for in this Section 8, there shall be no adjustments to the Purchase Price.

9. ASSUMED LIABILITIES.

- (a) On Closing, the Purchaser shall assume and be liable for the following Liabilities from and after Closing (collectively, the "**Assumed Liabilities**"):
 - (i) the Permitted Encumbrances;
 - (ii) all Liabilities under the Assumed Contracts;
 - (iii) all Liabilities under the Assumed Agreements of Purchase and Sale, including without limitation, any Liabilities arising out of or in connection with the *Ontario New Home Warranties Plan Act*; and
 - (iv) all Liabilities arising from the Purchaser's ownership of the Purchased Assets after Closing.
- (b) The Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities of the Debtor other than the Assumed Liabilities, including without limitation any Liabilities arising or accruing from the ownership or use of the Purchased Assets prior to the Closing.

10. ASSUMED AGREEMENTS OF PURCHASE AND SALE AND CONTRACTS.

- (a) The Purchaser shall give notice to the Vendor in writing on or before the Due Diligence Deadline of the Existing Agreements of Purchase and Sale that it elects to assume on Closing. A list of the Assumed Agreements of Purchase and Sale shall be inserted as **Schedule "A"** attached hereto and form part of this Agreement.
- (b) The Purchaser shall give notice to the Vendor in writing on or before the Due Diligence Deadline of the Contracts that it elects to assume on Closing. A list of the Assumed Contracts shall be inserted as **Schedule "D"** attached hereto and form part of this Agreement. This Agreement and any document delivered under

this Agreement will not constitute an assignment or an attempted assignment of any such Assumed Contracts contemplated to be assigned to the Purchaser under this Agreement which are not assignable without the consent of a third Person if such consent or order of the Court has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract. The Vendor, in cooperation with the Purchaser, shall use commercially reasonable efforts to obtain the consent of the counterparties for the assignment of the Assumed Contracts. The Purchaser shall pay the applicable Cure Costs related to the Assumed Contracts on Closing and shall provide evidence of such payment to the Vendor.

11. ASSIGNMENT OF PURCHASED ASSETS.

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "**Rights**") is not capable of being transferred without the approval, consent or waiver of any Person, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent, waiver or order of the Court has been obtained (the "**Assignment Order**") and the Purchaser has paid all applicable Cure Costs related to such Purchased Assets.

12. EXCLUDED ASSETS.

The Purchaser may, at its option and upon written notice to the Vendor not less than two (2) Business Days prior to the Closing Date, exclude any of the Purchased Assets from the Transaction (the "**Excluded Assets**"), whereupon such assets shall be deemed to form part of the Excluded Assets. In the event that the Purchaser exercises such option, there shall be no reduction and/or abatement to the Purchase Price as a result of such exclusion(s).

13. CLOSING DATE.

The Transaction shall be completed seven (7) Business Days following the date on which the Approval and Vesting Order is granted, or such other date as the Parties may agree in writing (the "**Closing Date**" or "**Closing**"). If, prior to the Closing, the Approval and Vesting Order (or any orders dismissing appeals thereof) shall have been appealed or a proceeding shall have been commenced to restrain or prevent the completion of the Transaction, then notwithstanding the foregoing and/or anything contained herein to the contrary, the Vendor shall have the option, exercisable by it, as it may determine in its sole and unfettered discretion, to extend the Closing Date by written notice thereof to the Purchaser to the date this is no later than seven (7) Business Days immediately following the date that any such appeals and/or proceedings are dismissed.

14. ELECTRONIC REGISTRATION.

- (a) The Purchaser authorizes the Purchaser's Solicitor to enter into a document registration agreement with the Vendor's Solicitors in the form as agreed by the Parties (the "**DRA**"), establishing the procedures and timing for completing this transaction.
- (b) The delivery and exchange of the closing documents:
 - (i) shall not occur contemporaneously with the registration of the application for vesting order (the "**Application**") and other registerable documentation; and
 - (ii) shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitors shall hold all closing documents in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.
- (c) The Purchaser expressly acknowledges and agrees that the Vendor will not release the Receiver's Certificate confirming the effectiveness of the Approval and Vesting Order until the balance of funds due on Closing are remitted to the Vendor or as it may direct.
- (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser when the Vendor's Solicitors have:
 - (i) delivered all documents required to be delivered by the Vendor to the Purchaser pursuant to Section 24;
 - (ii) advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by the electronic registration system ("**TERS**") to complete the Transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's Solicitors, and specifically when the "**completeness signatory**" for the Application has been

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electronically "**signed**" by the Vendor's Solicitors,

without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (e) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Purchaser upon the Vendor, when the Purchaser's Solicitors have:
- (i) delivered the balance due at Closing and all the documents required to be delivered by the Purchaser to the Vendor pursuant to Section 25;
 - (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Vendor's Solicitors, and specifically when the "**completeness signatory**" for the Application has been electronically "**signed**" by the Purchaser's Solicitors,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (f) If through no fault of the Purchaser's Solicitors or the Vendor's Solicitors TERS is unavailable on the Closing Date, such that the Purchaser's Solicitors are unable to register the Application for Vesting Order, then the Transaction shall be completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitors forthwith and the Parties shall arrange to complete the registration of the Approval and Vesting Order as expeditiously as possible, whereupon the escrow shall be released.

