

COURT OF APPEAL OF ONTARIO

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant
(Respondent in Appeal)

- and -

LA PUE INTERNATIONAL INC.

Respondent
(Appellant)

MOTION RECORD

January 20, 2025

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capacity as Receiver of La Pue International Inc.*

TO: SERVICE LIST

COURT OF APPEAL OF ONTARIO

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COURT OF APPEAL OF ONTARIO

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant
(Respondent in Appeal)

- and -

LA PUE INTERNATIONAL INC.

Respondent
(Appellant)

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

NOTICE OF MOTION

KSV RESTRUCTURING INC. (“KSV”), in its capacity as court-appointed receiver (the **“Receiver”**) of all of the assets, undertakings and properties of La Pue International Inc. (**“Respondent”**), including the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the **“Real Property”**) will make an urgent motion to a single Judge of the Court of Appeal of Ontario on January 24, 2025, or as soon after that time as the Motion can be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING:

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);

- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- BY VIDEO CONFERENCE.**

THE MOTION IS FOR:

1. an order:
 - (a) abridging the time for the service and filing of this Notice of Motion and the Motion Record such that the Motion is properly returnable on January 24, 2025 and dispensing with further service thereof;
 - (b) a Declaration that the *Bankruptcy and Insolvency Act* RSC 1985, c. B-3, as amended, (the “**BIA**”) governs the appeal by the Appellants from the Approval and Vesting Order of Justice Jane Dietrich dated January 7, 2025 (the “**AVO**”);
 - (c) a Declaration that there is no automatic right of appeal from the AVO pursuant to subsections 193(a)-(d) of the *BIA* and that leave to appeal is required pursuant to subsection 193(e) of the *BIA*;
 - (d) an Order declining to grant leave to appeal from the AVO;
 - (e) an Order sealing the confidential appendices to the fifth report of the Receiver dated January 20, 2025 (the “**Fifth Report**”);
 - (f) costs of this motion on a scale that is just; and
 - (g) such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. La Pue International Inc.'s (the "**Company**") principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the "**Real Property**"). The Receiver was appointed pursuant to the terms of the Receivership Order on an application by MarshallZehr Group Inc. ("**MarshallZehr**"), the Company's senior secured creditor.

2. The Real Property was intended to be developed and sold as three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Real Property (the "**Project**"). The Project includes over 350 pre-sale agreements with homebuyers, who have been waiting for years to take possession of their homes. These individuals have placed deposits totaling approximately \$31 million, which are currently held in trust.

3. The principal purpose of the receivership proceeding was to market the Real Property for sale in a Court-supervised sale process. Following completion of this sale process, the Receiver entered into a transaction concerning the Real Property (the "**Original Transaction**") with Lakeshore Luxe Design & Build Group ("**Lakeshore**"). Lakeshore assigned its interest in the sale agreement to 1000835091 Ontario Inc. (the "**Purchaser**"). The Receiver obtained a sale approval order on June 21, 2024 in respect of the Original Transaction.

4. The Original Transaction did not close. The sale transaction was reinstated a number of times, but as a result of various breaches by the purchaser, the Receiver ultimately terminated the transaction with the purchaser on October 24, 2024. The Receiver subsequently re-listed the Real Property for sale.

5. In November 2024, the Purchaser approached the Receiver and advised that it had access

to additional funds to pay a meaningful deposit to reinstate the offer. The Receiver entered into a reinstatement agreement with the Purchaser, which included additional terms (the “**Amended Transaction**”). The Receiver obtained the AVO, approving the Amended Transaction, over the Company’s opposition, on January 7, 2025.

6. On January 16, 2025, the Company served a notice of appeal (the “**Notice of Appeal**”) in respect of the AVO.

Urgency for Relief

7. The Receiver seeks an urgent motion for directions from the Court of Appeal for Ontario. The Amended Transaction, which was approved by way of the AVO, is scheduled to close on January 27, 2025. The Receiver cannot close the Amended Transaction in the face the uncertainty created by the Company serving the Notice of Appeal.

8. Any delay in closing the Amended Transaction will prejudice the Company’s creditors and other stakeholders, as outlined below:

- a) **Interest Accrual:** As at December 11, 2024, the Company owed MarshallZehr approximately \$20.9 million, of which approximately \$20.4 million was in respect of the MarshallZehr Indebtedness and approximately \$523,000 was in respect of the borrowings under the Receiver’s Borrowings Charge. Interest continues to incur on the MarshallZehr Indebtedness at a rate of \$14,181.37 per day. Prolonged delays in the closing process will increase the debt burden, eroding the eventual recovery for the Company’s creditors
- b) **Impact on Homebuyers:** Prolonged delays risk further frustrating these homebuyers, eroding confidence in the Project, and increasing the likelihood of claims or disputes.
- c) **Deterioration of the Real Property:** the Real Property, which is the primary asset of the

receivership estate, remains in an incomplete state. Any further delays may result in physical deterioration of the site, including potential safety hazards and increased maintenance costs, all of which could reduce the value of the Real Property. In that respect, to date, the Receiver has incurred costs in excess of \$500,000 in connection with maintenance of the Real Property.

- d) Rising Costs and Professional Fees:** The ongoing receivership incurs significant professional costs, including legal and administrative fees, which are paid from the estate. Delaying the closing of the Amended Transaction will further reduce the net recovery for stakeholders

The Company's Notice of Appeal

9. The appeal regime under the *BIA* governs the *AVO*.
10. It is well-established at law that an appellant does not have an automatic right to appeal an approval and vesting order granted in a receivership proceeding pursuant to subsections 193(a) through (d) of the *BIA*. The Company does not have an automatic right of appeal and has not sought leave to appeal pursuant to subsection 193(e) of the *BIA*.
11. Even if the Company were to seek leave to appeal pursuant to subsection 193(e) of the *BIA*, the Company could not satisfy the test for leave, because the proposed appeal: (i) does not raise an issue of general importance to the practice in bankruptcy and insolvency matters or to the administration of justice as a whole; (ii) is not *prima facie* meritorious; and (iii) would unduly hinder the progress of the underlying receivership proceeding.
12. The Company's purported appeal has no merit, and is a transparent attempt to delay the

closing of the Amended Transaction, to the detriment of stakeholders.

13. Sections 193 and 195 of the *BIA*, sections 106 of the *CJA*, Rules 1.04, 2.01, 3.02, 3.03, 16.08, 41.05, 63.01 and 63.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Fifth Report of the Receiver dated January 20, 2025 and the appendices thereto;

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

January 20, 2025

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capacity as Receiver of La Pue International
Inc.*

MARSHALLZEHR GROUP INC

Applicant (Respondent in Appeal)

- and LA PUE INTERNATIONAL INC.

Respondent (Appellant)

Court of Appeal File No.

Court File No. CV-23-00700695-00CL

COURT OF APPEAL OF ONTARIO

Proceedings commenced at TORONTO

NOTICE OF MOTION

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as Receiver of La Pue International Inc.*

TAB 2



**Fifth Report of
KSV Restructuring Inc.
as Receiver of
La Pue International Inc.**

January 20, 2025

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COURT OF APPEAL FILE NO.:
COURT FILE NO.: CV-23-00700695-00CL

COURT OF APPEAL OF ONTARIO

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT
(RESPONDENT)

- AND -

LA PUE INTERNATIONAL INC.

RESPONDENT
(APPELLANT)

FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

JANUARY 20, 2025

1.0 Introduction

1. This fifth report (“**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and property of La Pue International Inc. (the “**Company**”) acquired for or used in relation to a business carried on by the Company, including the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”).
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 19, 2023, KSV was appointed Receiver.
3. The Company’s principal asset is the Real Property, and the principal purpose of the receivership proceeding was to market the Real Property for sale in a Court-supervised Sale Process (as defined below).
4. Following completion of the Sale Process, the Receiver entered into a transaction concerning the Real Property and obtained an Approval and Vesting Order from the Court on January 7, 2025 (the “**AVO**”). The sale transaction is scheduled to close on January 27, 2025.

5. This Report is being filed in support of an urgent motion for directions from the Court of Appeal for Ontario. The urgency arises from the Company's filing of a notice of appeal (the "**Notice of Appeal**") of the AVO, which would prevent the Receiver from completing the Amended Transaction (as defined below).
6. The receivership has been outstanding for well over a year. The Amended Transaction offers a path to conclude the receivership and minimize further professional fees and costs, including significant maintenance costs. Interest continues to accrue on the debt of the first-ranking mortgagee, MarshallZehr Group Inc. ("**MarshallZehr**"), at a rate of \$14,181.37 per day.
7. The Receiver moves for:
 - a. an order declaring that the appeal is governed by the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) ("**BIA**");
 - b. an order declaring that there is no automatic right to appeal the AVO under section 193 of the BIA and that leave is required;
 - c. an order that leave should not be granted;
 - d. costs of this motion on a scale that is just; and
 - e. a sealing order in respect of the confidential appendices.

1.1 Purposes of this Report

1. The purposes of this Report are to provide background to the proceedings, in support of the Receiver's motion for directions.
2. Capitalized terms used but are not otherwise defined in this Fifth Report shall have the meanings given to them in the Fourth Report of the Receiver dated December 11, 2024 (the "**Fourth Report**"), a copy of which is attached hereto without appendices as **Appendix "A"**.

1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information provided by MarshallZehr, the principal secured creditor of the Company. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence.

2.0 Background

1. The Company is a single purpose entity that owns the Real Property. Mr. Pawel Fugiel is the sole officer and director of the Company.
2. The Real Property was intended to be developed and sold as three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Real Property (the “**Project**”). Prior to the receivership proceedings, the Company completed significant shoring and excavation work on the Project, although no other phases of construction have commenced.
3. The Receiver was appointed on application by MarshallZehr, the Company’s senior secured lender. Pursuant to the terms of a commitment letter dated November 15, 2021, as amended, MarshallZehr agreed to provide a loan in the maximum principal amount of \$12,375,000 to the Company for the purpose of refinancing an existing loan. The Receiver understands, based on the information provided to it by MarshallZehr, that the entirety of the funds advanced was used to fund the refinancing, an interest reserve and service fees related to the refinancing of an acquisition term facility.
4. As at December 18, 2024, MarshallZehr was owed approximately \$20.4 million (the “**MarshallZehr Indebtedness**”).
5. As security for the MarshallZehr Indebtedness, the Company granted MarshallZehr, among other things, (i) a first ranking charge in the principal amount of \$13.8 million on the Property, which was registered on December 1, 2021, and (ii) a general security agreement. MarshallZehr registered a financing statement against the Company under the *Personal Property Security Act* (Ontario) (“**PPSA**”).
6. Sovereign General Insurance Company (“**SGIC**”) holds a second ranking charge in the principal amount of \$2 million as security for deposit insurance. SGIC also registered a financing statement against the Company under the PPSA. SGIC and MarshallZehr are also parties to a priority agreement.
7. In addition to a PPSA registration in favour of SGIC and MarshallZehr, eight construction liens totaling approximately \$13.6 million are registered against the Real Property.
8. Prior to the receivership proceedings, the Company entered into the Sale Agreements (as defined below) and collected approximately \$31 million of deposits from home buyers. The deposits are being held in trust with the surety, being SGIC.

3.0 Court-approved Sale Process

1. On December 20, 2023, the Court issued an order (the “**Sale Process Order**”) approving a sale process for the Real Property and certain related assets (the “**Sale Process**”).
2. A summary of the Sale Process is provided in the Receiver’s Third Report to Court dated June 17, 2024 (the “**Third Report**”), a copy of which, without appendices, is attached as **Appendix “B”**. The Sale Process Order is attached as **Appendix “C”**.

3. As described in the Third Report, the Receiver retained Colliers Macaulay Nicolls Inc. (“**Colliers**”) pursuant to the Sale Process Order. The marketing phase carried out by Colliers included:
 - a. On January 17, 2024, Colliers sent an investment summary detailing the acquisition opportunity to over 4700 parties in its database, including real estate developers in the Niagara region;
 - b. Interested parties had to sign a confidentiality agreement (“**NDA**”) to (i) access the virtual data room (“**VDR**”) which contained various reports and site plans and a budget to build-out the Project; and (ii) obtain a copy of the Confidential Information Memorandum (“**CIM**”), which included a summary of the Real Property and details concerning the Sale Process
 - c. The listing was posted on the Real Estate Board Multiple Listing Services (“**MLS**”); and
 - d. the Receiver, in conjunction with Colliers, set out a “bid not before date” of March 22, 2024 at 5:00 pm (Toronto time).
4. A summary of the results of the Sale Process is as follows:
 - a. 22 parties executed an NDA and were provided a copy of the CIM and access to the VDR; and
 - b. 2 parties submitted offers.

4.0 The Successful Offer

1. Following extensive negotiations, on April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”) entered into an Asset Purchase Agreement (the “**Original APA**”) which contemplated a transaction (the “**Original Transaction**”) for, among other things, the sale of the Real Property and the assumption of over 350 pre-sale agreements entered into with homebuyers (collectively, the “**Sale Agreements**”) and together with the Real Property, the “**Purchased Assets**”).
2. On June 11, 2024, Lakeshore assigned all its right, title and interest in the Original APA to 1000835091 Ontario Inc. (the “**Purchaser**”) pursuant to an Assignment of Agreement of Purchase and Sale dated June 11, 2024 (the “**Assignment Agreement**”).
3. The Purchaser paid the First Deposit of \$500,000. Despite the Second Deposit (as defined in the Original APA) not being paid, the Receiver proceeded to obtain an approval and vesting order and close the transaction. The Receiver informed the Court that this approach was intended to compel the Purchaser to either complete the transaction or forfeit the First Deposit. The Receiver’s recommendations with respect to the Original APA and the Original Transaction were provided in the Third Report.
4. On June 21, 2024, the Court issued a Sale Approval Order, approving the Original Transaction.

5. The Original Transaction was scheduled to close on July 2, 2024. On the scheduled closing date, the Receiver tendered closing documents, but the Purchaser failed to pay the balance of the closing funds. On July 4, 2024, the Receiver terminated the Original Transaction and the First Deposit was forfeited to the Receiver.
6. As described in the Fourth Report, the sale transaction was reinstated a number of times, but as a result of various breaches by the Purchaser, the Receiver ultimately terminated the transaction with the Purchaser on October 24, 2024. The Receiver subsequently re-listed the Real Property for sale.
7. In November 2024, the Purchaser approached the Receiver and advised the Receiver that it had access to additional funds to pay a meaningful deposit to reinstate the offer, which amount was cumulatively the same value as the First Deposit and the Second Deposit (the “**Third Deposit**”). The Purchaser also advised the Receiver that it had secured financing from MarshallZehr sufficient to satisfy the purchase price and close the sale transaction.
8. On November 18, 2024, the Purchaser’s counsel confirmed it had the Third Deposit in its trust account. On the same day, the Receiver executed a Third Reinstatement and Amending Agreement (the “**Third Reinstatement Agreement**”), which included the following terms (the “**Amended Transaction**”):
 - a. the Purchaser would pay the Third Deposit to counsel to the Receiver in trust within one business day. If the Third Reinstatement Agreement was terminated due to the Purchaser’s default, the Third Deposit, along with any accrued interest, would be forfeited to the Receiver.
 - b. if the financing transaction contemplated by a letter of intent between MarshallZehr and the Purchaser failed due to reasons unrelated to the Purchaser’s default, the Third Deposit would be returned to the Purchaser without deductions or interest, upon the Purchaser’s request; and
 - c. the terms of the Original APA together with the First Reinstatement Agreement and Second Reinstatement Agreement were reinstated (together with the Third Reinstatement Agreement, the “**Amended APA**”).
9. MarshallZehr has confirmed that other than standard financing conditions requiring Court approval of the Amended Transaction and registration of security, all of its other financing conditions for its new loan to the Purchaser have been satisfied or otherwise waived.
10. Approximately 18% of the purchase price under the Amended Transaction has been paid in cash as a deposit. The balance of the purchase price will be satisfied by the financing provided by MarshallZehr to the Purchaser.

11. The Amended Transaction is substantially similar to the terms approved by the Court in June 2024, subject to the following amendments:
 - a. approximately 18% of the purchase price has now been received by the Receiver by way of deposits;
 - b. the purchase price was increased by \$50,000; and
 - c. the Purchaser will only assume the Sale Agreements once it gets registered with the Home Construction Regulatory Authority (“**HCRA**”) and receives the requisite approvals from HCRA, which it has over 90 days after closing to obtain. If the Purchaser does not obtain HCRA licensing and approvals, the homebuyer deposits under the Sale Agreements will be fully refunded to the homebuyers. The majority owner of the Purchaser entity has several projects registered with the HCRA and does not anticipate any issues obtaining registration for this project.
12. The Fourth Report provides the Receiver’s recommendation with respect to the Amended Transaction.
13. As noted above, on January 7, 2025, the Receiver obtained the AVO approving the Amended Transaction and the Amended APA. A copy of the AVO is attached as **Appendix “D”**.
14. Since obtaining the AVO, the Receiver has received a notice from the Purchaser that it has assigned the Amended APA to a related party, 1001082540 Ontario Inc. Under the terms of the Amended APA, the Receiver is required to obtain an amended AVO to amend the name of the Purchaser, at the sole cost of the Purchaser. Redacted copies of the Original APA, the reinstatement agreements, and the notice of assignment are attached as **Appendices “E”, “F”, “G”, “H” and “I”** respectively and unredacted copies are attached as **Confidential Appendices “1”, “2”, “3” and “4”**.

5.0 MarshallZehr Distribution and Construction Liens

1. In conjunction with obtaining the AVO, the Receiver also obtained an ancillary order providing that the balance of the refinancing proceeds from the Amended Transaction after reserving for the closing costs (i.e. broker commissions, property taxes, etc.) and the costs of these proceedings (i.e. the fees and costs of the Receiver and its counsel) are to be used to: (i) repay the amounts owing under the Receiver’s Borrowings Charge (which were \$523,266.95 as at December 18, 2024); (ii) establish a reserve to fund any holdback deficiencies in respect of any valid construction liens on the Real Property, and (iii) permanently repay a portion of the MarshallZehr Indebtedness.
2. As of December 11, 2024, MarshallZehr was owed approximately \$20.9 million, of which approximately \$20.4 million was in respect of the MarshallZehr Indebtedness and approximately \$523,000 was in respect of the borrowings under the Receiver’s Borrowings Charge.

3. There are eight construction liens totaling approximately \$13.6 million on the Real Property (collectively the “**Lien Claimants**”). MarshallZehr has brought a motion returnable March 7, 2025, to determine if any of the Lien Claimants could have a claim that ranks ahead of MarshallZehr in respect of any deficiency in holdback.