In the event of any conflict or inconsistency between the terms of this Section 14 and the terms of the DRA, the terms of this Section 14 shall prevail.

15. **PRE-CLOSING RISK.**

The Purchased Assets are and shall remain at the Vendor's risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the Parties as their respective interests may appear pending Closing.

16. **PURCHASER'S REPRESENTATIONS AND WARRANTIES.**

- (a) The Purchaser represents and warrants to the Vendor that, as at the date hereof:
- (i) it is a corporation duly incorporated, organized and validly subsisting under the laws of the Province of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement;
 - (ii) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
 - (iii) it is or will on Closing be a registrant under Part IX of the ETA;
 - (iv) it is or will on Closing be a builder and vendor licensed under the Home Construction Regulatory Authority;
 - (v) it has made adequate arrangements to have sufficient funds available to satisfy its obligation to pay the Purchase Price to the Vendor on Closing;
 - (vi) it is not a non-resident within the meaning of the *Income Tax Act* (Canada); and
 - (vii) the representations and warranties of the Purchaser contained in this Section 16 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive Closing.
- (b) The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations

and warranties contained in this Agreement not continuing to be true as at Closing.

17. VENDOR'S REPRESENTATIONS AND WARRANTIES.

The Vendor represents and warrants to the Purchaser that, as at the date hereof:

- (a) it is a registrant under Part IX of the ETA;
- (b) it is not a non-resident within the meaning of the *Income Tax Act* (Canada); and
- (c) the Receivership Order is in full force and effect.

18. "AS IS, WHERE IS".

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" and "without recourse" basis. Other than as specifically indicated herein, the Vendor nor any of its directors, officers, employees, professional consultants or advisors, agents or representatives make or grant any representations, warranties, terms, conditions, understandings or collateral agreements, express or implied, statutory or otherwise, including, without limitation, under the *Sale of Goods Act* (Ontario), all of which are expressly waived by the Purchaser, with respect to title, encumbrances, outstanding liens, assignability, merchantability, condition, description, present or future uses, fitness for purpose or use, quality, quantity, cost, value or the validity, invalidity, or enforceability of any patent, copyright or trade-mark right, or as to any other matter whatsoever regarding the Purchased Assets or the Debtor. Without limiting the generality of the foregoing, the Purchaser acknowledges having conducted its own due diligence and investigations in respect of the environmental state of the Purchased Assets, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Purchased Assets, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under any Environmental Law, and the existence, nature, kind, state or identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Purchased Assets or elsewhere. The Purchaser has relied entirely on its own judgment, inspection and investigation of the Purchased Assets, and further acknowledges that: at its own expense, it has inspected the Purchased Assets; and in entering into this Agreement and proceeding with and completing its purchase of the Purchased Assets pursuant hereto, it is satisfied with and has relied entirely on its own inspection, investigations and judgment.

19. ENCROACHMENTS.

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Purchased Assets, or encroachments onto adjoining lands, or to remove same, or for any matters relating to any Applicable Laws, including without limitation, zoning regulations or by-laws in existence now or in the future affecting any of the Purchased Assets.

20. INDEMNIFICATION AND RELEASE BY PURCHASER.

- (a) The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, shareholders, agents and representatives (collectively, the "Indemnitees") from and against any and all Liabilities incurred by or asserted against them arising out of or in connection with the Purchased Assets after the Closing Date, including without limitation any Liabilities relating to any Environmental Laws and/or Liabilities imposed by Tarion in connection with the Assumed Agreements of Purchase and Sale, if any.
- (b) The Purchaser agrees to release and discharge the Vendor together with its directors, officers, employees, agents, and representatives from every Liability of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Purchased Assets. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Purchased Assets, or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials.
- (c) The foregoing provisions shall not merge on Closing and shall remain in effect thereafter without limitation.

21. NON-REGISTRATION.

The Purchaser hereby covenants and agrees that it shall not register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document, instrument or court order or judgement providing evidence of this Agreement against title to the Lands. Should the Purchaser be in default of its obligations under this Section 21, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Purchased Assets. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate

of pending litigation or any other document or instrument whatsoever from title to the Purchased Assets. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 21 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Lands any of the items set out in this Section 21.

22. VENDOR'S CLOSING CONDITIONS.

- (a) The Vendor shall not be obliged to complete the transaction contemplated hereunder unless, on or before the Closing Date, the following conditions shall have been satisfied, it being understood that the conditions are included for the exclusive benefit of the Vendor and may be waived in writing in whole or in part by the Vendor at any time:
- (i) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as if such representations and warranties were made at such time, and a certificate of the Purchaser, dated as of the Closing Date, to that effect shall have been delivered to the Vendor, such certificate to be in a form and substance satisfactory to the Vendor, acting reasonably;
 - (ii) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed by the Purchaser;
 - (iii) no court order restraining or prohibiting the Closing shall have been made;
 - (iv) the Purchased Assets shall not have been removed from the Vendor's control;
 - (v) the Approval and Vesting Order shall have been issued and no appeals thereof shall be pending; and
 - (vi) the delivery of the documents referenced in Section 25 to the Vendor.

23. PURCHASER'S CLOSING CONDITIONS.

The Purchaser shall not be obliged to complete the transaction contemplated herein unless, on or before the Closing Date, the following conditions shall have been satisfied, it being understood that the conditions are included for the exclusive benefit of the Purchaser and may be waived in writing in whole or in part by the Purchaser at any time:

- (a) all the representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as if such representations and warranties were made at such time, and a certificate of the Vendor, dated as of the Closing Date, to that effect shall have been delivered to the Purchaser, such certificate to be in a form and substance satisfactory to the Purchaser, acting reasonably;
- (b) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed by the Vendor;
- (c) no court order restraining or prohibiting the Closing shall have been made and no legal proceeding shall be pending which enjoins, restricts or prohibits the purchase and sale of the Purchased Assets contemplated hereby;
- (d) the Approval and Vesting Order shall have been issued and no appeals thereof shall be pending; and
- (e) the delivery of the documents referenced in Section 24 to the Purchaser.

24. VENDOR'S CLOSING DELIVERIES.

- (a) The Vendor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date expressly provided herein:
- (i) the Approval and Vesting Order;
 - (ii) the Receiver's Certificate;
 - (iii) a statement of adjustments prepared in accordance with Section 8 (the "**Statement of Adjustments**");
 - (iv) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Liabilities;

- (v) an assignment and assumption agreement with respect to the Debtor's right, title and interest in any Assumed Contracts;
- (vi) an assignment and assumption agreement with respect to the Debtor's right, title and interest in any Assumed Agreements of Purchase and Sale;
- (vii) any Assignment Order(s);
- (viii) a certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada); and
- (ix) a copy of the Project Documents.

25. PURCHASER'S CLOSING DELIVERIES.

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

- (a) the balance of the Purchase Price described in Subsection 5(c);
- (b) the Purchaser's certificate setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing;
- (c) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Liabilities;
- (d) an assignment and assumption agreement with respect to the Debtor's right, title and interest in any Assumed Contracts;
- (e) an assignment and assumption agreement with respect to the Debtor's right, title and interest in any Assumed Agreements of Purchase and Sale;
- (f) the Purchaser's certificate described in Subsection 28(b);
- (g) an undertaking with respect to refunds and/or reassessments of all realty taxes attributable to the period prior to the Closing Date;
- (h) the indemnity provided for under Subsection 28(c);
- (i) a certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada);
- (j) a direction re title to confirm the name in which title to the Purchased Assets will be taken, provided that such direction must be provided to the Vendor no less than two (2) Business Days before the hearing date for the motion to obtain the Approval and Vesting Order;
- (k) the Vendor's Solicitors will prepare the application for vesting order in Teraview in accordance with the Purchaser's direction re title; and
- (l) any other documentation relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors.

26. DOCUMENTATION PREPARATION AND REGISTRATION.

The Vendor shall prepare or cause to be prepared all documentation described in Sections 24 and 25 hereof and shall deliver draft documentation to the Purchaser not less than three (3) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and substance satisfactory to the Vendor, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the Transaction. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

27. LAND TRANSFER TAXES.

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)) payable in connection with the transfer of the Purchased Assets pursuant to this Agreement.

28. HARMONIZED SALES TAX.

- (a) The Purchaser acknowledges and agrees that the transaction contemplated hereunder shall be subject to the goods and services tax and harmonized sales tax ("HST") levied pursuant to the ETA and that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the ETA.

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- (b) If:
- (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the ETA; and/or
 - (ii) the Purchaser is a "prescribed recipient" under the ETA and/or is registered under the ETA,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the ETA or, if no such form is prescribed, then in form satisfactory to the Vendor and the Vendor's Solicitors, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the transaction contemplated hereunder. If Subsection (b)(i) hereof shall be applicable, then the Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration, as the case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor, at Closing, in addition to the balance otherwise due at Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.

- (c) The Purchaser shall indemnify and save harmless the Vendor, its directors, officers, employees, agents and representatives from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

29. Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver under this Agreement, then the Deposit, without deduction, shall be returned to the Purchaser forthwith (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Purchaser's sole right and remedy as a result of the Receiver's breach). If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser under this Agreement, then the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Receiver's sole right and remedy as a result of the Purchaser's breach).

30. Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (a) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Deposit, without deduction, shall be returned to the Purchaser forthwith; and

neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

31. PLANNING ACT (ONTARIO).

This Agreement shall be effective to create an interest in the Purchased Assets for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing or if a Court orders the completion of the Transaction notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario).