6.0 The Debtor’s Attempts to Purchase the Real Property

1. Since the outset of these proceedings, Mr. Fugiel, the principal of the Company, has indicated on several occasions his intention to redeem the MarshallZehr mortgage loan or purchase the Real Property.
2. On September 20, 2024, Mr. Fugiel presented an offer to Colliers International, the listing broker engaged by the Receiver, to purchase the Real Property. Attached as **Appendix “J”** is a copy of Mr. Fugiel’s redacted offer, and an unredacted copy is attached as **Confidential Appendix “5”**.
3. By email correspondence dated September 30, 2024 and October 28, 2024, the Receiver and its legal counsel advised Mr. Fugiel and his legal counsel that his offer will not be considered unless he provides evidence that he has the financial ability to close the transaction. No such evidence was provided. Copies of the email correspondence are collectively attached as **Appendix “K”**.
4. On November 2, 2024, Mr. Fugiel presented another offer to the Receiver with an increased purchase price (the “**Second Offer**”). A redacted copy of the Second Offer is attached hereto as **Appendix “L”** and an unredacted copy is attached as **Confidential Appendix “6”**.
5. On November 3, 2024, counsel for Mr. Fugiel provided the Receiver a copy of a conditional term sheet from Morris Financial Group (“**Morris**”), a lender based in New York and Tel Aviv (the “**Morris Term Sheet**”). The Morris Term Sheet was, among other things, subject to due diligence and credit committee approval. The Morris Term Sheet also had a confidentiality clause. As a consequence of the confidentiality clause, the Receiver is not attaching this commitment letter to this Report. Counsel for Mr. Fugiel advised that this lender needed 14 days to complete its due diligence. A copy of the email from Mr. Fugiel’s counsel without the attachment is attached as **Appendix “M”**.
6. On November 3, 2024, the Receiver sent an email to Mr. Fugiel’s counsel, noting prior unfavorable experiences with Morris. The Receiver requested that counsel inform them if the financing became firm and advised that the Receiver would continue marketing the property in the meantime. A copy of this correspondence is attached as **Appendix “N”**.
7. On November 12, 2024, counsel for Mr. Fugiel wrote to the Receiver and its counsel to advise that another commitment for financing was coming shortly. Counsel for the Receiver replied to Mr. Fugiel’s counsel and again reminded him that his client’s offer will not be considered until evidence of financing is provided. Counsel for the Receiver also advised Mr. Fugiel’s counsel that the Receiver has received another offer that it is considering. A copy of the email correspondence between counsel is attached as **Appendix “O”**.

8. On November 15, 2024, counsel for Mr. Fugiel provided a commitment letter from Fiducia Ventures Inc. A copy of the commitment letter is attached as **Appendix “P”**. The Fiducia commitment letter included over 20 conditions, such as requirements for an appraisal, environmental reports, and development budgets. The commitment letter provided that the maximum proposed loan amount could not exceed 60% of the appraised value, which would require the Real Property to be valued at over \$36 million. The Receiver understands that the Real Property is worth substantially less than this amount.
9. The Receiver again advised counsel to Mr. Fugiel that it could not accept an offer conditional on financing and that the Receiver would be pursuing the other transaction. A copy of the correspondence between the Receiver and Mr. Fugiel’s counsel is attached as **Appendix “Q”**.
10. In response to the Receiver’s motion for an AVO for the Amended Transaction, the Company filed materials seeking, among other things, additional time to redeem the MarshallZehr mortgage.
11. On January 7, 2025, Justice Dietrich granted the AVO, approving the Amended Transaction. Copies of the AVO, the ancillary order addressing the interim distribution and the accompanying endorsement of Her Honour (the **“AVO Endorsement”**) are attached as **Appendix “D”**.
12. As noted in the AVO Endorsement, Justice Dietrich held that providing additional time for the Company to redeem would not be appropriate. She considered:
 - a. that the receivership proceeding had been ongoing for over 14 months;
 - b. the Company did not have a cheque in hand to pay out its creditors, let alone the senior lender;
 - c. Mr. Fugiel is attempting to participate as a bidder and is raising the possibility of redemption as an alternative option to delay a sale approval; and
 - d. Unlike other cases where redemption was permitted, there are no unusual and exceptional circumstances that exist to support the Company’s right to redeem at this time.

7.0 The Notice of Appeal

1. The Company served the Notice of Appeal on January 16, 2025. A copy of the Notice of Appeal is attached as **Appendix “R”**.

7.1 Declaration that Leave is Required to Appeal AVO and Leave Should Not be Granted

1. The Company’s appeal is incorrectly based on the assumption that it has an automatic right of appeal pursuant to sections 193(b) and 193(c) of the BIA.
2. The Receiver seeks a declaration that there is no automatic right to appeal the AVO under section 193 of the BIA and that leave is required.

3. The Receiver further seeks an order that leave be denied.

7.2 Risks Associated with Proposed Appeal Proceeding

1. The Receiver's objective is to preserve and complete the Amended Transaction by its scheduled closing date of January 27, 2025. The Receiver submits that any delay in closing the Amended Transaction will cause significant prejudice to the Company's creditors, homebuyers, and other stakeholders, as outlined below:
 - a. **Interest accrual on secured debt:** the outstanding indebtedness to MarshallZehr continues to accrue interest in the aggregate per diem amount of \$14,181.37. Prolonged delays in the closing process will increase the debt burden, eroding the eventual recovery for the Company's creditors.
 - b. **Impact on Homebuyers:** the Project includes over 350 pre-sale agreements with homebuyers who have been waiting for years to take possession of their homes. These individuals have placed deposits totaling approximately \$31 million, which are currently held in trust. Prolonged delays risk further frustrating these homebuyers, eroding confidence in the Project, and increasing the likelihood of claims or disputes.
 - c. **Deterioration of the Real Property:** the Real Property, which is the primary asset of the receivership estate, remains in an incomplete state. Any further delays may result in physical deterioration of the site, including potential safety hazards, increased maintenance costs, or environmental liabilities, all of which could reduce the value of the Real Property. In that respect, to date, the Receiver has incurred costs in excess of \$500,000 in connection with maintenance of the Real Property.
 - d. **Rising Costs and Professional Fees:** The ongoing receivership incurs significant professional costs, including legal and administrative fees, which are paid from the estate. Delaying the closing of the Amended Transaction will further reduce the net recovery for stakeholders.
 - e. **The impact of another sale process:** The receivership proceeding has been ongoing for over 14 months and the Real Property was first listed for sale in January 2024. Relisting the Real Property for sale will result in additional costs, which will be absorbed by MarshallZehr as the fulcrum creditor, with no real likelihood of a better result. In the Receiver's view, the Real Property has been exposed to the market for a significant amount of time.

8.0 Sealing

1. The Confidential Appendices contain the purchase price under the Amended Transaction and offers from Fugiel. These materials have been filed on a confidential basis as making this information publicly available may affect future offers submitted if the Amended Transaction does not close. A sealing order in respect of these materials was previously granted by the Court.

2. Temporarily sealing this information until the Amended Transaction closes is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the Sale Process. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Receiver believes the proposed sealing of the Confidential Appendices is appropriate in these circumstances.

9.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make the orders granting the relief detailed in paragraph 1.0(7) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
LA PUE INTERNATIONAL INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX A



**Fourth Report of
KSV Restructuring Inc.
as Receiver of
La Pue International Inc.**

December 11, 2024

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COURT FILE NO.: CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERNATIONAL INC.

RESPONDENT

FOURTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

DECEMBER 11, 2024

1.0 Introduction

1. This report (“**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and property of La Pue International Inc. (the “**Company**”) acquired for or used in relation to a business carried on by the Company.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 19, 2023, KSV was appointed Receiver.
3. The Company’s principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”). The principal purpose of the receivership proceeding is to market the Real Property for sale in a Court-supervised process.
4. On December 20, 2023, the Court issued an order (the “**Sale Process Order**”) approving a sale process for the Real Property and certain related assets (the “**Sale Process**”).

5. On April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”) entered into an Asset Purchase Agreement (the “**Original APA**”) which contemplated a transaction (the “**Original Transaction**”) for, among other things, the sale of the Real Property and the assumption of 359 pre-sale agreements entered into with homebuyers (the “**Sale Agreements**”) (collectively, the “**Purchased Assets**”).
6. On June 11, 2024, Lakeshore assigned all of its right, title and interest in the Original APA to 1000835091 Ontario Inc. (the “**Purchaser**”) pursuant to an Assignment of Agreement of Purchase and Sale dated June 11, 2024 (the “**Assignment Agreement**”).
7. On June 17, 2024, the Receiver filed its Third Report to Court (the “**Third Report**”) recommending, among other things, that the Court approve the Original Transaction. A copy of the Third Report (without appendices) is attached as **Appendix “A”**. On June 21, 2024, the Court issued an order (the “**Sale Approval Order**”) approving the Original Transaction. A copy of the Sale Approval Order is attached as **Appendix “B”**.
8. As detailed below, the Purchaser failed to close the Original Transaction, and the Receiver terminated this transaction. The Receiver subsequently entered into several reinstatement agreements with the Purchaser, the details of which are set out below.
9. The Receiver has now negotiated terms with the Purchaser for an amended transaction (the “**Amended Transaction**”), which is unconditional except for Court approval. Approximately 18% of the purchase price under the Amended Transaction has been paid in cash and is held by the Receiver in trust. The balance of the purchase price will be satisfied by financing provided by MarshallZehr to the Purchaser.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide an update on the status of the Real Property;
 - b) summarize the terms of the Amended Transaction;
 - c) summarize the Receiver’s dealings with Mr. Pawel Fugiel, the principal of the Company;
 - d) discuss a proposed distribution from the net sale proceeds of the Amended Transaction (the “**Proceeds**”) to MarshallZehr Group Inc. (“**MarshallZehr**”), the Company’s senior secured creditor and the Applicant in these proceedings;
 - e) discuss a proposed reserve (the “**Holdback Reserve**”) to be held by the Receiver from the cash proceeds of the Transaction pending a determination of the Holdback Claims (as defined below);
 - f) discuss next steps in these proceedings;

- g) recommend that the Court issue orders, among other things:
 - i. approving the Amended Transaction;
 - ii. authorizing and directing the Receiver to make an interim distribution to MarshallZehr, on account of its secured indebtedness;
 - iii. authorizing the Receiver to establish the Holdback Reserve, while the Receiver establishes a process for the determination of any entitlement to the Holdback Reserve, and authorizing the Receiver to release funds from the Holdback Reserve in respect of Holdback Claims to the applicable lien claimant, if the Receiver determines any such amounts are payable in priority to MarshallZehr (“**Priority Payables**”), (i) with the consent of MarshallZehr and the applicable claimant, or (ii) further order of the Court;
 - iv. sealing Confidential Appendices “1” to “5” (collectively, the “**Confidential Appendices**”) to this Report until the business day following the closing of the Amended Transaction; and
 - v. approving this Fourth Report and the Receiver’s conduct and activities described therein;

1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information provided by Marshallzehr, the principal secured creditor of the Company. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company’s financial information should perform its own diligence.

2.0 Background

1. The Company is a single purpose entity that owns the Real Property. Mr. Fugiel is the sole officer and director of the Company.
2. The Company intended to use the Real Property to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Property (the “**Project**”). Prior to the receivership proceedings, the Company completed significant shoring and excavation work on the Project, although no other phases of construction have commenced.

3. Prior to the receivership proceedings, the Company entered into the Sale Agreements and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
4. The Receiver was appointed on an application by MarshallZehr. Pursuant to a commitment letter dated November 15, 2021, as amended, MarshallZehr agreed to provide a loan in the maximum principal amount of \$12,375,000 to the Company for the purpose of refinancing an existing loan. The Receiver understands, based on the information provided to it by MarshallZehr, that the entirety of the funds advanced was used to fund the refinancing, interest reserve and service fees related to the refinancing transaction.
5. Pursuant to a letter dated November 30, 2022, MarshallZehr increased the loan amount by \$5,625,000 (the “**Third Advance**”). The Receiver understands that the Third Advance was conditional upon the Company satisfying certain conditions, which were not met. Accordingly, the Third Advance was not made to the Company. As of the date of this Report, MarshallZehr is owed approximately \$20.4 million (the “**MarshallZehr Indebtedness**”).
6. As security for the MarshallZehr Indebtedness, the Company granted MarshallZehr, amongst other things, (i) a first ranking charge in the principal amount of \$13.8 million on the Property, which was registered on December 1, 2021, and (ii) a general security agreement. MarshallZehr registered a financing statement against the Company under the *Personal Property Security Act* (Ontario) (“**PPSA**”).
7. Sovereign General Insurance Company (“**SGIC**”) holds a second ranking charge in the principal amount of \$2 million as security for deposit insurance. SGIC also registered a financing statement against the Company under the PPSA. SGIC and MarshallZehr are also parties to a priority agreement.
8. In addition to a PPSA registration in favour of SGIC and MarshallZehr, eight construction liens totalling approximately \$13.6 million are registered against the Real Property.
9. Following its appointment, on October 23, 2023, the Receiver wrote to Mr. Fugiel to request information regarding, among other things, the Company’s creditors. In November 2023, the Receiver also requested during telephone conversations with Mr. Fugiel that he provide, among other things, the Company’s books and records. Despite numerous follow up attempts via email and telephone calls, the information requested by the Receiver has not been provided.
10. Due to Mr. Fugiel’s lack of cooperation, the Receiver was forced to incur additional costs to obtain the required information and documents, including copies of all existing Agreements of Purchase and Sale. The Receiver reserved its rights to bring a motion in the future to recover these costs from Mr. Fugiel.

2.1 Status of Real Property

1. Since the commencement of these proceedings, the Receiver has had regular monitoring reports completed on the shoring by RWH Engineering Inc. which specializes in excavation work. Earlier this year, the Receiver spent approximately \$350,000 (excluding taxes) to repair the shoring. On November 29, 2024, the Receiver received a quote of \$390,000 (excluding taxes) to prepare the site for winter maintenance, which has been provided to counsel for the Purchaser.

3.0 Transaction

1. A summary of the Sale Process and the Original Transaction is provided in the Third Report, a copy of which, without appendices, is attached as Appendix "A". The purchase price of the Original Transaction was sealed pursuant to a Court order issued on June 21, 2024, although the purchase price was disclosed to the lien claimants who signed non-disclosure agreements.
2. As described in the Third Report, the Purchaser paid the First Deposit of \$500,000. Despite the Second Deposit (as defined in the Original APA) not being paid, the Receiver proceeded to obtain an approval and vesting order and close the transaction. The Receiver informed the Court that this approach was intended to compel the Purchaser to either complete the transaction or forfeit the First Deposit.
3. The Original Transaction was scheduled to close on July 2, 2024. On the scheduled date, the Receiver tendered the closing documents, however the Purchaser failed to pay the balance of the closing funds. On July 4, 2024, the Receiver formally terminated the Transaction and the First Deposit was forfeited to the Receiver. A copy of the termination letter sent by the Receiver's counsel to the Purchaser is attached as **Appendix "C"**.
4. Following discussions with the Purchaser, the Receiver was informed that the Purchaser required until September 2024 to secure the necessary funds to close. Consequently, on July 12, 2024, the Purchaser and the Receiver entered into a Reinstatement and Amending Agreement (the "**First Reinstatement Agreement**") pursuant to which the parties agreed as follows:
 - a) the Purchase Price under the Original APS would be increased by \$50,000;
 - b) the Purchaser would deliver the Second Deposit by July 11, 2024;
 - c) if the Purchaser failed to close the Transaction by the new closing date, the First Deposit and the Second Deposit would be forfeited to the Receiver;
 - d) the Purchaser would provide two additional deposits payable on July 22, 2024, and August 1, 2024; and
 - e) the closing date would be extended to September 6, 2024.
5. A copy of the First Reinstatement Agreement with the purchase price redacted is attached as **Appendix "D"**. An unredacted copy of the First Reinstatement Agreement is attached as **Confidential Appendix "1"**.

6. The Purchaser failed to pay the additional deposits by the prescribed deadline. Accordingly, the transaction was terminated and the First Deposit and the Second Deposit were forfeited. Attached as **Appendix "E"** is a copy of the termination letter.
7. In September 2024, MarshallZehr advised the Receiver that the Purchaser had partnered with a real estate developer based in Toronto known to MZ. The Receiver was advised that the Purchaser was not registered with the Home Construction Regulatory Authority ("**HCRA**") and, therefore, could not assume the Sale Agreements, even though the Original APS provided for the assumption. Following discussions with the Purchaser, the developer and MarshallZehr, on October 8, 2024, the Receiver entered into a Second Reinstatement and Amending Agreement (the "**Second Reinstatement Agreement**"), which included the following terms:
 - a) an additional deposit payable within one day of executing the agreement; and
 - b) an agreement for the Purchaser to assume the Sale Agreements ninety (90) days after the Closing Date (the "Assumption Date"), with an option for the Purchaser to extend the Assumption Date by an additional ninety (90) days upon prior written notice to the Vendor and the Vendor's Solicitors, or as mutually agreed in writing. This assumption was conditional on the Purchaser obtaining a vendor and builder license from the HCRA.
8. A copy of the Redacted Second Reinstatement Agreement is attached as **Appendix "F"**. A copy of the Unredacted Second Reinstatement Agreement is attached as **Confidential Appendix "2"**.
9. Despite executing the document the day earlier, the Purchaser failed to pay the additional deposit and the Receiver again terminated the transaction on October 24, 2024.
10. The Receiver subsequently re-listed the Purchased Assets for sale.
11. In November 2024, the Purchaser informed the Receiver that it now had access to a further deposit that was cumulatively the same value as the First Deposit and the Second Deposit (the "**Third Deposit**"). Given the Purchaser's prior defaults, the Receiver required the deposit to be placed in the Purchaser's lawyer's trust account before considering a further reinstatement agreement. MarshallZehr also advised the Receiver that it was prepared to finance the balance of the purchase price. On November 18, 2024, the Purchaser's counsel confirmed that the entirety of the Third Deposit was in its trust account. On the same day, the Receiver executed a Third Reinstatement and Amending Agreement (the "**Third Reinstatement Agreement**"), which included the following terms:
 - a) the Purchaser would pay the Third Deposit to counsel for the Receiver in trust within one (1) business day. If the Purchase Agreement was terminated due to the Purchaser's default, the Third Deposit, along with any accrued interest, will be forfeited to the Receiver;

- b) if the financing transaction contemplated by a letter of intent between MarshallZehr and the Purchaser failed due to reasons unrelated to the Purchaser's default, the deposit would be returned to the Purchaser without deductions or interest, upon the Purchaser's request; and
 - c) the terms of the Original APA together with the First Reinstatement Agreement and Second Reinstatement Agreement were reinstated.
12. A copy of the redacted Third Reinstatement Agreement is attached as **Appendix "G"**. A copy of the unredacted Third Reinstatement Agreement is attached as **Confidential Appendix "3"**
 13. MarshallZehr has confirmed that other than standard financing conditions requiring Court approval of the Transaction and registration of security, all of its other financing conditions for the loan to the Purchaser have been waived.

3.1 The Debtor's Attempts to Purchase the Real Property

1. Since the outset of these proceedings, Mr. Fugiel has indicated on several occasions his intention to redeem the MarshallZehr mortgage loan or purchase the Real Property.
2. On September 20, 2024, Mr. Fugiel presented an offer to Colliers International, the listing broker engaged by the Receiver, to purchase the Real Property. Attached as **Appendix "H"** is a copy of Mr. Fugiel's redacted offer. A copy of his unredacted offer is attached as **Confidential Appendix "4"**.
3. By email correspondence dated September 30, 2024 and October 28, 2024, the Receiver and its legal counsel advised Mr. Fugiel and his legal counsel that his offer will not be considered unless he provides evidence that he has the financial ability to close the transaction. No such evidence was provided. Copies of the email correspondence are collectively attached as **Appendix "I"**.
4. On November 2, 2024, Mr. Fugiel presented another offer to the Receiver with an increased purchase price (the **"Second Offer"**). A redacted copy of the Second Offer is attached hereto as **Appendix "J"**. An unredacted copy of Mr. Fugiel's Second Offer is attached hereto as **Confidential Appendix "5"**.
5. On November 3, 2024, counsel for Mr. Fugiel provided the Receiver a copy of a conditional term sheet from Morris Financial Group ("**Morris**"), a lender based in New York and Tel Aviv (the **"Morris Term Sheet"**). The Morris Term Sheet was, among other things, subject to due diligence and credit committee approval. The Morris Term Sheet also had a confidentiality clause. As a consequence of the confidentiality clause, the Receiver is not attaching this commitment letter to its report. Counsel for Mr. Fugiel advised that this lender needs 14 days to complete its due diligence. A copy of the email from Mr. Fugiel's counsel without the attachment is attached as **Appendix "K"**.

6. On November 3, 2024, the Receiver sent an email to Mr. Fugiel's counsel, noting prior unfavorable experiences with Morris. The Receiver requested that counsel inform them if the financing became firm and advised that the Receiver would continue marketing the property in the meantime. A copy of this correspondence is attached as **Appendix "L"**.
7. On November 12, 2024, counsel for Mr. Fugiel wrote to the Receiver and its counsel to advise that another commitment for financing was coming shortly. Counsel for the Receiver replied to Mr. Fugiel's counsel and again reminded him that his client's offer will not be considered until evidence of financing is provided. Counsel for the Receiver also advised Mr. Fugiel's counsel that the Receiver has received another offer that it is considering. A copy of the email correspondence between counsel is attached as **Appendix "M"**.
8. On November 15, 2024, counsel for Mr. Fugiel provided a commitment letter from Fiducia Ventures Inc. A copy of the commitment letter is attached as **Appendix "N"**. The commitment letter included over 20 conditions, such as requirements for an appraisal, environmental reports, and development budgets. The commitment letter provided that the maximum proposed loan amount could not exceed 60% of the appraised value, which would require the Property to be valued at over \$36 million. The Receiver understands that the Real Property is worth substantially less than this amount.
9. The Receiver again advised counsel to Mr. Fugiel that it could not accept an offer conditional on financing and that it had entered into another transaction. A copy of the correspondence between the Receiver and Mr. Fugiel is attached as **Appendix "O"**.
10. Since then, counsel to Mr. Fugiel has requested a payout statement from MarshallZehr which was provided to Mr. Fugiel on December 5, 2024.
11. On December 8, 2024, counsel to Mr. Fugiel advised the Receiver that Mr. Fugiel intended to oppose approval of the Amended Transaction.

3.2 Recommendation to approve the Amended Transaction

1. The Amended Transaction is substantially similar to the terms approved by the Court in June 2024, subject to the following amendments:
 - a) approximately 18% of the purchase price has now been received by the Receiver by way of deposits;
 - b) the purchase price was increased by \$50,000; and
 - c) the Purchaser will only assume the Sale Agreements once it gets HCRA approval, which it has over 90 days after closing to obtain. If the Purchaser does not obtain HCRA approvals, the deposits under the Sale Agreements will be fully refunded.

2. In addition to the reasons set out in the Third Report, the Receiver recommends the Court issue the proposed Approval and Vesting Order approving the Amended Transaction for the following reasons:
 - a) the process undertaken by the Receiver to market the Real Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
 - b) the Real Property has been listed for over a year, and the Transaction offers a path to conclude the receivership and minimize further professional fees and costs, including significant maintenance costs;
 - c) the Amended Transaction is unconditional, but for Court approval; and
 - d) MarshallZehr supports the Transaction.
3. Mr. Fugiel has had over a year to redeem or submit an offer to purchase the Real Property, and has failed to deliver any concrete offers that are acceptable to the Receiver or that would realistically materialize in a closeable transaction. Any further delays would prejudice the stakeholders and unnecessarily increase the costs of the proceedings.

4.0 MarshallZehr Distribution

1. If the Transaction is approved, the Receiver is seeking authorization and direction to distribute the balance of the proceeds therefrom, after reserving for the closing costs (i.e. broker commissions, property taxes) and the costs of these proceedings (i.e. the fees and costs of the Receiver and its counsel) to: (i) repay the amounts owing under the Receiver's Borrowings Charge (which will be \$523,266.95 as at December 18, 2024); (ii) establish a reserve to fund any holdback deficiencies in respect of any valid construction liens on the Real Property, and (iii) repay a portion of the MarshallZehr Indebtedness.
2. MarshallZehr is the principal secured creditor of the Company. Attached as **Appendix "P"** is the discharge statement provided by MarshallZehr to December 18, 2024 (the "**Discharge Statement**"). The Discharge Statement discloses that MarshallZehr is owed \$20.9 million, of which approximately \$20.4 million is in respect of the MarshallZehr Indebtedness and approximately \$523,000 is in respect of the borrowings under the Receiver's Borrowings Charge.
3. The Receiver requested that Aird & Berlis LLP ("**A&B**"), as independent legal counsel, conduct a review of the security granted by the Company in respect of the MarshallZehr Indebtedness. A&B provided the Receiver with an opinion that, subject to standard assumptions and qualifications, pursuant to applicable security documentation, MarshallZehr has valid security interests or charge, as applicable, against the Property to be sold pursuant to the Amended Transaction.
4. There are eight construction liens totaling approximately \$13.6 million on the Property (collectively the "**Lien Claimants**"). Based on description of services provided in the liens, the claimants all provided services to Buttcon Limited ("**Buttcon**"). Buttcon's own lien is in the amount of approximately \$8.2 million.

5. The Receiver understands that the Company did not segregate any funds for holdback. The Receiver intends to carry out a process to establish whether any of the lien claimants could have a Priority Payable Claim that ranks ahead of MarshallZehr in respect of any deficiency in holdback (the “**Holdback Claims**”). A&B further advised that based on its review of the MarshallZehr loan and security documents, and the information relating to the timing and the nature of the loans, the maximum aggregate potential priority for the holdback claims for liens registered against the Real Property would be limited to the statutory 10% holdback of valid construction liens on the Real Property.
6. The Receiver has written to the Lien Claimants for more information regarding their Lien Claims.
7. To facilitate an interim distribution, while concurrently running this process, the Receiver seeks to establish a Holdback Reserve of approximately \$1.4 million, which exceeds 10% of the total amount of liens registered on the Real Property. Should the Receiver determine there are amounts that are in fact payable in priority to MarshallZehr, following a review of the applicable claims, the Receiver will seek to release funds from the Holdback Reserve with the consent of MarshallZehr and the applicable claimant or a further order of the Court.

5.0 Sealing

1. The Confidential Appendices contain the purchase price under the Amended Transaction and offers from Fugiel. These materials have been filed on a confidential basis as making this information publicly available may affect future offers submitted if the Amended Transaction does not close.
2. Temporarily sealing this information until the Amended Transaction closes is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the Sale Process. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Receiver believes the proposed sealing of the Confidential Appendices is appropriate in these circumstances.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make the orders granting the relief detailed in Section 1.1 (1)(g) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
LA PUE INTERNATIONAL INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX B



**Third Report of
KSV Restructuring Inc.
as Receiver of
La Pue International Inc.**

June 17, 2024

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Appendix A – Sale Process Order

Appendix B - Redacted Agreement of Purchase and Sale

Appendix C – Parcel Search for 5978 Allendale

Appendix D – Property Tax Certificate for 5978 Allendale

Appendix E – Notice of Sale of Framajo Enterprises Limited

Appendix F – Parcel Search for 6092 Allendale

Confidential Appendix 1 – Summary of Offers

Confidential Appendix 2 – Unredacted Agreement of Purchase and Sale



COURT FILE NO.: CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERANTIONAL INC.

RESPONDENT

THIRD REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

JUNE 17, 2024

1.0 Introduction

1. This report (“**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and properties of La Pue International Inc. (the “**Company**”) acquired for or used in relation to a business carried on by the Company.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 19, 2023, KSV was appointed Receiver.
3. The Company’s principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”). The principal purpose of the receivership proceeding is to market the Real Property for sale in a Court-supervised process.
4. On December 20, 2023, the Court issued an order (the “**Sale Process Order**”) approving a sale process for the Real Property and certain related assets (the “**Sale Process**”). A copy of the Sale Process Order is attached hereto as **Appendix “A”**.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) summarize the results of the sale process for the Real Property;

- b) provide an update on the Allendale Properties (as defined below);
- c) recommend that the Court issue an order, among other things:
 - i. approving an Asset Purchase Agreement (the “**APA**”) between the Receiver and Lakeshore Luxe Design & Build Group (the “**Purchaser**”) and vesting title in and to the Property (as defined in the APA, including the Real Property) free and clear of all liens, claims and encumbrances (the “**Approval and Vesting Order**”);
 - ii. sealing the APA until the closing of the sale transaction contemplated therein (the “**Transaction**”);
 - iii. approving this Third Report and the Receiver’s conduct and activities described therein; and
 - iv. amending the Receivership Order to exclude 5978 Allendale (as defined below) from the definition of Property under the Receivership Order.

1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information provided by Marshallzehr Group Inc. (“**Marshallzehr**”), the principal secured creditor of the Company. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company’s financial information should perform its own diligence.

2.0 Background

1. The Company is a single purpose entity that owns the Real Property. Pawel Fugiel (“**Fugiel**”) is the sole officer and director of the Company.
2. The Company intended to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Property (the “**Project**”). Prior to the receivership proceedings, the Company completed significant shoring and excavation work on the Project, although no other phases of construction have commenced.

3. Prior to the receivership proceedings, the Receiver understands the Company pre-sold 359 units (the “**Sale Agreements**”) and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
4. The Receiver was appointed on an application by MarshallZehr. As at May, 2023, when MarshallZehr first served its receivership application, there was approximately \$13 million owing to MarshallZehr by the Company.
5. Sovereign General Insurance Company holds a second ranking charge in the principal amount of \$2 million as security for deposit insurance. SGIC also registered a financing statement against the Debtor under the *Personal Property Security Act* (Ontario) (“**PPSA**”).
6. In addition to a PPSA registration in favour of SGIC and MarshallZehr, as at the date of the Receiver’s appointment, five construction liens totalling approximately \$12.87 million were registered against the Real Property.
7. Following its appointment, on October 23, 2023, the Receiver wrote to Fugiel to request information regarding, among other things, the Company’s creditors. In November 2023, the Receiver also requested during telephone conversations with Fugiel that he provide, among other things, the Company’s books and records. Despite numerous follow up attempts via email and telephone calls, the information requested by the Receiver has not been provided.
8. As a consequence of Fugiel’s failure to cooperate, the Receiver was forced to incur additional costs to obtain the required information and documents, including copies of all existing Agreements of Purchase and Sale. The Receiver reserved its rights to bring a motion in the future to recover these costs from Fugiel.

3.0 Sale Process and the APA

3.1 Update on Sale Process

1. Colliers Macaulay Nicolls Inc. (“**Colliers**”) was retained by the Receiver as the listing agent pursuant to the terms of the Sale Process Order.
2. The Receiver carried out the Sale Process in accordance with the Sale Process Order. A summary of the Sale Process is as follows:

Pre-marketing Phase

- a) Immediately after the Sale Process Order was issued, the Receiver and Colliers assembled information to be used for due diligence purposes and uploaded this information to a virtual data room (“**VDR**”);
- b) Colliers and/or the Receiver prepared:
 - an investment summary detailing the acquisition opportunity (the “**Investment Summary**”);

- a confidentiality agreement (“**CA**”);
- a VDR, which included, among other things, various reports concerning the Real Property, including environmental reports, site plans and a budget to build-out the Project which was commissioned by the Receiver;
- a form of asset purchase agreement. Pursuant to the terms of the Sale Process, the Receiver recommended that interested parties submit their offers using this agreement and blackline any changes to it. A copy of the form of asset purchase agreement was made available in the VDR; and
- a Confidential Information Memorandum (“**CIM**”), which included a summary of the Real Property and details concerning the Sale Process.

Marketing Phase

- a) on January 17, 2024, Colliers sent the Investment Summary to over 4,700 parties in its database, including real estate developers in the Niagara region;
- b) the CA was attached to the Investment Summary. To obtain a copy of the CIM and access to the VDR, interested parties were first required to sign the CA;
- c) the listing was posted on the Real Estate Board Multiple Listing Services (“**MLS**”);
- d) the Receiver, in conjunction with Colliers, set a “bid not before date” of March 22, 2024 at 5:00 p.m. (Toronto time).

3.2 Sale Process Results

1. A summary of the results of the Sale Process is as follows:
 - a) 22 parties executed the CA and were provided a copy of the CIM and access to the VDR; and
 - b) 2 parties submitted offers. An offer summary in respect of the final bids received for the Real Property (the “**Offer Summary**”) is attached as **Confidential Appendix “1”**.
2. Following extensive negotiations between the Receiver and the Purchaser, the Receiver entered into the APA, subject to the approval of the Court. Attached as **Appendix “B”** is a copy of the APA with the purchase price redacted. An unredacted copy of the APA will be filed with the Court as **Confidential Appendix “2”**. The Receiver’s recommendation regarding sealing this information is discussed in Section 3.4 below.

3.3 The Transaction

1. The key terms of the APA are provided below. Reference should be made directly to the APS for all of its terms and conditions:
 - **Purchased Assets:** means the Company's right, title and interest in the Real Property, the assumed Sale Agreements and deposits thereunder, all permits and project documents;
 - **Purchase Price:** the Receiver seeks an order sealing the purchase price under the APA until the closing of the Transaction. The purchase price under the APA is higher than any other offer received by the Receiver in the sale process;
 - **Excluded Assets:** the Purchaser may, at its option and upon written notice to the Receiver not less than two business days prior to closing, exclude any of the Purchased Assets from the Transaction. 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 exclusions;
 - **Deposits:** a first deposit in the amount of \$500,000 was received by the Receiver (the "**First Deposit**"). At the request of MarshallZehr, the Company's senior secured lender, and notwithstanding the fact that the Second Deposit (as defined in the APA) was not received, the Receiver will proceed to obtain the Approval and Vesting Order and close the Transaction. Marshallzehr has made this request so that the Transaction can close expediently once all conditions have been satisfied or waived. The First Deposit will be forfeited by the Purchaser if the Transaction is approved and does not close;
 - **Conditions:** the APA was conditional on the purchaser completing or waiving its due diligence inspection condition. This condition was waived on April 30, 2024. The only material outstanding condition under the APA is the Receiver obtaining the Approval and Vesting Order;
 - **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties;
 - **Closing Date:** the Transaction shall be completed seven (7) business days following the date on which the Approval and Vesting Order is granted.
2. The Receiver recommends the Court issue the proposed Approval and Vesting Order approving the Transaction for the following reasons:
 - a) the process undertaken by the Receiver to market the Real Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
 - b) Colliers has extensive experience selling development properties and widely canvassed the market for prospective purchasers;
 - c) the Purchaser's offer represents the highest and best offer received for the Real Property;

- d) the Receiver and Colliers are of the view that the Transaction provides for the greatest recovery available for the benefit of the Company's stakeholders in the circumstances; and
- e) MarshallZehr consents to the Transaction.

3.4 Sealing

1. The Receiver recommends that the Offer Summary and an unredacted copy of the APA be filed with the Court on a confidential basis and remain sealed until the closing of the Transaction. These documents contain confidential information, including with respect to value of the Real Property, the identity of the bidders and the value of the other bids received that could adversely impact the future marketability of the Real Property should the Transaction not close.
2. Sealing this information is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the sale process.
3. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full. The Receiver is of the view that the sealing of the Confidential Appendix is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendix is appropriate in the circumstances.

4.0 The Allendale Properties

1. After its appointment as Receiver, the Receiver learned that in addition to the Real Property, the Company was also the registered owner of two small adjacent lots municipally known as 5978 Allendale Avenue, Niagara Falls, Ontario ("**5978 Allendale**") and 6092 Allendale Avenue, Niagara Falls, Ontario ("**6092 Allendale**", and together, the "**Allendale Properties**").
2. Attached hereto as **Appendix "C"** is the parcel search for 5978 Allendale that discloses the following registrations against this property:
 - a) a first ranking charge in favour of Framajo Enterprises Limited ("**Framajo**"), as amended, in the principal amount of \$1,100,000;
 - b) a second ranking charge in the principal amount of \$800,000 in favour of Tomasz Sobota, Andrzej Zalewski and Daniela Lupu; and
 - c) a construction lien in favour of Buttcon Limited in the amount of \$8,205,941.
3. The Receiver was provided with a copy of the tax certificate with respect to this property as at April 24, 2024, a copy of which is attached hereto as **Appendix "D"** that discloses that as at April 24, 2024, there were outstanding property taxes on this property in the amount of \$20,267.29.

4. The Receiver was advised that Framajo issued a Notice of Sale to the Company, a copy of which is attached hereto as **Appendix "E"**. In the Notice of Sale, Framajo states that the amounts owing under its first mortgage is \$1,458,429.57.
5. Counsel for the Receiver requested and received copies of Framajo's loan and security documents together with evidence of advances. Following its review of the documents provided, counsel for the Receiver has opined that Framajo has a validly secured first mortgage against 5978 Allendale.
6. The Receiver has obtained an opinion of value for this property from Colliers which disclosed that the value of this property is less than the amount owing to Framajo under its first mortgage.
7. Framajo has requested that it be permitted to proceed to enforce mortgage against 5978 Allendale under power of sale. In light of the value of this property and the amounts owing to Framajo, the Receiver has agreed to request an amendment to the Receivership Order that excludes 5978 Allendale from the definition of Property subject to this receivership.
8. Attached hereto as **Appendix "F"** is the parcel search for 6092 Allendale. The search discloses the following registrations against this property in order of registration:
 - a) Charge in the principal amount of \$1,505,000 in favour of Jaroslaw Proborszcz and Yasmeeen Moroz; and
 - b) A charge in the principal amount of \$820,000 in favour of Dariusz Konopka and Aleksander Jacak.
9. The Receiver was contacted by Marek Tufman, who advised that he is acting as legal counsel for all of the parties holding a registered mortgage against 6092 Allendale. The Receiver and its counsel were advised by Mr. Tufman that his clients also wish to proceed with enforcement on their mortgages. Counsel for the Receiver and Mr. Tufman are continuing to engage in discussions about this request.