32. NOTICE.

Any notice given hereunder shall be in writing and delivered or communicated by e-mail to:

- (a) in the case of the Purchaser at:
 -
- (b) with a copy to the Purchaser's Solicitors;
- (c) and in the case of the Vendor at:

KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9

ADF

Attention: Noah Goldstein
Email: ngoldstein@ksadvisory.com

(d) with a copy to the Vendor's Solicitors.

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission unless such notice is delivered or transmitted outside of usual business hours, in which event the notice shall be deemed to have been delivered or transmitted on the next Business Day. A Party may change its address and/or e-mail address by providing notice in accordance with this Section 32.

33. WAIVER OF CONDITIONS.

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such Party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting Party without prejudice to the benefiting Party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the Transaction by a Party shall be deemed to be a waiver by such Party of compliance with any condition inserted for its benefit and not satisfied at Closing.

34. SEVERABILITY.

If any provision contained in this Agreement or the application thereof to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to such Person or circumstances other than those to whom it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

35. DIVISION/HEADINGS.

The division of this Agreement into sections, subsections, paragraphs and subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

36. ENTIRE AGREEMENT.

This Agreement and the Schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Purchased Assets. Each of the Parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the Parties agree that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive Closing.

37. CUMULATIVE REMEDIES.

No remedy conferred upon or reserved to one or both of the Parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

38. INTERPRETATION.

This Agreement shall be read with all changes of gender and number as required by the context.

39. STATUTE AND SECTION REFERENCES.

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or subparagraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

40. TIME OF ESSENCE.

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

41. CURRENCY AND PAYMENT OBLIGATIONS.

Except as otherwise provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian Dollars and any payment contemplated by this Agreement shall be made by certified cheque, bank draft or wire transfer.

42. TENDER.

Any tender of notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by wire transfer, a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

43. FURTHER ASSURANCES.

Except as otherwise expressed herein to the contrary, each Party shall, without receiving additional consideration therefor, co-operate with and take such additional actions as may be requested by the other Party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

44. CONFIDENTIALITY.

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any Person. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and the Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such Person also keeps such terms confidential as aforesaid.

45. NON-BUSINESS DAYS.

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

46. GOVERNING LAWS.

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario and the laws of Canada applicable therein.

47. ASSIGNMENT.

No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, the Purchaser shall have the right, until five (5) Business Days before the hearing date for the motion to obtain the Approval and Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Purchased Assets herein to any company or companies affiliated (as that term is defined in the Ontario *Business Corporations Act*) with the Purchaser, provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

48. VENDOR'S CAPACITY.

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-Appointed Receiver of the Debtor and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any Liabilities against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Debtor and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

49. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

50. COUNTERPARTS AND ELECTRONIC TRANSMISSION.

This Agreement may be executed in any number of original counterparts, with the same effect as if each of the Parties had signed the same document, and will become effective when one or more counterparts have been signed by both of the Parties and delivered to other. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be

deemed to be dated the first date set out above and accepted on the date of the last signature, and only one of which need be produced for any purpose.

51. **IRREVOCABLE.**

This Agreement shall be irrevocable by the Purchaser.

[remainder of this page intentionally left blank]

DATED as of the date first mentioned above.

LAKESHORE LUXE DESIGN & BUILD GROUP

Anthony De Francesco

Per: _____

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have authority to bind the Corporation.

The Vendor hereby accepts this Agreement and agrees with the Purchaser to complete the Transaction, subject to and in accordance with the provisions contained herein.

DATED at Toronto, Ontario this 4th day of April, 2024.

KSV RESTRUCTURING INC., in its capacity as Court-appointed receiver of La Pue International Inc., and not in its personal or corporate capacity and without personal or corporate liability

Per: _____ 

Name: Noah Goldstein

Title: Authorized Signing Officer

I have authority to bind the Corporation.

SCHEDULE "A"
ASSUMED AGREEMENTS OF PURCHASE AND SALE

To be inserted pursuant to the provisions of Subsection 10(a) hereof.

SCHEDULE "B"
THE LANDS

The lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in PIN 64349-0258 (LT).

SCHEDULE "C"
THE PERMITTED ENCUMBRANCES

1. any registered reservations, restrictions, rights of way, easements or covenants that run with the Lands;
2. any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Lands;
4. any minor easements for the supply of utility service to the Lands or adjacent properties;
5. encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown;
8. liens for taxes if such taxes are not due and payable;
9. Instrument No. SN613492, registered on December 12, 2019, being an application to consolidate;
10. Instrument No. SN629148, registered on May 14, 2020, being a notice of agreement between the Debtor and the Corporation of the City of Niagara Falls;
11. Instrument No. SN642462, registered on September 18, 2020, being a notice of site plan agreement between the Debtor and the Corporation of the City of Niagara Falls;
12. Plan 59R-16793, registered on October 1, 2020, being a reference plan;
13. Instrument No. SN666113, registered on March 22, 2021, being By-Law 2020-04 from the Corporation of the City of Niagara Falls;
14. Instrument No. SN666891, registered on March 26, 2021, being a notice from the Corporation of the City of Niagara Falls;
15. Plan 59R-17206, registered on March 11, 2022, being a reference plan;
16. Instrument No. SN716940, registered on March 11, 2022, being an application for absolute title;
17. Instrument No. SN721529, registered on April 12, 2022, being an application (general) from the Corporation of the City of Niagara Falls;
18. Instrument No. SN721530, registered on April 12, 2022, being an application (general) from the Corporation of the City of Niagara Falls;
19. Instrument No. SN721531, registered on April 12, 2022, being an application (general) from the Corporation of the City of Niagara Falls;
20. Instrument No. SN723231, registered on April 26, 2022, being a notice from the Corporation of the City of Niagara Falls;
21. Plan 59R-17292, registered on June 13, 2022, being a reference plan;
22. Instrument No. SN754703, registered on January 13, 2023, being a transfer easement from the Debtor to Anastasia Georgina Loukas and 2779006 Ontario Inc.;
23. Instrument No. SN754853, registered on January 16, 2023, being a land registrar's order from the Niagara South Land Registry Office; and
24. Instrument No. SN763208, registered on April 17, 2023, being a notice from Anastasia Georgina Loukas, 2779006 Ontario Inc. and the Debtor.

ADF

SCHEDULE "D"
ASSUMED CONTRACTS

To be inserted pursuant to the provisions of Subsection 10(b) hereof.

SCHEDULE "E"
PURCHASER'S DUE DILIGENCE INSPECTION CONDITION

1. The Purchaser's obligation to complete the Transaction shall be subject to the Purchaser, in its sole, subjective, unfettered and unreviewable discretion, being satisfied with the following:

(a) the results all environmental assessments performed on the Property;

(b) confirmation that all funds held in trust for the sale of the condominium units within the Project shall be transferrable to the Purchaser on Closing;

(c) all building approvals from the City of Niagara Falls have not been modified and that approvals are still in place for three (3) condominium towers; and

(d) the Purchaser's subjective assessment of the economic viability of the Purchaser's proposed use of the Property and review of the Due Diligence Deliveries (as hereinafter defined) (the "**Due Diligence Period**").

2. The Due Diligence Period shall commence on the date that is the later of the following:

(a) the Acceptance Date; and

(b) the date that the Vendor has delivered and/or made available to the Purchaser the Due Diligence Deliveries.

The Due Diligence Period shall end at 5:00 p.m. Toronto time on the first Business Day that is ten (10) calendar days following the commencement thereof (the "**Due Diligence Deadline**").

3. (a) The Vendor shall deliver and/or make available to the Purchaser either in a virtual data room or at a designated location, within three (3) Business Days of the Acceptance Date, the following (collectively, the "**Due Diligence Deliveries**") provided that the Due Diligence Deliveries have not been previously made available to the Purchaser in any format, whether electronic, paper copy or otherwise:

all of the following materials affecting or pertaining to the Property currently within the Vendor's possession or control: plans (including "as-built" plans), surveys, area certificates, drawings, consultants' reports (including, without limitation, environmental reports and engineering reports), title insurance policies, agreements with Governmental Authorities (pending or executed), governmental approvals and permits, leases, licenses, all other agreements to occupy or use space at the Property (including, without limitation, a written summary of any oral agreements), income and expense statements for the past three (3) years, gross revenue and costs for the current calendar year, list and copies of all contracts for the management, operation, service or maintenance of the land and/or buildings (including, without limitation, agreements for security, landscaping or cleaning, listing agreements, commission agreements and written summaries of any oral agreements), list and copies of warranties and guarantees for structures, list of chattels included in the Purchase Price if not set out in of the standard pre-set portion of this Agreement (the "Standard Form") realty tax bills and assessment notices for the current and previous three (3) years, outstanding work orders, violation and deficiency notices and open building permits. The Purchaser agrees that all such materials shall be returned forthwith to the Vendor if the Transaction is not completed. The Vendor agrees that it shall promptly deliver to the Purchaser, as soon as reasonably possible after becoming aware of same, any updates to the Due Diligence Deliverables which arise after the deadline for delivery in this paragraph but prior to the Due Diligence Deadline.

(b) The Due Diligence Deliveries are being provided to the Purchaser by the Vendor as a courtesy only and without the intention that the Purchaser will rely on same. The Purchaser acknowledges and agrees that the Vendor makes no representation or warranty as to the accuracy of any of the Due Diligence Deliveries, and the Purchaser shall have no remedy or recourse against the Vendor if any of the Due Diligence Deliveries are later determined to be materially or immaterially inaccurate.