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(c) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
LA PUE INTERNATIONAL INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 20TH
)
JUSTICE STEELE) DAY OF DECEMBER 2023
)

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

**ORDER
(Sale Process Approval)**

THIS MOTION, made by KSV RESTRUCTURING INC. in its capacity as Court-appointed receiver, without security (in such capacities, the “**Receiver**”), over all assets, undertakings and properties La Pue International Inc. (the “**Debtor**”) for an order, *inter alia*, approving a sale process (the “**Sale Process**”) for the Debtor’s property, including the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated December 13, 2023 and on hearing the submissions of counsel for the Receiver, and such other counsel as are present and listed on the counsel slip,

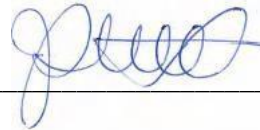
SERVICE

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

APPROVAL OF SALE PROCESS

2. **THIS COURT ORDERS** that the Listing Agreement between the Receiver and Colliers Macaulay Nicolls Inc., for the sale of the Real Property substantially in the form attached as Appendix A to the First Report (the "**Listing Agreement**") be and hereby is approved and the Receiver is authorized to engage Colliers as a listing agent for the sale of the Real Property on the terms set out in the Listing Agreement.

3. **THIS COURT ORDERS** that the Sale Process, as described in section 3.2 of the First Report, be and is hereby approved and the Receiver is hereby authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.



Applicant

Respondent

Court File No. CV-23-00700695-00CL

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

PROCEEDING COMMENCED AT
TORONTO

SALE PROCESS APPROVAL ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
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**Lawyers for KSV Restructuring Inc., in its capacity
as Court-Appointed Receiver**



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00700695-00CL

DATE: December 20, 2023

NO. ON LIST: #5

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. LA PUE
INTERNATIONAL INC. et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Counsel for the Receiver, KSV Restructuring Inc.	maya@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Mark A. Russell	Counsel for the Respondent, La Pue International Inc.	mr@friedmans.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Anthony Gabriele	Counsel for HC Matcon Inc.	gabriele@paveylaw.com
Fernando Souza	Counsel for Buttcon Limited	fsouza@lawtoronto.com
Jason Dutrizac	Counsel for Sovereign	jdutrizac@blg.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver seeks an Order approving the Listing Agreement between the Receiver and Colliers Macaulay Nicolls Inc., for the sale of the Real Property and approving the Sale Process described in section 3.2 of the First Report.
- [2] La Pue International Inc. sought an adjournment to the second week of January, which, after hearing submissions, I declined to grant. There is no reason for the Receiver to be delayed from starting the sale process.

- [3] La Pue International raised an issue regarding the language in the Listing Agreement with Collier. Specifically, La Pue was concerned that the agreement contemplated a \$100,000 break fee if the receivership was terminated. The language in the agreement could be clearer. The Receiver clarified the intent that there is no break fee payable if the receivership is terminated. The \$100,000 referred to in paragraph 6 of the Listing Agreement is intended to reduce the real estate fee payable to the broker if the purchaser is a party known to the Receiver, as set out at para. 12(g) of the Receiver's factum. The Receiver indicated that it would email Colliers to clarify this point.

Background

- [4] The Receiver was appointed on October 19, 2023, as receiver of the assets, undertakings, and properties of La Pue International Inc.
- [5] La Pue International's principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls.


Should the Court approve the Sale Process?

- [6] The Court has jurisdiction to approve the Sale Process pursuant to s. 243(1)(c) of the *Bankruptcy and Insolvency Act*.
- [7] In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 the Court determined that the criteria set out in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 OR (3d) 1 (ONCA) also inform whether the Court should approve a sale process proposed by a court-appointed receiver. The Court is to consider:
- a) The fairness, transparency and integrity of the proposed process;
 - b) The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
 - c) Whether the sales process will optimize the changes, in the particular circumstances, of securing the best possible price for the assets up for sale.
- [8] The Sale Process and timeline is set out in the First Report in section 3. The marketing and diligence phase is scheduled to commence January 8, 2024 with the bid deadline estimate being 5 weeks from the marketing launch.
- [9] The Receiver recommends that the Court approve the Sale Process and the Listing Agreement with Colliers for the following reasons set out in the Receiver's factum:
- a. Collier's team has extensive experience selling undeveloped residential properties in the Niagara region and offers a commission structure that is consistent with the market;
 - b. MarshallZehr supports the Sale Process and engagement of Colliers;

- c. The Sale Process is designed to be a fair, open and transparent process intended to broadly canvass the market to obtain the highest and best price;
- d. The duration of the Sale Process is sufficient to allow interested persons to perform due diligence and make offers. The Receiver also has the flexibility to extend or amend timelines if the Receiver considers it necessary to do so; and
- e. The Sale Process includes procedures commonly used to sell real estate development projects, including by KSV in other court-supervised real property sale processes.

[10] I am satisfied that the Listing Agreement and the proposed Sale Process should be approved, as recommended by the Receiver.

[11] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page.

APPENDIX D



Court File No. CV-23-00700695-00CL

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

THE HONOURABLE MADAM)

TUESDAY, THE 7TH

JUSTICE JANE DIETRICH)

DAY OF JANUARY, 2025

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

ORDER

(Sale Approval)

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets (the “**Property**”) of La Pue International Inc. (the “**Debtor**”) for an order, among other things:

- (a) validating service of the Receiver’s Notice of Motion and Motion Record;
- (b) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated April 4, 2024, as amended by the First Reinstatement and Amending Agreement dated July 12, 2024, the Second Reinstatement and Amending Agreement dated October 8, 2024 and the Third Reinstatement and Amending Agreement dated November 18, 2024 (collectively, the “**Sale Agreement**”), between the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”), appended as Confidential Appendices 1, 2 and 3 respectively, to the Receiver’s Fourth Report to the Court dated December 11, 2024 (the “**Fourth Report**”) and to Appendix A to the Supplemental

Confidential Brief to the Fourth Report and vesting in 1000835091 Ontario Inc. (the “**Purchaser**”), as assignee of Lakeshore, the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), including the lands and premises located at the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in **Schedule “A”** hereto (the “**Real Property**”); and

(c) sealing the Confidential Appendices to the Fourth Report and the Supplemental Confidential Brief to the Fourth Report (collectively, the “**Confidential Appendices**”) pending the closing of the Transaction or a further order of the Court,

was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated December 11, 2024 including the Fourth Report, and on hearing the submissions of counsel for the Receiver, counsel to the Applicant, and such other counsel as were present and on the Counsel Slip, no one else appearing although properly served as appears from the Affidavits of Service of Daisy Jin sworn December 12, 2024 and January 2, 2025 and the Affidavit of Service of Cristian Delfino sworn December 13, 2024, filed:

SERVICE

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

APPROVAL OF THE TRANSACTION AND VESTING ORDER

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), the Purchased Assets, including the Real Property, shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, taxes, including real property taxes, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated October 19, 2023 (the "**Receivership Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system including those registrations listed on Schedule "E" hereto but only in respect of the Purchased Assets; (iii) any Claims filed in respect of or affecting the Purchased Assets, including Claims in respect of the *Construction Act* (Ontario); and (iv) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara (South) (No. 59) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order and the Purchased Assets vesting in the Purchaser shall not include any current or future funds related to deposits held in trust by any law firm acting on behalf of a the Deposit Insurer, Sovereign General Insurance Company or the Debtor with respect to the purchase of a residential unit located on any of the Real Property, including, without limitation, the deposits held by Sullivan Mahoney LLP in trust related to a residential development known as The Stanley District containing 435 residential dwelling units at Ferry Street in the City of Niagara Falls (the "**Deposits**"). Further, nothing in this Order shall, or is intended to, entitle or grant the Purchaser any interest in the Deposits.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that the Confidential Appendices to the Fourth Report be and hereby are sealed pending the completion of the Transaction or a further order of the Court.

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

11. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



Jane Dietrich J.

Schedule “A” – Real Property

Municipal Address: 5528 Ferry Street, Niagara Falls, Ontario

PIN: 64349-0258 (LT)

Property Description: Firstly: Lots 46, 51, 52, 61, 62, 63, 64 & 65, Plan 273 & Part Lots 43, 44, 45, 47, 48, 49 & 50, Plan 273, Village of Niagara Falls, Parts 1 & 3 Plan 59R17206; Secondly: Surface Rights Only (as in RO718049), Part Lots 47, 48, 49 & 50 Plan 273, Village of Niagara Falls, Part 2 Plan 59R17206; subject to an Easement over Parts 1 & 2 59R17292 in favour of Part Lots 41 & 42 Plan 273 as in RO441658 as in SN754703; City of Niagara Falls

Schedule “B” – Form of Receiver’s Certificate

Court File No. CV-23-00700695-00CL

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated October 19, 2023, KSV Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of La Pue International Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated January 7, 2025 (“**Approval and Vesting Order**”), the Court approved the asset purchase agreement (as amended, restated, reinstated or otherwise supplement from time to time, the “**Sale Agreement**”) between the Receiver and Lakeshore Luxe Design & Build Group (the “**Purchaser**”) and provided for the vesting in the Purchaser all of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or

waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser.; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____, 2025.

KSV RESTRUCTURING INC., solely in its capacity as Court-Appointed Receiver of La Pue International Inc. and not in its personal capacity

Per: _____

Name:

Title:

Schedule “C” – Encumbrances to be deleted and expunged from title to Real Property.

No.	Registration No.	Registration Date	Instrument Type	Amount	Encumbrancers
1.	SN644659	2020/10/02	Charge	\$2,000,000	The Sovereign General Insurance Company
2.	SN658896	2021/01/26	Notice	\$1	The Sovereign General Insurance Company
3.	SN703091	2021/12/01	Charge	\$13,800,000	MarshallZehr Group Inc.
4.	SN703094	2021/12/01	Notice of Assignment of Rents – General		MarshallZehr Group Inc.
5.	SN703098	2021/12/01	Postponement		MarshallZehr Group Inc.
6.	SN703255	2021/12/01	Application to Annex Restrictive Covenants S.118		MarshallZehr Group Inc.
7.	SN743390	2022/09/26	Notice of Change of Address		MarshallZehr Group Inc.
8.	SN758055	2023/02/22	Construction Lien	\$3,673,337	HC Matcon Inc.
9.	SN759949	2023/03/15	Construction Lien	\$841,498	Kada Group Inc.
10.	SN760306	2023/03/17	Construction Lien	\$8,205,941	Buttcon Limited
11.	SN761643	2023/03/31	Construction Lien	\$123,734	Kada Group Inc.
12.	SN764799	2023/05/01	Certificate		HC Matcon Inc.

13.	SN767364	2023/05/26	Construction Lien	\$23,278	TT Galbraith Electric Ltd
14.	SN769190	2023/06/12	Certificate		Buttcon Limited
15.	SN770167	2023/06/21	Certificate		Kada Group Inc.
16.	SN771564	2023/07/04	Construction Lien	\$43,630	HC Matcon Inc.
17.	SN772841	2023/07/14	Certificate		HC Matcon Inc.
18.	SN787037	2023/11/29	Construction Lien	\$254,023	HC Matcon Inc.
19.	SN788992	2023/12/18	Certificate		HC Matcon Inc.

**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land;
2. Any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
4. Any minor easements for the supply of utility services or other services to the Lands or Buildings, if any, or adjacent properties;
5. Encroachments disclosed by any error or omission in existing surveys of the Lands or neighbouring properties and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey of the Lands and survey matters generally;
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto;
7. Any reservation(s) contained in the original grant from Crown;
8. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
9. Provincial succession duties and escheats or forfeiture to the Crown;
10. The rights of any person who would, but for the *Land Titles Act* (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;
11. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies; and

12. The following instruments registered on title to the Premises:

No.	Registration No.	Registration Date	Instrument Type	Parties To
1.	SN613492	2019/12/12	Application to Consolidate	
2.	SN629148	2020/05/14	Notice	The Corporation of the City of Niagara Falls
3.	SN642462	2020/09/18	Notice	The Corporation of the City of Niagara Falls
4.	59R16793	2020/10/01	Plan Reference	
5.	SN666113	2021/03/22	Application Bylaw Deeming Plan Not A Plan	The Corporation of the City of Niagara Falls
6.	SN666891	2021/03/26	Notice	The Corporation of the City of Niagara Falls
7.	59R17206	2022/03/11	Plan Reference	
8.	SN716940	2022/03/11	Application Absolute Title	La Pue International Inc.
9.	SN721529	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
10.	SN721530	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
11.	SN721531	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
12.	SN723231	2022/04/26	Notice	The Corporation of the City of Niagara Falls
13.	59R17292	2022/06/13	Plan Reference	
14.	SN754703	2023/01/13	Transfer Easement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
15.	SN754704	2023/01/13	Postponement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
16.	SN754705	2023/01/13	Postponement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
17.	SN754853	2023/01/16	Land Registrar's Order	Land Registrar, Niagara South Land Registry Office
18.	SN763208	2023/04/17	Notice	Anastasia Georgina Loukas and 2779006 Ontario Inc. and La Pue International Inc.

Schedule “E” – PPSA Registrations to be Released but only in respect of Purchased Assets

Date of Registration	Secured Party	File Number	Registration Number	Expiry Date
Jun 1, 2022	Newroads Automotive Group Ltd.	783547137	20220601 1259 1210 8587	Jun 1, 2026
Nov. 25, 2021	Marshallzehr Group Inc.	778525902	2021125 1518 1590 6050	Nov. 25, 2026
Nov. 25, 2021	Marshallzehr Group Inc.	778525911	2021125 1519 1590 6051	Nov. 25, 2026
Jan. 26, 2021	The Sovereign General Insurance Company	769461417	20210126 1509 1862 9924	Jan. 26, 2032
Oct. 2, 2020	The Sovereign General Insurance Company	766400931	20201002 1508 1862 2211	Oct. 2, 2031

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

Court File No. CV-23-00700695-00CL

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

APPROVAL AND VESTING ORDER

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*Lawyers for the Receiver, KSV Restructuring
Inc.*



Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE JANE DIETRICH)
TUESDAY, THE 7TH DAY
OF JANUARY, 2025

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondents

ANCILLARY AND INTERIM DISTRIBUTION ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets (the “**Property**”) of La Pue International Inc. (the “**Debtor**”) for an order, among other things, (i) approving an interim distribution to MarshallZehr Group Inc. (“**MarshallZehr**”); (ii) approving the Fourth Report of the Receiver dated December 11, 2024 (the “**Fourth Report**”) and the conduct and activities of the Receiver defined therein; and (iii) authorizing the Receiver to establish the Holdback Reserve (as defined below), was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated December 11, 2024 including the Fourth Report, and on hearing the submissions of counsel for the Receiver, counsel to the Applicant, and such other counsel as were present and on the Counsel Slip, no one else appearing although properly served as appears from the Affidavits of Service of Daisy Jin sworn December 12, 2024 and January 2, 2025 and the Affidavit of Service of Cristian Delfino sworn December 13, 2024, filed.

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Fourth Report.

HOLDBACK RESERVE

2. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain a reserve from the net sale proceeds of the Amended Transaction in the amount of \$1,400,000.00 (the “**Holdback Reserve**”) on account of the estimated maximum amount in respect of any construction lien claims (collectively, the “**Lien Claims**” and each a “**Lien Claim**”) that could have priority over the security interest of MarshallZehr against the real property located at 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”) pursuant to section 78(5) of the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”), and the Receiver is authorized and directed to pay from time to time from the Holdback Reserve any amounts in respect of Lien Claims (in aggregate up to the remaining amount held in the Holdback Reserve and in each case in full and final satisfaction of the priority portion of such claim) according to:

- (a) any such amounts that the Receiver determines, with the consent of MarshallZehr and the consent of the holders of the Lien Claims listed in Schedule “A”, to have priority over the security interest of MarshallZehr against the Real Property pursuant to section 78(5) of the *Construction Act*; or
- (b) further order of this Court.

INTERIM DISTRIBUTION

3. **THIS COURT ORDERS** that subject to the Receiver maintaining such reserves as the Receiver deems appropriate for the proper administration of the receivership estate, and the payment by the Receiver of the amounts secured under the Receiver's Borrowings Charge (as defined in the Receivership Order), the fees of the Receiver and its legal counsel, Aird & Berlis LLP and Chaitons LLP, and the Holdback Reserve, the Receiver be and is hereby authorized and directed to distribute MarshallZehr, in respect of its secured claim, the net sale proceeds from the

Amended Transaction, but not to exceed the amount of its secured claim (the “**MZ Interim Distribution**”).

4. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings and receivership proceedings in respect of the Debtor;
- (b) any applications for a bankruptcy order issued pursuant to the BIA in respect of the Debtor and any bankruptcy order issued pursuant to any such application;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) any provisions of any federal or provincial legislation,

any payment or distributions made pursuant to this Order shall be made free and clear of any and all security interests (whether contractual, statutory or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Debtor and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

APPROVAL OF FOURTH REPORT

6. **THIS COURT ORDERS** that the Fourth Report and the conduct and activities of the Receiver as set out therein be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize, in any way, such approvals.

GENERAL

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

8. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



J DIETRICH, J.

Schedule “A”

1. Astro Excavating Inc.
2. Buttcon Limited
3. HC Matcon Inc.
4. Kada Group Inc.
5. TT Galbraith Electric Ltd.

MARSHALLZEHR GROUP INC
Applicant

- and -

LA PUE INTERNATIONAL INC.
Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

INTERIM DISTRIBUTION AND
ANCILLARY ORDER

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Lawyers for the Receiver, KSV Restructuring Inc.



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00700695-00CL

DATE: January 6, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Lawyers for MarshallZehr Group Inc.	maya@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Howard F. Manis Daniel Litsos	Lawyers for the Respondent, La Pue International Inc.	hmanis@manislaw.ca dlitsos@manislaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Andrew Beney	Lawyers for HC Matcon Inc.	beney@paveylaw.com
Dylan Dilks	Lawyers for Kada Group Inc.	ddilks@weirfoulds.com
James Maclellan	Lawyers for The Sovereign General Insurance Company	jmaclellan@blg.com
Murtaza Tallat	Court-Appointed Receiver	mtallat@ksvadvisory.com

Noah Goldstein		ngoldstein@ksvadvisory.com
Adrienne Ho Brian Chung Miranda Spence	Lawyers for the Receiver, KSV Restructuring Inc.	aho@airdberlis.com bchung@airdberlis.com mspence@airdberlis.com
Fernando Souza	Counsel for Buttcon Limited	fsouza@lawtoronto.com
Jason Wadden	Counsel for the Purchaser	jwadden@tyrllp.com

ENDORSEMENT OF JUSTICE J. DIETRICH :

Overview

- [1] KSV Restructuring Inc. was appointed as receiver (the “Receiver”), of all of the assets, undertakings and properties of La Pue International Inc. (the “Company”), including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “Real Property”).
- [2] The Receiver seeks, among other things, orders:
- a. Approving the asset purchase agreement dated April 4, 2024, as amended by the Reinstatement and Amending Agreement dated July 12, 2024, the Reinstatement and Amending Agreement dated October 8, 2024 and the Third Reinstatement and Amending Agreement dated November 18, 2024, between Lakeshore Luxe Design & Build Group (“Lakeshore”) and the Receiver (collectively, the “Lakeshore APS”) and vesting in 100835091 Ontario Inc. (the “Purchaser”), as assignee of Lakeshore, the Company’s right, title and interest in and to the purchased assets, including the Real Property;
 - b. Approving an interim distribution to MarshallZehr from the proceeds of the sale transaction contemplated by the Lakeshore APS (the “Transaction”);
 - c. Authorizing the Receiver to establish a Holdback Reserve in the amount of \$1.4 million;
 - d. Approving the Fourth Report of the Receiver dated December 11, 2024 (“Fourth Report”) and the conduct and activities of the Receiver as described therein; and
 - e. Sealing the Confidential Appendices to the Fourth Report.
- [3] The main opposition comes from the principal of the Company who takes the position that he was not treated fairly as a bidder during the sale process and the Transaction should not be approved – rather the Receiver should be directed to remarket the Real Property. As a second position, the Company says that it should be entitled to redeem the mortgage of MarshallZehr.

- [4] Buttcon Limited and HC Matcon Inc., who are construction lien claimants support the position of the Company – specifically the Company’s request to redeem as that would leave their claims intact.
- [5] MarshallZehr supports the relief requested by the Receiver.
- [6] The Sovereign General Insurance Company, the deposit insurer who holds a second mortgage on the property and Kada Group Inc. (another construction lien claimant) take no position on the motion.

Background

- [7] The Company is a single purpose entity that owns the Real Property. The Company intended to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Real Property.
- [8] Prior to the receivership proceedings (i) the Company completed shoring and excavation work although no other phases of construction have commenced; and (ii) the Receiver understands the Company pre-sold 359 units (the “Sale Agreements”) and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
- [9] The Receiver was appointed by Order dated October 19, 2023, on an application by MarshallZehr, the Company’s secured creditor who is owed approximately \$20.9 million, including amounts advanced prior to the Receivership Order being granted as well as amounts advanced as Receiver’s borrowings.
- [10] On December 20, 2023, the Court granted an order approving a process for marketing the Real Property. That sales process was detailed in the Receiver’s third report. On June 21, 2024, Justice Penny granted an approval and vesting order in respect of the original sale agreement dated April 4, 2024, as assigned to the Purchaser.
- [11] That transaction failed to close as neither the Second Deposit contemplated by that transaction or the remaining amount of the purchase price was paid to the Receiver. On July 4, 2024, the Receiver formally terminated the original transaction and the First Deposit was forfeited to the Receiver. However, a week later, on July 12, 2024, the Purchaser and the Receiver entered into the First Reinstatement Agreement pursuant to which the Purchaser agreed, among other things, to increase the purchase price by \$50,000 and provide two more deposits in addition to the Second Deposit. The Second Deposit was paid, but the Purchaser failed to pay the additional deposits and at the end of July of 2024, the agreement was terminated by the Receiver.
- [12] In September of 2004, the Receiver learned that the Purchaser was not registered with the Home Construction Regulatory Authority (the “HCRA”) and, accordingly, could not assume the Sale Agreements. Given that the original sales process only resulted in one other offer which was substantially inferior to the Purchaser's offer, discussions between the Purchaser, MarshallZehr and the Receiver continued.
- [13] The Second Reinstatement and Amending Agreement was entered into on October 8, 2024, which included, among other things, an additional deposit and an agreement for the Purchaser to assume the Sale Agreements conditional upon the Purchaser obtaining a vendor and builder license from the HCRA. However, the Purchaser again failed to pay the additional deposit and the Receiver again

terminated the sale agreement on October 24, 2024. At this point the Receiver re-listed the Purchased Assets for sale.

- [14] However, in November of 2024, the Purchaser advised the Receiver it now had access to another additional deposit. MarshallZehr also advised the Receiver that it was prepared to finance the balance of the purchase price. Before considering a further re-instatement agreement the Receiver advised the Purchaser that it required the additional deposit to be placed in the trust account of the Purchaser's counsel. Accordingly, on November 18, 2024, the Purchaser confirmed the entirety of the additional deposit was placed in trust with their counsel and the Receiver entered to the Third Reinstatement Agreement on that day.
- [15] As a result, the Transaction for which approval is now sought is substantially similar to that approved on June 21, 2024 with the following exceptions – the purchase price has been increased by \$50,000, the deposit in the aggregate amount of 18% of the purchase price has been paid to the Receiver or the Purchaser's counsel in trust, and the Purchaser will only assume the Sale Agreements if it obtains the HRCA licenses within 90 days of closing.
- [16] As noted, MarshallZehr has agreed to finance the remaining amount of the purchase price and has advised the Receiver that other than standard financing conditions requiring court-approval of the transaction and registration of security, all other financing conditions have been waived.
- [17] As well, the Receiver advised during the hearing that communications with purchasers under the Sale Agreements have occurred via the Receiver's website – and in particular correspondence summarizing the motion was posted on the Receiver's website on December 20, 2024. Although certain purchasers under the Sale Agreements have asked questions of the Receiver, no purchaser has objected to the Transaction. As the deposits are held in trust, should those Sale Agreements not be assumed by the Purchaser, the Receiver advises the deposits will be returned to the purchasers under the Sale Agreements.
- [18] Throughout the proceedings, Mr. Fugiel, the principal of the Company, advised the Receiver that he intended to purchase the Real Property or redeem the MarshallZehr loan. This included an offer submitted by Mr. Fugiel in trust for a corporation to be incorporated, on September 20, 2024. In response, the Receiver indicated that the proof Mr. Fugiel's financial ability to close the transaction would be required for the offer to be considered. No evidence was provided at that time.
- [19] Again, on November 2, 2024, Mr. Fugiel submitted another offer in trust for a corporation to be incorporated. A conditional financing term sheet was submitted on November 3, 2024. The Receiver expressed concerns regarding the identity of the lender and the conditionality of the term sheet to Mr. Fugiel. A further financing commitment letter was provided by counsel to Mr. Fugiel on November 15, 2024, however, the financing was again conditional on, among other things, satisfactory environmental reports, budgets and an appraisal.
- [20] It appears that an updated commitment was provided to the Receiver on November 21, 2024, but by that time the Receiver had entered into the Third Reinstatement Agreement (which was dated November 18, 2024).

[21] The Company has also requested payout statements from MarshallZehr which were provided in December of 2024.

Issues

[22] The issues to be determined are:

- a. Should the Transaction be approved;
- b. Should the Company be granted a further time period to redeem the MarshallZehr mortgage loan;
- c. Should an interim distribution to MarshallZehr from the proceeds of the Transaction be approved;
- d. Should the Receiver be authorized to establish a Holdback Reserve in the amount of \$1.4 million;
- e. Should the Fourth Report and the conduct and activities of the Receiver as described therein be approved; and
- f. Should the Confidential Appendices to the Fourth Report be sealed?

Analysis

Approval of the Transaction

- [23] The parties agree that the principles governing court-approval of the Transaction are set out in *Royal Bank v Soundair Corp.* 1991 CanLII 2727 (ONCA) [*Soundair*] where the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the receiver has made sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and (iv) the interest of all parties.
- [24] The Company submits it and its principal have not been treated fairly in the sale process and was not provided a commercially reasonable opportunity to submit offers. Specifically, when offers were submitted, the Receiver requested proof of financing on what the Company says are tight and unreasonable timelines.
- [25] The Company also says that Lakeshore previously entered into a joint venture agreement with the Company, and their participation as a bidder in the sale process violates that agreement. However, the parties agree that issue is not before me today and whether Lakeshore violated any contractual agreements with the Company or Mr. Fugiel is for another day.
- [26] This receivership proceeding has been ongoing for more than fourteen months. The Company or Mr. Fugiel did not submit a bid in the original sale process approved in December of 2023. The bids that were submitted in September and November of 2024 by Mr. Fugiel were not accompanied by proof of financing and included various conditions. That a firm commitment for financing from a purchaser in

an insolvency proceeding should be expected is not a surprise. I do not see this as unfairness in the working out of the process.

- [27] I am mindful that the Transaction may result in the Sale Agreements not being assumed by the Purchaser if the Purchaser cannot obtain the HCRA approvals. However, the purchasers under the Sale Agreements will have recourse to their deposits of \$31 million that are being held in trust should that occur.
- [28] As well, the purchase price under the Transaction is superior to that submitted by Mr. Fugiel in his offers. In this respect, Company's counsel indicated during the hearing that he had instructions to match the purchase price and should be given an opportunity to do so. Counsel to the Company also argued that if one accounts for the portion of the deposit that should already be forfeited to the Receiver based on the previously failed transactions, that the purchase price under the Transaction would not be superior to Mr. Fugiel's offers. Given the request for a sealing order for the redacted Transaction documents it is not clear how counsel to the Company has the required information to make those statements. It is also not appropriate for a Receiver, in this context, to be disclosing bids as suggested by the Company.
- [29] Rather what should be considered is the information available to the Receiver at the time it made a decision to proceed with the Transaction. At that time, the Transaction represented the best offer in terms of purchase price that it had received. The argument by counsel to the Company that the purchase price of Mr. Fugiel's offer is superior when one accounts for the forfeited deposits is not necessarily true. Contrary to the submissions by the Company, is not clear what portion of the deposit would be forfeited if the Transaction is not approved – counsel to the Purchaser argues that the deposit should be returned to his client based on the terms of the various reinstatement agreements.
- [30] As set out by the Ontario Court of Appeal in *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.* 2021 ONCA 375 at para 15, courts will generally defer to a court appointed receiver's business expertise in reviewing a sale and will not second guess their recommendation absent exceptional circumstances.
- [31] A similar statement was made in *Bank of Montreal v Dedicated National Pharmacies Inc. et al* 2011 ONSAC 4634 in addressing objections to a sale approval at paragraph 43: "Provided a receiver has acted reasonably, prudently and not arbitrarily, as is the case here, a court should not sit as in appeal from a receiver's decision or review in every detail every element of the procedure by which the receiver made its decision. To do so would be futile and duplicative. It would emasculate the role of the receiver.
- [32] Accordingly, I would approve the Transaction.

Redemption of the MarshallZehr mortgage loan

- [33] The Company also submits that it should be given a further time period to redeem the MarshallZehr loan. In this respect, the Company relies on the recent Court of Appeal decision in *Peakhill Capital Inc. v. 1000093910 Ontario Inc.* 2024 ONCA 584 [*Peakhill*]. The Court of Appeal in para 9 of *Peakhill* noted that the motion judge in the lower court in *Peakhill* correctly recognized that paras 9 and 10 of *Rose-*

Isli Corp. v. Smith, 2023 ONCA 548 [Rose-Isli] set out the governing principles that guided his decision. In *Rose-Isli* the Court of Appeal stated:

[9] We see no error in the motions judge applying the following principles to guide her consideration of whether, in the specific circumstances, 273 Ontario should be granted leave to redeem:

- In considering a request by an encumbrancer to redeem a mortgage on property in receivership, a court should consider the impact that allowing the encumbrancer to exercise its right of redemption would have on the integrity of a court-approved sales process;
- Usually, if a court-approved sales process has been carried out in a manner consistent with the principles set out in *Royal Bank of Canada v. Soundair Corp.*, (1991), 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.), a court should not permit a latter attempt to redeem to interfere with the completion of the sales process. In our view, the reason the *Soundair* principles apply to circumstances where an encumbrancer seeks to redeem a mortgage is that once the court's process has been invoked to supervise the sale of assets under receivership, the process must take into consideration all affected economic interests in the properties in question, not just those of one creditor; and
- In dealing with the matter, a court should engage in a balancing analysis of the right to redeem against the impact on the integrity of the court-approved receivership process.

[10] We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 2009 CanLII 37930 (ON SC), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:

A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

- [34] In *Peakhill*, the motions judge found that in the extraordinary circumstances of that case, including that all creditors were being paid in full and allowing the respondent to redeem would not have a significant impact on the integrity of the system in that particular case.
- [35] Unlike in *Peakhill*, in the circumstances before me, providing additional time for the Company to redeem would not be appropriate. As noted, the receivership proceeding has been ongoing for over fourteen months, the Company is not coming with a cheque in hand to pay out all creditors. Rather, Mr. Fugiel has been attempting to participate as a bidder for the Real Property and is only raising the possibility of redemption (and requesting more time to put together the necessary funds) as an alternative option to delay sale approval. Unlike in *Peakhill*, there are no unusual and exceptional circumstances that exist to support granting the Company's right to redeem at this time.

Interim distribution to MarshallZehr and establishment of the Holdback Reserve

- [36] Should the Transaction close, no party objected to the Receiver's request that the Receiver be authorized to distribute the proceeds, subject to adequate reserves as determined by the Receiver to MarshallZehr.
- [37] The Receiver has obtained an opinion from its independent legal counsel that, subject to standard assumptions and qualifications, pursuant to applicable security documentation, MarshallZehr has a valid security interests or charge, as applicable, against the Real Property.
- [38] The Receiver also seeks to establish a Holdback Reserve of \$1.4 million, which exceeds 10% of the total amount of liens registered against the real property. This permits the Receiver to facilitate an interim distribution while at the same time reviewing the validity of the lien claims. Counsel for the construction lien claimants present did not object to the distribution the size of the proposed Holdback Reserve. There is separately a motion scheduled for March 7, 2025, to address MarshallZehr's position that none of the \$1.4 million has priority over its mortgage.
- [39] In the circumstances, the interim distribution to MarshallZehr and proposed Holdback Reserve, to be dealt with in accordance with the terms of the ancillary order signed by me, are approved.

Approval of Fourth Report and the Receiver's activities

- [40] The activities of the Receiver described in its fourth report were necessary and undertaken in good faith. Given my findings above, the Fourth Report and the activities of the Receiver as set out therein are approved.

Sealing of Confidential Appendices

- [41] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Real Property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the Fourth report meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in his sealed envelope with a copy of the approval investing order in this endorsement.

Disposition

- [42] For the forgoing reasons, I grant the relief requested by the Receiver with the minor amendments to the form of draft approval and vesting order and ancillary order discussed during the hearing. Orders to issue in the forms signed by me this day.



APPENDIX E

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] (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] (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] (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

ADF

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.

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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.

APPENDIX F

REINSTATEMENT AND AMENDING AGREEMENT

THIS AGREEMENT is made as of the 12th day of July, 2024 (the "Effective Date").

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 -

1000835091 ONTARIO INC.
(the "Purchaser")

WHEREAS:

- A. The Vendor and Lakeshore Luxe Design & Build Group Inc. (the "Original Purchaser") entered into an asset purchase agreement dated as of the 4th day of April, 2024 (the "Original Purchase Agreement"), pursuant to which the Vendor agreed to sell and the Original Purchaser agreed to purchase, *inter alia*, those lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario, as legally described in PIN 64349-0258 (LT);
- B. The Original Purchaser assigned all of its right, title and interest in the Original Purchase Agreement to the Purchaser pursuant to an Assignment of Agreement of Purchase and Sale dated as of June 11, 2024 (the "Assignment Agreement"), provided that the Assignment Agreement shall not release the Original Purchaser from its obligations under the Original Purchase Agreement;
- C. The Vendor terminated the Original Purchase Agreement, as assigned pursuant to the Assignment Agreement, (collectively, the "Purchase Agreement") pursuant to a termination letter to the Purchaser dated July 4, 2024;
- D. The Vendor and the Purchaser have agreed to reinstate, confirm, ratify and amend the Purchase Agreement in accordance with and subject to the terms and conditions hereof; and
- E. Unless otherwise specifically defined in this Agreement or the context otherwise requires, any capitalized terms used in this Agreement shall have the meanings assigned thereto in the Purchase Agreement.

NOW THEREFORE in consideration of the sum of the Two (\$2.00) Dollars now paid to each Party, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. The Parties hereby reinstate, confirm, ratify and agree to be bound by the terms of the Purchase Agreement in accordance with and subject to the terms and conditions hereof.
2. The Parties hereby acknowledge and agree that:
 - (a) Subsection 1(r) is hereby deleted in its entirety and replaced with the following:

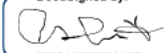
"Deposit" means collectively, the First Deposit, the Second Deposit, the Third Deposit and the Fourth Deposit;
 - (b) Section 4 is hereby deleted in its entirety and replaced with the following:

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be the sum of [REDACTED] (the "Purchase Price").
 - (c) The Closing Date is hereby extended to September 6, 2024.
 - (d) The First Deposit is hereby deemed to be non-refundable to the Purchaser and fully earned and released to the Vendor on the Effective Date. In this regard, (i) the Purchaser hereby irrevocably authorizes and directs the Vendor to release the First Deposit (together with any interest thereon) from trust as forfeited to the Vendor and (ii) if the Transaction is completed on the Closing Date in accordance with the provisions of the Purchase Agreement, as amended by this Agreement, the First Deposit shall be credited against the balance of the Purchase Price payable by the Purchaser on the Closing Date.
 - (e) The Purchaser (i) delivered payment of the Second Deposit to the Vendor's Solicitors on July 11, 2024 and (ii) hereby irrevocably authorizes and directs the Vendor's Solicitors to release the Second Deposit to the Vendor, in trust. Provided that in the event that the Purchase Agreement is terminated due to the Purchaser's default thereunder, the Second

Deposit (together with any interest thereon) shall, without the requirement of any further action by the Parties, be immediately thereafter released from trust and forfeited to the Vendor as liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under the Purchase Agreement and at law.

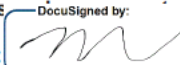
- (f) The Purchaser shall pay, as a further deposit towards the balance of the Purchase Price due on Closing, by wire transfer, the amount of [REDACTED] (the "Third Deposit") to the Vendor, in trust, on or before July 22, 2024. Provided that in the event that the Purchase Agreement is terminated due to the Purchaser's default thereunder, the Third Deposit (together with any interest thereon) shall, without the requirement of any further action by the Parties, be immediately thereafter released from trust and forfeited to the Vendor as liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under the Purchase Agreement and at law.
 - (g) The Purchaser shall pay, as a further deposit towards the balance of the Purchase Price due on Closing, by wire transfer, the amount of [REDACTED] (the "Fourth Deposit") to the Vendor, in trust, on or before August 1, 2024. Provided that in the event that the Purchase Agreement is terminated due to the Purchaser's default thereunder, the Fourth Deposit (together with any interest thereon) shall, without the requirement of any further action by the Parties, be immediately thereafter released from trust and forfeited to the Vendor as liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under the Purchase Agreement and at law.
3. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Agreement as a full estoppel to any proceeding, suit, claim motion or other action brought by the Purchaser to seek relief from forfeiture of the Deposit, or any portion thereof, to the Vendor.
 4. All other terms and conditions of the Purchase Agreement shall remain the same and time shall continue to be of the essence.
 5. This Agreement shall be binding upon the Parties and their respective successors and assigns.
 6. This Agreement shall be governed by and construed in accordance with the Law of the Province of Ontario and the Law of Canada applicable in that Province.
 7. This Agreement may be executed in counterparts and transmitted by electronic transmission, each of which, when so executed and transmitted, shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.
 8. In the event of any discrepancy between the provisions of this Agreement and the provisions of the Purchase Agreement, the provisions of this Agreement shall prevail and the Purchase Agreement shall be deemed to be amended to incorporate same.