4. In the event the Due Diligence Inspection Condition is not satisfied or waived on or before the Due Diligence Deadline, this Agreement shall be terminated, null and void and of no further force or effect whatsoever and neither Party to this Agreement shall have a claim against the other Party with respect to this Agreement other than the return of the Deposit to the Purchaser pursuant to the provisions of this Agreement. If by 5:00 p.m. Toronto time on the Due Diligence Deadline the Purchaser has not given notice to the Vendor or the Vendor's Solicitors that the Due Diligence Inspection Condition has not been satisfied or has been satisfied or has been waived, the Due Diligence Inspection Condition shall be deemed not to have been satisfied or waived.

Exhibit “B”
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits

From: Adrienne Ho <aho@airdberlis.com>
Sent: Thursday, January 9, 2025 5:15 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Cc: jwadden@tyrllp.com; fsouza@lawtoronto.com; Brian Chung; Miranda Spence; ngoldstein@ksvadvisory.com; mtallat@ksvadvisory.com; jmaclellan@blg.com; ddilks@weirfoulds.com; beney@paveylaw.com; Howard Manis; Daniel Litsos; maya@chaitons.com; Daisy Jin; Mark Willis-O'Connor; Kyle Plunkett
Subject: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC.. CV-23-00700695-00CL
Attachments: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC. CV-23-00700695-00CL Approval and Vesting Order. 7-Jan-2025.pdf

Good afternoon,

We are counsel to the court-appointed receiver in the above referenced matter. On January 7, 2025, we obtained, amongst other things, an approval and vesting order, a copy of which is attached. The order was granted by Justice Dietrich.

We have since been advised by the purchaser that an amendment to the order is required, as the sale agreement has been assigned to another party.

Please kindly ask Justice Dietrich if she would prefer that we attend before her for a 9:30 appointment, or to bring a motion in writing to amend the order. We will be filing materials to support our requested relief.

Thank you.

Best Regards,

Adrienne Ho
Associate

T 416.637.7980
F 416.863.1515
E aho@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



Aird & Berlis LLP operates as a multi-disciplinary practice.

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Humphreys, Sarah (MAG) <Sarah.Humphreys@ontario.ca>
Sent: January 7, 2025 11:47 AM
To: jwadden@tyrllp.com; fsouza@lawtoronto.com; Adrienne Ho <aho@airdberlis.com>; Brian Chung <bchung@airdberlis.com>; Miranda Spence <mspence@airdberlis.com>; ngoldstein@ksvadvisory.com; mtallat@ksvadvisory.com; jmaclellan@blg.com; ddilks@weirfoulds.com; beney@paveylaw.com; hmanis@manislaw.ca; dlitsos@manislaw.ca; maya@chaitons.com
Subject: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC.. CV-23-00700695-00CL - Endorsement, Approval

and Vesting Order, Ancillary Order - J DIETRICH, J.

Importance: High

Good morning,

On behalf of Madame Justice J Dietrich, please find attached the Endorsement dated January 7, 2025, the Ancillary Order and Approval and Vesting Order of January 7, 2025, with respect to the above-noted matter.

Kindly confirm receipt of this email.

Thank you.

Kind regards,

Sarah Humphreys

Divisional Court Judicial Assistant | Office of the Chief Justice

Superior Court of Justice, Ministry of the Attorney General | Ontario Public Service

416-327-5090 | sarah.humphreys@ontario.ca

Ontario |

Taking pride in strengthening Ontario, its places and its people

Fiers de renforcer l'Ontario, ses lieux et sa population

This communication is intended only for the party/parties to whom it is addressed and may contain information which is privileged or confidential. Any other delivery is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message from your In-folder and Delete-folder

Exhibit “C”
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits



From: **Noah Goldstein** >
To: [Kailey DenBraber](#) > [Jeff Norman](#) >
Cc: [Frank Claessens](#) > [Jason Weck, P.Eng](#) >
[Rob Mara](#) > [Nick Warren](#) > [Murtaza Tallat](#) >
[RWH Monitoring](#) > [Jack Scivoletto](#) >
cscivoletto@auragoc.com > [Cecil Hayes](#) >
Today at 10:59 AM 

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Thank you for your email. Can we arrange one more call. I'm copying the prospective purchaser which intends to undertake much of this work

Noah Goldstein
(m) [416.844.4842](tel:416.844.4842)

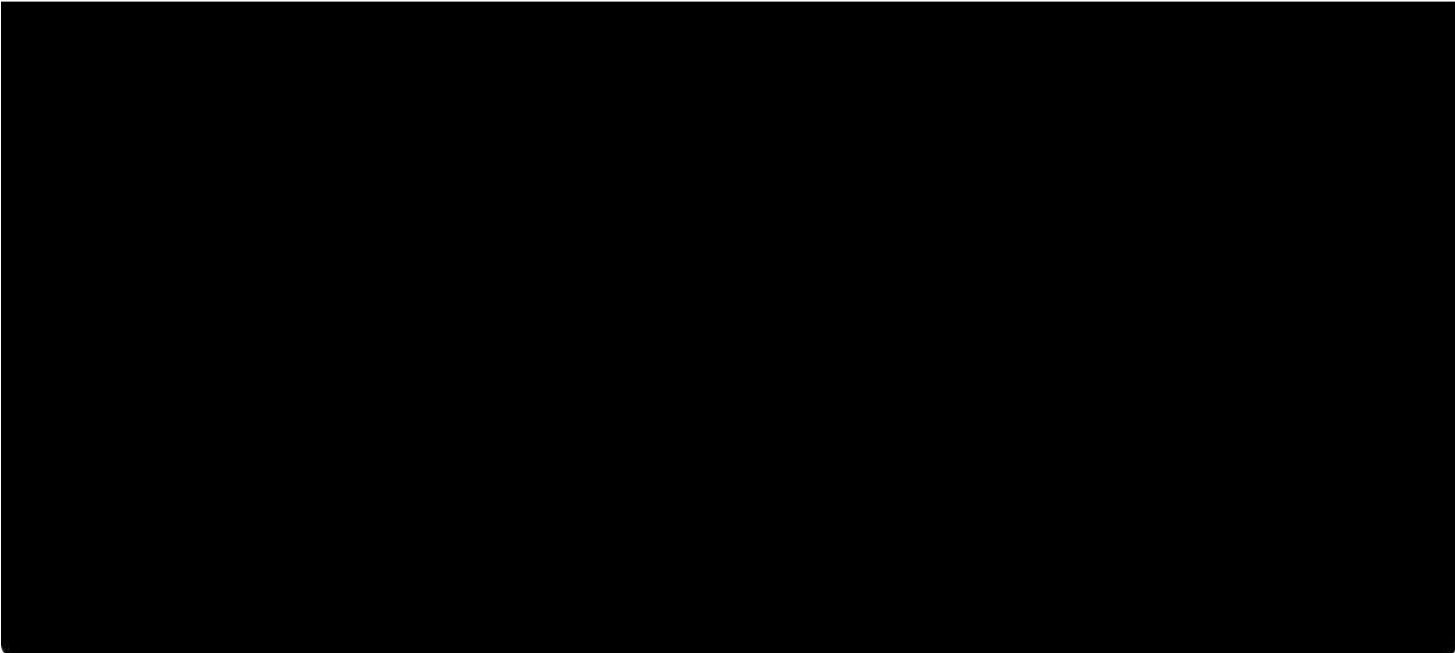


Exhibit “D”
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits

5:08

41



Jason >

Thu, Dec 19 at 12:03 PM

Let me know if you can talk

1hr

Thu, Dec 19 at 2:23 PM

I called you back

cscivoletto@auragoc.com

jscivoletto@ggroupdevelopment.com

2:29 3:15

3 Messages

< 9 M20-059 Stanley Distri... ^ v

From: **Noah Goldstein** >
 To: [Kailey DenBraber](#) > [Jeff Norman](#) >
 Cc: [Frank Claessens](#) > [Jason Weck, P.Eng](#) >
[Rob Mara](#) > [Nick Warren](#) > [Murtaza Tallat](#) >
[RWH Monitoring](#) > [Jack Scivoletto](#) >
cscivoletto@auragoc.com > [Cecil Hayes](#) >
 Today at 10:59 AM

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Thank you for your email. Can we arrange one more call. I'm copying the prospective purchaser which intends to undertake much of this work

Noah Goldstein
 (m) [416.844.4842](tel:416.844.4842)



1 Reply

Thu, Dec 19 at 6:34 PM



iMessage



Exhibit “E”
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits



Profile Report

1001082540 ONTARIO INC. as of January 21, 2025

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1001082540 ONTARIO INC.
Ontario Corporation Number (OCN)	1001082540
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	December 05, 2024
Registered or Head Office Address	Attention/Care of GIACOMO SCIVOLETTO, 50 Casmir Court, Unit 1, Concord, Ontario, L4K 4J5, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Minimum Number of Directors 1
Maximum Number of Directors 10

Active Director(s)

Name GIACOMO SCIVOLETTO
Address for Service 50 Casmir Court, Unit 1, Concord, Ontario, L4K 4J5, Canada
Resident Canadian Yes
Date Began December 05, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Officer(s)

There are no active Officers currently on file for this corporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Corporate Name History

Name

1001082540 ONTARIO INC.

Effective Date

December 05, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

Filing Name	Effective Date
CIA - Initial Return PAF: GIACOMO SCIVOLETTO	January 10, 2025
BCA - Articles of Incorporation	December 05, 2024

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Exhibit “F”
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits



Profile Report

1000835091 ONTARIO INC. as of January 21, 2025

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1000835091 ONTARIO INC.
Ontario Corporation Number (OCN)	1000835091
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	May 10, 2024
Registered or Head Office Address	7500 Highway 27, Suite 4, Woodbridge, Ontario, L4H0J2, Canada

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Director/Registrar

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Minimum Number of Directors 1
Maximum Number of Directors 10

Active Director(s)

Name ANTHONY DE FRANCESCO
Address for Service 7500 Highway 27, Suite 4, Woodbridge, Ontario, L4H0J2,
Canada
Resident Canadian Yes
Date Began May 10, 2024

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Director/Registrar

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Active Officer(s)

There are no active Officers currently on file for this corporation.