[Signature Page Follows]

DocuSigned by:

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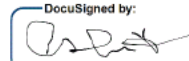
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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 pers

DocuSigned by:  ability
Per: _____
Name: 07FC5B52A0B74D7
Title: Managing Director

I have authority to bind the Receiver.

1000835091 ONTARIO INC.

DocuSigned by: 
Per: _____
Name: 0933A55F063849C Anthony De Francesco
Title: Authorized Signing Officer

I have authority to bind the Corporation.

APPENDIX G

SECOND REINSTATEMENT AND AMENDING AGREEMENT

THIS AGREEMENT is made as of the 8th day of October, 2024 (the "Effective Date").

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 -

1000835091 ONTARIO INC.
(the "Purchaser")

WHEREAS:

- A. The Vendor and Lakeshore Luxe Design & Build Group Inc. (the "Original Purchaser") entered into an asset purchase agreement dated as of the 4th day of April, 2024 (the "Original Purchase Agreement"), pursuant to which the Vendor agreed to sell and the Original Purchaser agreed to purchase, *inter alia*, those lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario, as legally described in PIN 64349-0258 (LT);
- B. The Original Purchaser assigned all of its right, title and interest in the Original Purchase Agreement to the Purchaser pursuant to an Assignment of Agreement of Purchase and Sale dated as of June 11, 2024 as subsequently replaced by an Assignment of Asset Purchase Agreement dated as of July 12, 2024 (the "Assignment Agreement"), provided that the Assignment Agreement shall not release the Original Purchaser from its obligations under the Original Purchase Agreement;
- C. The Vendor has obtained the Approval and Vesting Order of The Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) (Court File No. CV-23-00700695-00CL) dated June 21, 2024 approving the transaction contemplated in the Purchase Agreement (as hereinafter defined);
- D. The Vendor terminated the Original Purchase Agreement, as assigned pursuant to the Assignment Agreement, (which, together with any amendments thereof, shall hereinafter be collectively referred to as the "Purchase Agreement") pursuant to a termination letter to the Purchaser dated July 4, 2024 due to the Purchaser's failure to provide the balance of the closing funds and the executed closing documentation on the Closing Date;
- E. The Vendor and the Purchaser entered into a Reinstatement and Amending Agreement dated as of July 12, 2024 (the "First Reinstatement and Amending Agreement") to reinstate, confirm, ratify and amend the Purchase Agreement in accordance with and subject to the terms and conditions thereof;
- F. The Vendor terminated the reinstated Purchase Agreement pursuant to a letter dated July 29, 2024 (the "Termination Letter") due to the Purchaser's failure to pay the Third Deposit (as defined in the First Reinstatement and Amending Agreement);
- G. Notwithstanding the issuance of the Termination Letter, the Vendor and the Purchaser have agreed to further reinstate, confirm, ratify and amend the Purchase Agreement in accordance with and subject to the terms and conditions hereof;
- H. This Agreement is conditional on the Vendor obtaining a Court order (the "Reinstatement Order") authorizing and ratifying the Vendor's execution of this Agreement and approving the Transaction (as hereby further reinstated, confirmed, ratified and amended) in accordance with and subject to the terms and conditions hereof (the "Vendor's Condition"). Provided that the Vendor's Condition is inserted for the sole benefit of the Vendor and the Vendor may waive same without prejudice to its right of termination in the event of the non-fulfillment of any other terms and conditions of the Purchase Agreement; and
- I. Unless otherwise specifically defined in this Agreement or the context otherwise requires, any capitalized terms used in this Agreement shall have the meanings assigned thereto in the Purchase Agreement.

NOW THEREFORE in consideration of the sum of the Two (\$2.00) Dollars now paid to each Party, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. The above recitals are true and correct in substance and in fact.
2. The Parties hereby further reinstate, confirm, ratify and agree to be bound by the terms of the Purchase Agreement in accordance with and subject to the terms and conditions hereof.

3. The Parties hereby acknowledge and agree that:

- (a) Subsection 1(r) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"Deposit" means collectively, the First Deposit, the Second Deposit and the Third Deposit;

- (b) Subsection 1(tt) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"Purchaser's Solicitors" means the firm of Miller Thomson LLP, 100 New Park Place, Suite 700, Vaughan, Ontario (Attention: Michael Carli, E-mail: mcarli@millerthomson.com);

- (c) Provided that the Vendor has not theretofore waived the Vendor's Condition, within five (5) Business Days following the Purchaser's payment of the Third Deposit pursuant to the terms hereinafter set out, 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 Reinstatement Order (the **"Outside Date"**). 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 Reinstatement Order. In the event that the Court does not grant the Reinstatement Order as aforesaid prior to the Outside Date, and the Vendor has not theretofore waived the Vendor's Condition, the Purchase Agreement shall be deemed automatically terminated and the (i) Third Deposit shall be returned to the Purchaser without deduction and/or interest and (ii) Purchaser acknowledges and agrees that it shall have no further rights or remedies against the Vendor arising out of the termination of the Purchase Agreement including without limitation in respect of the forfeiture and release of the First Deposit and the Second Deposit to the Vendor.

- (d) The Closing Date is hereby designated as the date that is seven (7) Business Days following the date on which the (i) Reinstatement Order is granted or (ii) Vendor waives the Vendor's Condition, as applicable, or such other date as the Parties agree in writing.

- (e) The balance of the Purchase Price due on the Closing Date shall be paid by the Purchaser to the Vendor by way of certified cheque, bank draft or wire transfer, or as the Parties may otherwise agree in writing.

- (f) Subsection 2(d) of the First Reinstatement and Amending Agreement is hereby deleted in its entirety and replaced with the following:

The First Deposit was heretofore deemed non-refundable to the Purchaser and fully earned and released to the Vendor on July 12, 2024. In this regard, (i) the Purchaser hereby acknowledges and agrees that the First Deposit (together with any interest thereon) was forfeited to the Vendor and (ii) if the Transaction is completed on the Closing Date in accordance with the provisions of the Purchase Agreement, as amended by this Agreement, the First Deposit shall be credited against the balance of the Purchase Price payable by the Purchaser on the Closing Date.

- (g) Subsection 2(e) of the First Reinstatement and Amending Agreement is hereby deleted in its entirety and replaced with the following:

The Second Deposit is hereby deemed to be non-refundable to the Purchaser and fully earned and released to the Vendor on the Effective Date. In this regard, (i) the Purchaser hereby irrevocably authorizes and directs the Vendor to release the Second Deposit (together with any interest thereon) from trust as forfeited to the Vendor and (ii) if the Transaction is completed on the Closing Date in accordance with the provisions of the Purchase Agreement, as amended by this Agreement, the Second Deposit shall be credited against the balance of the Purchase Price payable by the Purchaser on the Closing Date.

- (h) Subsections 2(f) and (g) of the First Reinstatement and Amending Agreement are hereby deleted in their entirety and replaced with the following:

The Purchaser shall pay, as a further deposit towards the balance of the Purchase Price due on Closing, by wire transfer, the amount of [REDACTED] (the **"Third Deposit"**) to the Purchaser's Solicitors, in trust, within one (1) Business Day of the date that this Agreement is executed by each of the Parties. Provided that in the event that the Purchase Agreement is terminated due to the Purchaser's default thereunder, the Third Deposit (together with any interest thereon) shall, without the requirement of any further action by the Parties, be immediately thereafter released from trust by wire transfer from the Purchaser's Solicitors to the Vendor and forfeited to the Vendor as liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under the Purchase Agreement and at law.

(i) Schedule D of the Purchase Agreement is hereby deleted in its entirety and replaced with the Schedule D attached hereto.

(j) Subsection 16(a)(iv) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

it is or will be on the Assumption Date (as hereinafter defined) a builder and vendor licensed under the Home Construction Regulatory Authority;

(k) Section 47 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

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 seven (7) Business Days before the Closing Date, 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 in which the Purchaser or Anthony De Francesco, directly or indirectly, holds a material interest (the "**Assignee**"), provided that such assignment shall not release the Purchaser from its obligations under this Agreement. The Purchaser hereby covenants and agrees that any such assignment by the Purchaser pursuant to this paragraph shall be conditional on and subject to the (i) Court granting an amendment to the Approval and Vesting Order for the purpose of noting the Assignee as the Purchaser and (ii) Purchaser reimbursing the Vendor, as a credit in favour of the Vendor on the Statement of Adjustments, for all costs, expenses, fees and disbursements incurred by the Vendor in connection with obtaining such amendment to the Approval and Vesting Order such that the Vendor shall be fully indemnified in respect thereof.

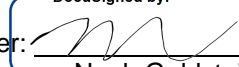
(l) Notwithstanding any provision in the Purchase Agreement to the contrary, the Parties hereby covenant and agree that the Purchaser shall assume the Assumed Agreements of Purchase and Sale ninety (90) days following the Closing Date (the "**Assumption Date**"), with a right in favour of the Purchaser to extend the Assumption Date by a further ninety (90) days upon prior written notice to the Vendor and the Vendor's Solicitors, or such other date as the Parties may agree in writing. The Purchaser's assumption of the Assumed Agreements of Purchase and Sale shall be subject to and conditional on the Purchaser being licensed as a vendor and builder with the Home Construction Regulatory Authority. The Parties hereby agree to act reasonably and in good faith in agreeing to further extend the Assumption Date if required while the Purchaser's application for a vendor and builder licence remains pending for approval by the Home Construction Regulatory Authority. The Purchase Agreement shall be deemed to be amended, *mutatis mutandis*, to incorporate the provisions hereof, which shall survive Closing.

4. The Purchaser and the Vendor hereby agree and confirm that the Due Diligence Inspection Condition contemplated by Schedule E of the Purchase Agreement has been waived, or is deemed to have been waived, by the Purchaser in the manner and within the timeline prescribed by the Purchase Agreement.
5. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Agreement as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser to seek relief from forfeiture of the Deposit, or any portion thereof, to the Vendor.
6. All other terms and conditions of the Purchase Agreement shall remain the same and time shall continue to be of the essence.
7. This Agreement shall be binding upon the Parties and their respective successors and assigns.
8. This Agreement shall be governed by and construed in accordance with the Law of the Province of Ontario and the Law of Canada applicable in that Province.
9. This Agreement may be executed in counterparts and transmitted by electronic transmission, each of which, when so executed and transmitted, shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.
10. In the event of any discrepancy between the provisions of this Agreement and the provisions of the Purchase Agreement, the provisions of this Agreement shall prevail and the Purchase Agreement shall be deemed to be amended to incorporate same.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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

DocuSigned by:
Per: 
Name: Noah Goldstein
Title: Managing Director

I have authority to bind the Receiver.

1000835091 ONTARIO INC.

Per: _____
Name: Anthony De Francesco
Title: Authorized Signing Officer

I have authority to bind the Corporation.

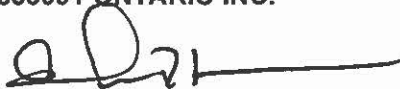
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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: Managing Director

I have authority to bind the Receiver.

1000835091 ONTARIO INC.

Per:  _____
Name: Anthony De Francesco
Title: Authorized Signing Officer

I have authority to bind the Corporation.

**SCHEDULE "D"
ASSUMED CONTRACTS**

None.

APPENDIX H

THIRD REINSTATEMENT AND AMENDING AGREEMENT

11/18/2024

THIS AGREEMENT is made as of the ____ day of November, 2024 (the "Effective Date").

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 -

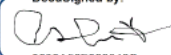
1000835091 ONTARIO INC.
(the "Purchaser")

WHEREAS:

- A. The Vendor and Lakeshore Luxe Design & Build Group Inc. (the "Original Purchaser") entered into an asset purchase agreement dated as of the 4th day of April, 2024 (the "Original Purchase Agreement"), pursuant to which the Vendor agreed to sell and the Original Purchaser agreed to purchase, *inter alia*, those lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario, as legally described in PIN 64349-0258 (LT);
- B. The Original Purchaser assigned all of its right, title and interest in the Original Purchase Agreement to the Purchaser pursuant to an Assignment of Agreement of Purchase and Sale dated as of June 11, 2024 as subsequently replaced by an Assignment of Asset Purchase Agreement dated as of July 12, 2024 (the "Assignment Agreement"), provided that the Assignment Agreement shall not release the Original Purchaser from its obligations under the Original Purchase Agreement;
- C. The Vendor has obtained the Approval and Vesting Order of The Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) (Court File No. CV-23-00700695-00CL) dated June 21, 2024 approving the transaction contemplated in the Purchase Agreement (as hereinafter defined);
- D. The Vendor terminated the Original Purchase Agreement, as assigned pursuant to the Assignment Agreement, (which, together with any amendments thereof, shall hereinafter be collectively referred to as the "Purchase Agreement") pursuant to a termination letter to the Purchaser dated July 4, 2024 due to the Purchaser's failure to provide the balance of the closing funds and the executed closing documentation on the Closing Date;
- E. The Vendor and the Purchaser entered into a Reinstatement and Amending Agreement dated as of July 12, 2024 (the "First Reinstatement and Amending Agreement") to reinstate, confirm, ratify and amend the Purchase Agreement in accordance with and subject to the terms and conditions thereof;
- F. The Vendor terminated the reinstated Purchase Agreement pursuant to a letter dated July 29, 2024 due to the Purchaser's failure to pay the Third Deposit (as defined in the First Reinstatement and Amending Agreement);
- G. The Vendor and the Purchaser entered into a Reinstatement and Amending Agreement dated as of October 8, 2024 (the "Second Reinstatement and Amending Agreement") to reinstate, confirm, ratify and amend the Purchase Agreement in accordance with and subject to the terms and conditions thereof;
- H. The Vendor terminated the reinstated Purchase Agreement pursuant to a letter dated October 24, 2024 (the "Termination Letter") due to the Purchaser's failure to pay the Third Deposit (as defined in the Second Reinstatement and Amending Agreement);
- I. Notwithstanding the issuance of the Termination Letter, the Vendor and the Purchaser have agreed to further reinstate, confirm, ratify and amend the Purchase Agreement in accordance with and subject to the terms and conditions hereof; and
- J. Unless otherwise specifically defined in this Agreement or the context otherwise requires, any capitalized terms used in this Agreement shall have the meanings assigned thereto in the Purchase Agreement.

NOW THEREFORE in consideration of the sum of the Two (\$2.00) Dollars now paid to each Party, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. The above recitals are true and correct in substance and in fact.

DocuSigned by:

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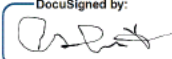
2. The Parties hereby further reinstate, confirm, ratify and agree to be bound by the terms of the Purchase Agreement, as amended by the First Reinstatement and Amending Agreement and the Second Reinstatement and Amending Agreement, in accordance with and subject to the terms and conditions hereof.
3. The Parties hereby acknowledge and agree that:
 - (a) Subsection 1(tt) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"Purchaser's Solicitors" means the firm of Tyr LLP, 488 Wellington Street West, Suite 300-302, Toronto, Ontario (Attention: Jason Wadden, E-mail: jwadden@tyrllp.com);
 - (b) Subsection 3(d) of the Second Reinstatement and Amending Agreement is hereby deleted in its entirety and replaced with the following:

The Closing Date is hereby designated as the date that is fourteen (14) Business Days following the date on which the (i) Reinstatement Order is granted or (ii) Vendor waives the Vendor's Condition, as applicable, or such other date as the Parties agree in writing.
 - (c) Subsection 3(h) of the Second Reinstatement and Amending Agreement is hereby deleted in its entirety and replaced with the following:

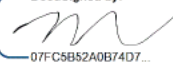
The Purchaser shall pay, as a further deposit towards the balance of the Purchase Price due on Closing, by wire transfer, the amount of [REDACTED] (the "Third Deposit") to the Vendor, in trust, within one (1) Business Day of the Effective Date. Provided that in the event that the Purchase Agreement is terminated due to the Purchaser's default thereunder, the Third Deposit (together with any interest thereon) shall, without the requirement of any further action by the Parties, be immediately thereafter released from trust and forfeited to the Vendor as liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under the Purchase Agreement and at law. Notwithstanding the foregoing, in the event that MarshallZehr Group Inc. ("MZ") fails to complete the financing transaction contemplated in a letter of intent to be entered into between MZ and the Purchaser for any reason other than due to the Purchaser's default in respect of such financing transaction and the Purchase Agreement is terminated as a result, the (i) Third Deposit shall be returned to the Purchaser without deduction and/or interest at the request of the Purchaser and (ii) that in the event the Third Deposit is so returned, the Purchaser acknowledges and agrees that it shall have no further rights or remedies against the Vendor arising out of the termination of the Purchase Agreement including without limitation in respect of the forfeiture and release of the First Deposit and the Second Deposit to the Vendor.
4. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Agreement as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser to seek relief from forfeiture of the Deposit, or any portion thereof, to the Vendor.
5. All other terms and conditions of the Purchase Agreement shall remain the same and time shall continue to be of the essence.
6. This Agreement shall be binding upon the Parties and their respective successors and assigns.
7. This Agreement shall be governed by and construed in accordance with the Law of the Province of Ontario and the Law of Canada applicable in that Province.
8. This Agreement may be executed in counterparts and transmitted by electronic transmission, each of which, when so executed and transmitted, shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.
9. In the event of any discrepancy between the provisions of this Agreement and the provisions of the Purchase Agreement, the provisions of this Agreement shall prevail and the Purchase Agreement shall be deemed to be amended to incorporate same.

[Signature Page Follows]

DocuSigned by:

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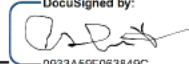
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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

DocuSigned by:
Per:  _____
Name: 07FC5B52A0B74D7...
Title: Managing Director

I have authority to bind the Receiver.

1000835091 ONTARIO INC.

DocuSigned by:
Per:  _____
Name: 0933A56F063849C
Title: Authorized Signing Officer

I have authority to bind the Corporation.

APPENDIX I

ASSIGNMENT OF AGREEMENT OF PURCHASE AND SALE

This Assignment made as of the 11th day of June, 2024

B E T W E E N:

Lakeshore Luxe Design & Build Group Inc.

(the "Assignor")

-and-

1000835091 Ontario Inc.

(the "Assignee")

RE: Asset Purchase 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, as Vendor, and Lakeshore Luxe Design & Build Group Inc., as Purchaser, for 5528 Ferry Street, Niagara Falls, Ontario (the "Agreement")

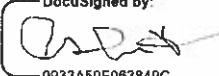
FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows.