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Director/Registrar

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Corporate Name History

Name

1000835091 ONTARIO INC.

Effective Date

May 10, 2024

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V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

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Document List

Filing Name

BCA - Articles of Incorporation

Effective Date

May 10, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Exhibit "G"
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits

From: Francois Landry <f.landry@krblaw.ca>
Sent: Monday, January 27, 2025 9:35 AM
To: Maya Poliak; Howard Manis
Cc: Pawel Fugiel; Daniel Litsos; Harvey G. Chaiton; Albert Guido; Cesare Della Santina; Tammy Hendrick
Subject: Re: Redemption of Marshall Zehr Security

Good morning,

KRB Lawyers hereby confirms that we are holding in trust the sum of \$19,255,160.00 on account of CDS Financial Group with regards to the aforementioned matter.

We have been informed that approximately \$2,500,000,00 should be further received shortly by our firm, also to be held in trust on account of CDS Financial.

We trust this to be satisfactory.

Regards,

Frank Landry
KRB Lawyers
310 Miwate Private, Suite 100
Ottawa, ON, K1R 0E2
(613) 704-3350
F.landry@krblaw.ca

Exhibit “H”
to the Affidavit of Pawel Fugiel
Sworn this 27th day of January, 2025



Commissioner for Taking Affidavits

STATEMENT OF ADVANCE

(Advance Date – December 31, 2024)

Re: 9523-5685 Quebec Inc. (the “**Lender**”) loan to 1000136721 Ontario Inc. (the “**Borrower**”), as guaranteed by Pawel Fugiel (the “**Guarantor**”), with respect to the lands municipally known as 5500 Victoria Avenue, Niagara Falls, Ontario and being legally described within PIN 64343-0042 (LT) (the “**Property**”) zoned to allow a 45-storey tower with a combined GFA of 412,144 sq. ft. with 502 residential units, 403 parking spaces and a commercial GFA of 10,050 sq. ft. (the “**Project**”), pursuant to a commitment letter dated December 7, 2024, as it may be amended from time to time (the “**Commitment Letter**”) Our File No. 47081

RECEIVED from Lender – Legal Retainer previously paid by Borrower	\$ 5,000.00
RECEIVED from Lender:	<u>\$3,000,000.00</u>

TOTAL RECEIPTS:	\$3,005,000.00
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Disbursements:

Lender

- | | |
|--|------------------|
| - Mortgage Fee (6%) = \$180,000.00 less \$30,000.00
Previously paid by Borrower | (\$ 150,000.00) |
| - Proof of Funds Work Fee and Ferry Street | (\$ 250,000.00) |
| - Administration, Expenses, Bank fees, Inspection | (\$ 14,113.48) |
| - Interest Reserve (initial 3 months prepaid interest) | (\$ 105,000.00) |
| - Soft Cost Reserves (Ferry Street & Victoria Street) | (\$1,455,654.28) |

Chicago Title Insurance Company	(\$ 2,408.40)
- Title Insurance Premium	

Schneider Ruggiero Spencer Milburn LLP, trust	(\$ 23,975.00)
- Legal fees of \$19,500.00 plus estimated Disbursements and HST thereon	

Ritchie Smyth Lawyers Professional Corporation, in trust	
- Net loan advance to Borrower’s solicitor, as directed Including: funds to cover Full payment of realty tax arrears; \$500,000.00 due to first mortgagee’s solicitor (Virgilio Law) for payment as per Forebearance Agreement; Tarion insurance for purchaser deposits on Ferry Street for approx \$250,000	<u>(\$1,003,848.84)</u>

BALANCE:	\$NIL
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MARSHALLZEHR GROUP INC.
Applicant

- and -

LA PUE INTERNATIONAL INC.
Respondents

CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings Commenced at TORONTO
(COMMERCIAL LIST)

AFFIDAVIT OF PAWEL FUGIEL

MANIS LAW

2300 Yonge Street, Suite 1600
Toronto, Ontario, M4P 1E4

Howard Manis (LSO # 34336V)
Email: hmanis@manislaw.ca
Phone: (416)364-5289

Daniel Litsos (LSO #79628V)
Email: dlitsos@manislaw.ca

Lawyers for the Respondent,
La Pue International Inc.

MARSHALLZEHR GROUP INC.
Applicant

- and -

LA PUE INTERNATIONAL INC.
Respondents

CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO
(COMMERCIAL LIST)

**RESPONDENT'S CROSS MOTION
RECORD**

MANIS LAW

2300 Yonge Street, Suite 1600
Toronto, Ontario, M4P 1E4

Howard Manis (LSO # 34336V)

Email: hmanis@manislaw.ca

Phone: (416)364-5289

Daniel Litsos (LSO #79628V)

Email: dlitsos@manislaw.ca

Lawyers for the Respondent,
La Pue International Inc.