1. The Assignor hereby assigns and sets over unto the Assignee the Agreement and all right, title and interest of the Assignor therein, including, without limitation, all deposits provided by the Assignor pursuant to the Agreement.
2. The Assignee covenants and agrees that it will observe and perform all of the covenants and obligations of the Buyer under the Agreement and assume all of the obligations and responsibilities of the Assignor pursuant to the Agreement to the same extent as if it had originally signed the Agreement as Buyer thereunder.
3. The Assignor hereby represents that it has full right, power and authority to assign the Agreement to the Assignee pursuant to the provisions herein.
4. The Assignor covenants and agrees that notwithstanding the within assignment, it will remain liable, until closing, for the performance of all of the obligations of the Buyer under the Agreement, jointly and severally with the Assignee.
5. Any capitalized terms hereunder shall have the same meaning attributed to them in the Agreement, unless they are defined differently in this assignment.
6. This Assignment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
7. The parties agree that this Assignment of Agreement of Purchase and Sale may be executed and delivered in counterparts and by transmission or other electronic communication and

that any copies hereof, containing the facsimile signatures of both parties together, and/or in counterparties, shall be effective to bind the parties hereto.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by its duly authorized officers in that behalf as of the day and year first above written.

LAKESHORE LUXE DESIGN & BUILD GROUP INC.

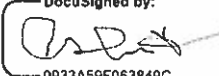
By:  DocuSigned by: 6/19/2024
0033A59F063849C

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have authority to bind the Corporation

1000835091 Ontario Inc.

By:  DocuSigned by: 6/19/2024
0033A59F063849C

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have authority to bind the Corporation

NOTICE OF ASSIGNMENT OF AGREEMENT OF PURCHASE AND SALE

TO: 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

AND TO: Chaitons LLP, its solicitor herein


RE: Lakeshore Luxe Design & Build Group Inc. purchase from 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 of the property municipally known as 5528 Ferry Street, Niagara Falls, Ontario pursuant to an Asset Purchase Agreement made the 4th day of April, 2024 (the "Agreement")

In accordance with the provisions of the Agreement, you are hereby given notice that:

1. Lakeshore Luxe Design & Build Group Inc. (the "Assignor") has assigned and set over unto 1000835091 Ontario Inc. (the "Assignee") the Agreement and all right, title and interest of the Assignor therein, including, without limitation, all deposits provided by the Assignor pursuant to the Agreement;
2. The Assignee has covenanted and agreed that it will observe and perform all of the covenants and obligations of the Buyer under the Agreement and assume all of the obligations and responsibilities of the Assignor pursuant to the Agreement to the same extent as if it had originally signed the Agreement as Buyer thereunder; and
3. The Assignor acknowledges and agrees that the herein assignment shall not release the Assignor from its obligations under the Agreement.

Dated this 19th day of June, 2024.

LAKESHORE LUXE DESIGN & BUILD GROUP INC.

By:  6/19/2024
0933A59F063849C

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have authority to bind the Corporation

1000835091 Ontario Inc.

By:  6/19/2024
0933A59F063849C

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have authority to bind the Corporation

NOTICE OF ASSIGNMENT OF ASSET PURCHASE AGREEMENT

TO: 1001082540 ONTARIO INC.

AND TO: MILLER THOMSON LLP,
the Assignee's solicitors herein

RE: Asset Purchase Agreement between LAKESHORE LUXE DESIGN & BUILD GROUP INC. (the "Purchaser") and 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"), dated the 4th day of April, 2024, as reinstated and amended (the "Asset Purchase Agreement"), pursuant to which the Purchaser agreed to purchase and the Vendor agreed to sell the lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the "Property") and assigned by the Vendor to 1000835091 Ontario Inc. by an Assignment of Asset Purchase Agreement dated June 19, 2024.

TAKE NOTICE THAT the 1000835091 ONTARIO INC. has assigned all of its right, title and interest in the Asset Purchase Agreement, together with all deposit monies which have been paid thereunder to date to and in favour of 1001082540 ONTARIO INC. (the "Assignee"), which has agreed to be bound by the terms of the Asset Purchase Agreement as if it was the original "Purchaser" noted therein and has agreed to perform and complete all obligations thereof.

ACCORDINGLY, you are hereby irrevocably authorized and directed, as of the date hereof, to deal with and take all further instruction in respect of the interest of the "Purchaser" under the Asset Purchase Agreement from 1001082540 ONTARIO INC.

This Notice may be executed in counterparts and transmitted by facsimile, photocopy or other forms of electronic transmission and that the executed counterparts, however received, shall be received as original signatures and together form this Agreement.

DATED this 5th day of December, 2024.

1000835091 ONTARIO INC.

Per: 

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have the authority to bind the corporation

ASSIGNEE'S COVENANT

TAKE NOTICE THAT:

The Assignee hereby covenants to be bound by, assume, observe, comply with and be responsible for all of the Purchaser's obligations, covenants and liabilities under and in respect of the Asset Purchase Agreement, as if the Assignee were original signatories to the Asset Purchase Agreement.

This Notice may be executed in counterparts and transmitted by facsimile, photocopy or other forms of electronic transmission and that the executed counterparts, however received, shall be received as original signatures and together form this Notice.

DATED this 5th day of December, 2024.

1001082540 ONTARIO INC.

Per: 

Name: Giacomo Scivoletto
Title: Director
I have the authority to bind the corporation

APPENDIX J

ASSET PURCHASE AGREEMENT

THIS AGREEMENT dated the 20 day of September, 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 -

• **PAWEL FUGIEL IN TRUST FOR A CORPORATION TO BE INCORPORATED AND WITHOUT PERSONAL LIABILITY**
(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) “**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;
- (b) “**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;
- (c) “**Application**” has the meaning ascribed to it in Subsection 14(b)(i);
- (d) “**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;

- (e) **"Assignment Order"** has the meaning ascribed to it in Section 11;
- (f) **"Assumed Agreements of Purchase and Sale"** means the Existing Agreements of Purchase and Sale to be assumed by the Purchaser on Closing and listed on **Schedule "A"** attached hereto;
- (g) **"Assumed Contracts"** has the meaning ascribed to it in Section 10;
- (h) **"Assumed Liabilities"** has the meaning ascribed to it in Subsection 9(a);
- (i) **"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;
- (j) **"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;
- (k) **"Closing"** has the meaning ascribed to it in Section 13;
- (l) **"Closing Date"** has the meaning ascribed to it in Section 13;
- (m) **"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;
- (n) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (o) **"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, **save and except for any and all realty taxes (including any and all utility charges that may be outstanding) or other charges due and owing to any municipality, city, province or federal governmental authority, including but not limited to any sidewalk, road or other improvements so required as well as any and all real estate commissions, consultants, engineers, architects due and owing from the development of the Purchased Assets including the Existing Agreements of Purchase and Sale (as defined below);**
- (p) **"Debtor"** means La Pue International Inc.;
- (q) **"Deposit"** has the meaning ascribed to it in Subsection 5(a);
- (r) **"DRA"** has the meaning ascribed to it in Subsection 14(a)(i);
- (s) **"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;

- (t) **“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;
- (u) **“ETA”** means the *Excise Tax Act* (Canada);
- (v) **“Excluded Assets”** has the meaning ascribed to it in Section 12;
- (w) **“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;
- (x) **“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;
- (y) **“HST”** has the meaning ascribed to it in Section 28(a);
- (z) **“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;
- (aa) **“Indemnitees”** has the meaning ascribed to it in Subsection 20(a);
- (bb) **“Lands”** means the lands and premises legally described in **Schedule “B”** attached hereto;
- (cc) **“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;
- (dd) **“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;
- (ee) **“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;
- (ff) **“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;

- (gg) **“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;
- (hh) **“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;
- (ii) **“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;
- (jj) **“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);
- (kk) **“Purchase Price”** has the meaning ascribed thereto in Section 4;
- (ll) **“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;
- (mm) **“Purchaser”** has the meaning ascribed to it on page 1 above;
- (nn) **“Purchaser’s Solicitors”** means the firm of **Manis Law (Howard Manis – hmanis@manislaw.ca)**;
- (oo) **“Receiver”** means KSV Restructuring Inc. in its capacity as receiver of the Debtor appointed pursuant to the Receivership Order;
- (pp) **“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;
- (qq) **“Receivership Order”** has the meaning ascribed to it in the Recitals;

- (rr) **"Rights"** has the meaning ascribed to it in Section 11;
- (ss) **"Statement of Adjustments"** has the meaning ascribed to it in Subsection 24(a)(iii);
- (tt) **"Structure"** means the structure(s) situated on the Lands, including all improvements thereto and all fixtures forming a part thereof; **NTD: KSV are there any structures on this property?**
- (uu) **"TERS"** has the meaning ascribed to it in Subsection 14(d)(iii);
- (vv) **"Transaction"** means the transaction contemplated by this Agreement;
- (ww) **"Vendor"** has the meaning ascribed to it in the Recitals;
- (xx) **"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
- (yy) **"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

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] (the "Purchase Price").

5. SATISFACTION OF PURCHASE PRICE.

The Purchase Price shall be paid and satisfied as follows:

- (a) a deposit in the amount of [REDACTED], which is equal to [REDACTED] of the Purchase Price (the "Deposit"), to be paid by the Purchaser to the Vendor in trust contemporaneously with the delivery by the Purchaser of a copy of this Agreement executed by the Purchaser;
- (b) Deposit schedule as follows:
 - (i) [REDACTED] — 7 Business days upon acceptance.

- (ii) [REDACTED] — 20 Business days after acceptance.
- (iii) [REDACTED] — 35 business days after acceptance.
- (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 **seven (7)** Business Days following the execution of this Agreement by the Parties, 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 CONTRACTS.**

The Purchaser shall assume on Closing the Contracts listed on **Schedule "D"** attached hereto (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 **on or before November 22, 2024**, 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 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 trademark 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;
- (e) the delivery of the documents referenced in Section 24 to the Purchaser; and
- (f) the delivery of a Full and Final Release by the Applicant in the receivership proceeding of any and all liability of the Debtor, its principal, Pawel Fugiel, and their successors and assigns in accordance with the standard form of Releases acceptable to counsel for the Purchaser acting reasonably

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(b);
- (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.
- (m) **The Listing Brokerage (Colliers International) will pay the Co-operating Brokerage (Forestwood Real Estate Inc. - Sales representative Lisa Vo) the commission for the property above in the amount of 1% + hst of the purchase price, paid by the Seller to the Listing Brokerage.**

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.
- (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:

- PAWEL FUGIEL (pawelfugiel.fugielgroup@gmail.com)

(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

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 30.

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. **Tuesday September 24th, 2024 at 11:59 am**

[remainder of this page intentionally left blank]

DATED as of the date first mentioned above.

PAWEL FUGIEL IN TRUST FOR A CORPORATION TO BE INCORPORATED AND WITHOUT PERSONAL LIABILITY

Per:  9/20/2024
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We 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 ____ day of _____, 2024.

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

Per: _____
Name: Noah Goldstein
Title: Authorized Signing Officer

I have authority to bind the Corporation.

SCHEDULE "A"
ASSUMED AGREEMENTS OF PURCHASE AND SALE

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 [Draft Note: Confirm]

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.

SCHEDULE "D"
ASSUMED CONTRACTS

[Draft Note: Confirm]

APPENDIX K

From: Maya Poliak <Maya@chaitons.com>
Sent: October 28, 2024 12:31 PM
To: Pawel Fugiel
Cc: Howard Manis; Noah Goldstein; Harvey G. Chaiton; Lynda Christodoulou
Subject: RE: MarshallZehr vs La Pue International
Attachments: Re: MarshallZehr vs La Pue International

Importance: High

Good afternoon Pawel

The agreement was terminated late last week and we have written to the Court this morning to request that the November 12 hearing date be vacated.

Attached please find the correspondence from the Receiver to your counsel from the month of September where you and your counsel were expressly advised that for your offer to be considered, the Receiver needs to be provided with evidence that the purchaser has the financial ability to close the transaction. We have never been provided with same, despite multiple requests. If you would like the Receiver to consider your previous offer, please provide the requested evidence as soon as possible. If you intend to resubmit a new offer, please include evidence of financing.

Thank you

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: Monday, October 28, 2024 12:23 PM
To: Maya Poliak <Maya@chaitons.com>
Cc: Howard Manis <hmanis@manislaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: Re: MarshallZehr vs La Pue International

CAUTION: [External]

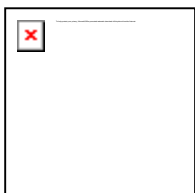
Hi Maya,

Thank you for informing me. Could you please advise why this information was not shared with me sooner? Especially, when it was the buyer and myself who was the only one submitting the offer? When was the agreement terminated?

Does that mean the court date on November 12th is terminated?

Thank you,

Pawel Fugiel
C.E.O



La Pue International Inc.

6158 Allendale Ave | Niagara Falls | ON | L2G 0A5 | Canada
Direct: 647.705.9810

lapueinternational@gmail.com

On Mon, Oct 28, 2024 at 11:51 AM Maya Poliak <Maya@chaitons.com> wrote:

Good morning Pawel

The purchaser has failed to comply with conditions of the agreement and, as such, the agreement was terminated last week. The property is being re-listed. If you are interested in resubmitting your APS, we suggest that you proceed to do so as soon as possible and provide us with evidence of financing.

Thank you,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: Friday, October 25, 2024 4:58 PM
To: Maya Poliak <Maya@chaitons.com>
Cc: Howard Manis <hmanis@manislaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: Re: MarshallZehr vs La Pue International

CAUTION: [External]

Hi Maya

Please provide the motion materials for November 12.

Thank you,

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.
C: 647.705.9810
lapueinternational@gmail.com

On Tue, Oct 8, 2024 at 4:18 PM Maya Poliak <Maya@chaitons.com> wrote:

Howard

We write to advise you that the Receiver has accepted another offer and will be proceeding to Court to approve this offer. The Court provided us with November 12 and November 13 as potential dates. Please advise if you have a preference for one of these two dates by tomorrow morning. If we don't hear from you we will be asking the Court to schedule this hearing for November 12, 2024.

Sincerely,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Howard Manis <hmanis@manislaw.ca>
Sent: Tuesday, October 1, 2024 8:57 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Pawel Fugiel <lapueinternational@gmail.com>; Maya Poliak <Maya@chaitons.com>; Harvey G. Chaiton <Harvey@chaitons.com>
Subject: RE: MarshallZehr vs La Pue International

CAUTION: [External]

Noah,

We are trying to get proof of the funds but I think that we need a few more days as the lender is finalizing its Commitment.

Please give us a bit more time as our client really wants his project back.

Given the pending holidays for most of the balance of the week, I am hopeful that you will afford us the necessary time as I believe that we put in a solid Offer.

Howard



Howard F. Manis
MANIS LAW

• Bankruptcy & Insolvency • Commercial

(416) 417-7257

hmanis@manislaw.ca

www.ManisLaw.ca

 2300 Yonge Street, Suite 1600, Toronto

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: September 30, 2024 8:15 PM

To: Howard Manis <hmanis@manislaw.ca>

Cc: Pawel Fugiel <lapueinternational@gmail.com>; Maya Poliak <Maya@chaitons.com>; harvey@chaitons.com

Subject: Re: MarshallZehr vs La Pue International

Hi Howard,

We are reviewing another agreement. For your agreement to even be considered, we need proof of funds by tomorrow.

Thanks,

Noah

Noah Goldstein

416.844.4842

On Sep 28, 2024, at 6:44 PM, Howard Manis <hmanis@manislaw.ca> wrote:

Noah

We expect to have an unconditional proof of funds early this week. Please confirm that this is satisfactory.

Howard

Sent from my iPhone

On Sep 23, 2024, at 9:13 AM, Noah Goldstein <ngoldstein@ksvadvisory.com> wrote:

Hi Pawel,

In order for us to consider this transaction, we need to see proof of financing, including proof of funds and/or an unconditional commitment letter. We need that before end of day today. Please let us know if that's possible.

Thank you,

Noah

Noah Goldstein

(m) 416.844.4842

From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: September 23, 2024 7:54 AM
To: Howard Manis <hmanis@manislaw.ca>
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Maya Poliak <Maya@chaitons.com>; Harvey@chaitons.com
Subject: Re: MarshallZehr vs La Pue International

Good morning Noah

Definitely we will provide you financial capability for the transaction.

Lender can secure the fund in trust for this transaction very quickly after we know everything in my offer is accepted.

Please advise.

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.
C: 647.705.9810
lapueinternational@gmail.com

On Sun, Sep 22, 2024 at 11:45 AM Howard Manis <hmanis@manislaw.ca> wrote:

Noah,

We will ask our client to obtain confirmation of the financing.

Howard

<image001.png>

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Subject: RE: MarshallZehr vs La Pue International

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Noah Goldstein

(m) 416.844.4842

From: Howard Manis <hmanis@manislaw.ca>
Sent: September 22, 2024 10:42 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Pawel Fugiel <lapueinternational@gmail.com>
Cc: Maya Poliak <Maya@chaitons.com>
Subject: RE: MarshallZehr vs La Pue International

Noah,

Hope all is well.

Please be advised that our client submitted a very good unconditional offer to Colliers in the past day or two, the receipt of which has been confirmed by the sales representative at Colliers.

We look forward to hearing from the Receiver.

Howard

<image001.png>

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: August 7, 2024 6:59 PM
To: Pawel Fugiel <lapueinternational@gmail.com>
Cc: Howard Manis <hmanis@manislaw.ca>; Maya Poliak <Maya@chaitons.com>
Subject: Re: MarshallZehr vs La Pue International

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Does KSV have a new buyer?

Colliers has informed me that they are not accepting any more offers because the buyer had provided the deposits and offer is firm. Can you confirm and provide more details on the transaction.

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C: 647.705.9810
lapueinternational@gmail.com

On Wed, Aug 7, 2024 at 3:33 PM Noah Goldstein
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Hi Pawel, the transaction was terminated.

Noah Goldstein

416.844.4842

On Aug 7, 2024, at 2:33 PM, Pawel Fugiel
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Lux was terminated and provide a documentation
about termination.

Or The Receiver (KSV) still working with the
Leakshore Lux to complete the closing?

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LA PUE INTERNATIONAL INC.

C: 647.705.9810

lapueinternational@gmail.com

<image001.png>

Daisy Jin

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PAWEL FUGIEL

LA PUE INTERNATIONAL INC.
C: 647.705.9810
lapueinternational@gmail.com

<image001.png>

APPENDIX L

ASSET PURCHASE AGREEMENT

THIS AGREEMENT dated the __2__ day of __November____, 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 -

PAWEL FUGIEL IN TRUST FOR A CORPORATION TO BE INCORPORATED AND WITHOUT PERSONAL LIABILITY
(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) “**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;
- (b) “**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;
- (c) “**Application**” has the meaning ascribed to it in Subsection 14(b)(i);
- (d) “**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;

- (e) **"Assignment Order"** has the meaning ascribed to it in Section 11;
- (f) **"Assumed Agreements of Purchase and Sale"** means the Existing Agreements of Purchase and Sale to be assumed by the Purchaser on Closing and listed on **Schedule "A"** attached hereto;
- (g) **"Assumed Contracts"** has the meaning ascribed to it in Section 10;
- (h) **"Assumed Liabilities"** has the meaning ascribed to it in Subsection 9(a);
- (i) **"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;
- (j) **"Cash Collateral"** means all cash security deposited by or on behalf of the Debtor with the City of Niagara Falls and/or Taron or with a financial institution, as required by the City of Niagara Falls and/or Taron in connection with the development and construction of the Project;
- (k) **"Closing"** has the meaning ascribed to it in Section 13;
- (l) **"Closing Date"** has the meaning ascribed to it in Section 13;
- (m) **"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;
- (n) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (o) **"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, save and except for any and all realty taxes (including any and all utility charges that may be outstanding) or other charges due and owing to any municipality, city, province or federal governmental authority, including but not limited to any sidewalk, road or other improvements so required as well as any and all real estate commissions, consultants, engineers, architects due and owing from the development of the Purchased Assets including the Existing Agreements of Purchase and Sale (as defined below);
- (p) **"Debtor"** means La Pue International Inc.;
- (q) **"Deposit"** has the meaning ascribed to it in Subsection 5(a);
- (r) **"DRA"** has the meaning ascribed to it in Subsection 14(a)(i);
- (s) **"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;

- (t) **“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;
- (u) **“ETA”** means the *Excise Tax Act* (Canada);
- (v) **“Excluded Assets”** has the meaning ascribed to it in Section 12;
- (w) **“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;
- (x) **“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;
- (y) **“HST”** has the meaning ascribed to it in Section 28(a);
- (z) **“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;
- (aa) **“Indemnitees”** has the meaning ascribed to it in Subsection 20(a);
- (bb) **“Lands”** means the lands and premises legally described in **Schedule “B”** attached hereto;
- (cc) **“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;
- (dd) **“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;
- (ee) **“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;
- (ff) **“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;

- (gg) **“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;
- (hh) **“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;
- (ii) **“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;
- (jj) **“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);
- (kk) **“Purchase Price”** has the meaning ascribed thereto in Section 4;
- (ll) **“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;
- (mm) **“Purchaser”** has the meaning ascribed to it on page 1 above;
- (nn) **“Purchaser’s Solicitors”** means the firm of Manis Law (Howard Manis – hmanis@manislaw.ca);
- (oo) **“Receiver”** means KSV Restructuring Inc. in its capacity as receiver of the Debtor appointed pursuant to the Receivership Order;
- (pp) **“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;
- (qq) **“Receivership Order”** has the meaning ascribed to it in the Recitals;

- (rr) **"Rights"** has the meaning ascribed to it in Section 11;
- (ss) **"Statement of Adjustments"** has the meaning ascribed to it in Subsection 24(a)(iii);
- (tt) **"Structure"** means the structure(s) situated on the Lands, including all improvements thereto and all fixtures forming a part thereof; **NTD: KSV are there any structures on this property?**
- (uu) **"TERS"** has the meaning ascribed to it in Subsection 14(d)(iii);
- (vv) **"Transaction"** means the transaction contemplated by this Agreement;
- (ww) **"Vendor"** has the meaning ascribed to it in the Recitals;
- (xx) **"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
- (yy) **"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

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 _____ (the "**Purchase Price**").

5. SATISFACTION OF PURCHASE PRICE.

The Purchase Price shall be paid and satisfied as follows:

- (a) a deposit in the amount of _____ of the Purchase Price (the "**Deposit**"), to be paid by the Purchaser to the Vendor in trust contemporaneously with the delivery by the Purchaser of a copy of this Agreement executed by the Purchaser;
- (b) Deposit schedule as follows:
 - (i) _____ — 35 Business days upon acceptance.

- (ii) [REDACTED] — 70 business days after acceptance.
- (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 seven (7) Business Days following the execution of this Agreement by the Parties, 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 CONTRACTS.**

The Purchaser shall assume on Closing the Contracts listed on **Schedule "D"** attached hereto (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 on or before January 30, 2025, 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 registrable 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 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 trademark 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;
- (e) the delivery of the documents referenced in Section 24 to the Purchaser; and
- (f) the delivery of a Full and Final Release by the Applicant in the receivership proceeding of any and all liability of the Debtor, its principal, Pawel Fugiel, and their successors and assigns in accordance with the standard form of Releases acceptable to counsel for the Purchaser acting reasonably.

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(b);
- (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.
- (m) The Listing Brokerage (Colliers International) will pay the Co-operating Brokerage (Forestwood Real Estate Inc. - Sales representative Lisa Vo) the commission for the property above in the amount of 1% + hst of the purchase price, paid by the Seller to the Listing Brokerage.

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.
- (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:

PAWEL FUGIEL (pawelfugiel.fugielgroup@gmail.com)

- (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

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 30.

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 ensure 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. Monday November 4th, 2024 at 5:00 pm

[remainder of this page intentionally left blank]

DATED as of the date first mentioned above.

**PAWEL FUGIEL IN TRUST FOR A
CORPORATION TO BE INCORPORATED AND
WITHOUT PERSONAL LIABILITY**

Per: 
Name: Pawel Fugiel
Title: President

Per: _____
Name:
Title:

I/We 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 ____ day of _____, 2024.

**KSV RESTRUCTURING INC., in its capacity
Court-appointed receiver of La Pue Internatic
Inc., and not in its personal or corpo
capacity and without personal or corpo
liability**

Per: _____
Name: Noah Goldstein
Title: Authorized Signing Officer

I have authority to bind the Corporation.

SCHEDULE "A"
ASSUMED AGREEMENTS OF PURCHASE AND SALE

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 [Draft Note: Confirm]

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.

SCHEDULE "D"
ASSUMED CONTRACTS

[Draft Note: Confirm]

APPENDIX M

From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: November 3, 2024 5:49 PM
To: Howard Manis
Cc: Pawel Fugiel; Maya Poliak; Harvey G. Chaiton; Lynda Christodoulou
Subject: Re: New offer attached_5528 Ferry St. Niagara Falls \$20,500,000
Attachments: image001.png

CAUTION: [External]

Howard, I've had a bad experience with this lender before. They didn't close a deal despite many assurances. Please let us know if it goes firm. In the interim, we will continue to market property.
Noah Goldstein
416.844.4842

On Nov 3, 2024, at 5:44 PM, Howard Manis <hmanis@manislaw.ca> wrote:

All,

Please find attached the proof of financing that our client referred to in his email of last night.

We expect that the lender will complete its due diligence and provide a firm Commitment in 14 days or so.

Please let us know if you have any questions or comments.

Howard

<image001.png>

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From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: November 2, 2024 8:19 PM
To: Maya Poliak <Maya@chaitons.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Howard Manis <hmanis@manislaw.ca>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: New offer attached_5528 Ferry St. Niagara Falls \$20,500,000

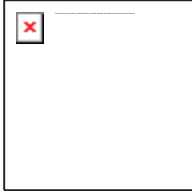
Hi Maya, Noah,

Please see the new increased offer attached below.

Yesterday afternoon, I received documents verifying and confirming financing, which I shared with Howard for his review. We will be able to provide proof of financing tomorrow or Monday.

Thank you,

Pawel Fugiel
C.E.O



La Pue International Inc.
6158 Allendale Ave | Niagara Falls | ON | L2G 0A5 | Canada
Direct: 647.705.9810

lapueinternational@gmail.com

<Signed. MGF TERM SHEET 2024 - LaPue International Inc. CA - November 3, 2024.pdf>

APPENDIX N

From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: November 3, 2024 5:49 PM
To: Howard Manis
Cc: Pawel Fugiel; Maya Poliak; Harvey G. Chaiton; Lynda Christodoulou
Subject: Re: New offer attached_5528 Ferry St. Niagara Falls \$20,500,000
Attachments: image001.png

CAUTION: [External]

Howard, I've had a bad experience with this lender before. They didn't close a deal despite many assurances. Please let us know if it goes firm. In the interim, we will continue to market property.
Noah Goldstein
416.844.4842

On Nov 3, 2024, at 5:44 PM, Howard Manis <hmanis@manislaw.ca> wrote:

All,

Please find attached the proof of financing that our client referred to in his email of last night.

We expect that the lender will complete its due diligence and provide a firm Commitment in 14 days or so.

Please let us know if you have any questions or comments.

Howard

<image001.png>

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From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: November 2, 2024 8:19 PM
To: Maya Poliak <Maya@chaitons.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Howard Manis <hmanis@manislaw.ca>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: New offer attached_5528 Ferry St. Niagara Falls \$20,500,000

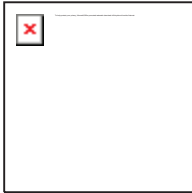
Hi Maya, Noah,

Please see the new increased offer attached below.

Yesterday afternoon, I received documents verifying and confirming financing, which I shared with Howard for his review. We will be able to provide proof of financing tomorrow or Monday.

Thank you,

Pawel Fugiel
C.E.O



La Pue International Inc.
6158 Allendale Ave | Niagara Falls | ON | L2G 0A5 | Canada
Direct: 647.705.9810

lapueinternational@gmail.com

<Signed. MGF TERM SHEET 2024 - LaPue International Inc. CA - November 3, 2024.pdf>

APPENDIX O

Adrienne Ho

From: Maya Poliak <Maya@chaitons.com>
Sent: November 13, 2024 10:11 AM
To: Howard Manis; Pawel Fugiel
Cc: Noah Goldstein; Harvey G. Chaiton; Lynda Christodoulou
Subject: RE: MarshallZehr vs La Pue International
Attachments: RE: MarshallZehr vs La Pue International; Re: New offer attached_5528 Ferry St. Niagara Falls \$20,500,000

Howard, I refer you to multiple correspondences sent from ours and the Receiver's office where we consistently advised that your client's offers will not be considered unless they are accompanied by evidence that that he has the financial ability to close the transaction. I also refer you to Noah's email to your office, which is also attached for your reference, dated November 3, 2024 where he asked you to let the Receiver know if Pawel's deal goes firm and expressly advised that the Receiver will continue to market the property.

My email from yesterday was provided as a courtesy to give your client the opportunity to firm up its offer so that the Receiver can consider it along side with its other offer. Pawel's offer will not be considered unless evidence of financing is received. If the Receiver enters into another agreement, we will let you and the service list know.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Howard Manis hmanis@manislaw.ca
Sent: Wednesday, November 13, 2024 9:54 AM
To: Maya Poliak Maya@chaitons.com; Pawel Fugiel lapueinternational@gmail.com
Cc: Noah Goldstein ngoldstein@ksvadvisory.com; Harvey G. Chaiton Harvey@chaitons.com; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: RE: MarshallZehr vs La Pue International

CAUTION: [External]

Maya,

Thanks for your email however, we are confused and perplexed why there is no transparency in the sale of the subject property. Had I not reached out yesterday, we would have been on the outside looking in again despite the fact that we have made two offers and are clearly interested in the purchase of the land.

Moreover, to provide us with a deadline of less than 24 hours is wholly unreasonable and we trust that you agree with this.

Our client has been diligently working on firming up the financing for the purchase of the property and has two interested parties, one of which is well known in Toronto.

We will get back to you as soon as possible and trust that the 4 pm deadline will not be strictly enforced.

Howard



Howard F. Manis

MANIS LAW

• Bankruptcy & Insolvency • Commercial & Civil Litigation • Corporate Law

(416) 417-7257

hmanis@manislaw.ca

www.ManisLaw.ca

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

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From: Maya Poliak <Maya@chaitons.com>

Sent: November 12, 2024 9:23 PM

To: Howard Manis <hmanis@manislaw.ca>; Pawel Fugiel <lapueinternational@gmail.com>

Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>

Subject: RE: MarshallZehr vs La Pue International

Good evening Howard

The Receiver has received an offer that it is considering. If you want your client's offer to be considered please provide evidence that your client is in funds by 4 pm tomorrow.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Howard Manis <hmanis@manislaw.ca>

Sent: Tuesday, November 12, 2024 1:59 PM

To: Maya Poliak <Maya@chaitons.com>; Pawel Fugiel <lapueinternational@gmail.com>

Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>

Subject: RE: MarshallZehr vs La Pue International

CAUTION: [External]

Maya and Noah,

I am advised that we expect a firm commitment for financing shortly and trust that the Receiver will look favourably on our Offer.

If there are any deadlines or timing that we need to be aware of, please advise.

Howard



Howard F. Manis

MANIS LAW

• Bankruptcy & Insolvency • Commercial & Civil Litigation • Corporate Law

(416) 417-7257

hmanis@manislaw.ca

www.ManisLaw.ca

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

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From: Maya Poliak <Maya@chaitons.com>

Sent: October 28, 2024 12:31 PM

To: Pawel Fugiel <lapueinternational@gmail.com>

Cc: Howard Manis <hmanis@manislaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>

Subject: RE: MarshallZehr vs La Pue International

Importance: High

Good afternoon Pawel

The agreement was terminated late last week and we have written to the Court this morning to request that the November 12 hearing date be vacated.

Attached please find the correspondence from the Receiver to your counsel from the month of September where you and your counsel were expressly advised that for your offer to be considered, the Receiver needs to be provided with evidence that the purchaser has the financial ability to close the transaction. We have never been provided with same, despite multiple requests. If you would like the Receiver to consider your previous offer, please provide the requested evidence as soon as possible. If you intend to resubmit a new offer, please include evidence of financing.

Thank you

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: Monday, October 28, 2024 12:23 PM
To: Maya Poliak <Maya@chaitons.com>
Cc: Howard Manis <hmanis@manislaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: Re: MarshallZehr vs La Pue International

CAUTION: [External]

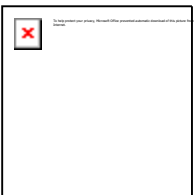
Hi Maya,

Thank you for informing me. Could you please advise why this information was not shared with me sooner? Especially, when it was the buyer and myself who was the only one submitting the offer? When was the agreement terminated?

Does that mean the court date on November 12th is terminated?

Thank you,

Pawel Fugiel
C.E.O



La Pue International Inc.
6158 Allendale Ave | Niagara Falls | ON | L2G 0A5 | Canada
Direct: 647.705.9810

lapueinternational@gmail.com

On Mon, Oct 28, 2024 at 11:51 AM Maya Poliak <Maya@chaitons.com> wrote:

Good morning Pawel

The purchaser has failed to comply with conditions of the agreement and, as such, the agreement was terminated last week. The property is being re-listed. If you are interested in resubmitting your APS, we suggest that you proceed to do so as soon as possible and provide us with evidence of financing.

Thank you,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Pawel Fugiel <lapueinternational@gmail.com>

Sent: Friday, October 25, 2024 4:58 PM

To: Maya Poliak <Maya@chaitons.com>

Cc: Howard Manis <hmanis@manislaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Harvey G. Chaiton <Harvey@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>

Subject: Re: MarshallZehr vs La Pue International

CAUTION: [External]

Hi Maya

Please provide the motion materials for November 12.

Thank you,

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.

C: 647.705.9810

lapueinternational@gmail.com

On Tue, Oct 8, 2024 at 4:18 PM Maya Poliak <Maya@chaitons.com> wrote:

Howard

We write to advise you that the Receiver has accepted another offer and will be proceeding to Court to approve this offer. The Court provided us with November 12 and November 13 as potential dates. Please advise if you have a preference for one of these two dates by tomorrow morning. If we don't hear from you we will be asking the Court to schedule this hearing for November 12, 2024.

Sincerely,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Howard Manis <hmanis@manislaw.ca>
Sent: Tuesday, October 1, 2024 8:57 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Pawel Fugiel <lapueinternational@gmail.com>; Maya Poliak <Maya@chaitons.com>; Harvey G. Chaiton <Harvey@chaitons.com>

Subject: RE: MarshallZehr vs La Pue International

CAUTION: [External]

Noah,

We are trying to get proof of the funds but I think that we need a few more days as the lender is finalizing its Commitment.

Please give us a bit more time as our client really wants his project back.

Given the pending holidays for most of the balance of the week, I am hopeful that you will afford us the necessary time as I believe that we put in a solid Offer.

Howard



Howard F. Manis

MANIS LAW

• Bankruptcy & Insolvency • Commercial

(416) 417-7257

hmanis@manislaw.ca

www.ManisLaw.ca

 2300 Yonge Street, Suite 1600, Toronto

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: September 30, 2024 8:15 PM

To: Howard Manis <hmanis@manislaw.ca>

Cc: Pawel Fugiel <lapueinternational@gmail.com>; Maya Poliak <Maya@chaitons.com>; harvey@chaitons.com

Subject: Re: MarshallZehr vs La Pue International

Hi Howard,

We are reviewing another agreement. For your agreement to even be considered, we need proof of funds by tomorrow.

Thanks,

Noah

Noah Goldstein

416.844.4842

On Sep 28, 2024, at 6:44 PM, Howard Manis <hmanis@manislaw.ca> wrote:

Noah

We expect to have an unconditional proof of funds early this week. Please confirm that this is satisfactory.

Howard

Sent from my iPhone

On Sep 23, 2024, at 9:13 AM, Noah Goldstein <ngoldstein@ksvadvisory.com> wrote:

Hi Pawel,

In order for us to consider this transaction, we need to see proof of financing, including proof of funds and/or an unconditional commitment letter. We need that before end of day today. Please let us know if that's possible.

Thank you,

Noah

Noah Goldstein

(m) 416.844.4842

From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: September 23, 2024 7:54 AM
To: Howard Manis <hmanis@manislaw.ca>
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Maya Poliak <Maya@chaitons.com>; Harvey@chaitons.com
Subject: Re: MarshallZehr vs La Pue International

Good morning Noah

Definitely we will provide you financial capability for the transaction.

Lender can secure the fund in trust for this transaction very quickly after we know everything in my offer is accepted.

Please advise.

--
PAWEL FUGIEL

LA PUE INTERNATIONAL INC.
C: 647.705.9810
lapueinternational@gmail.com

On Sun, Sep 22, 2024 at 11:45 AM Howard Manis <hmanis@manislaw.ca> wrote:

Noah,

We will ask our client to obtain confirmation of the financing.

Howard

<image001.png>

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: September 22, 2024 11:44 AM
To: Howard Manis <hmanis@manislaw.ca>; Pawel Fugiel <lapueinternational@gmail.com>
Cc: Maya Poliak <Maya@chaitons.com>; 'Harvey@chaitons.com' <Harvey@chaitons.com>
Subject: RE: MarshallZehr vs La Pue International

Hi Howard, we have another offer in hand. Can you please show us by tomorrow that Pawel has the financial capability to close this transaction?

Noah Goldstein

(m) 416.844.4842

From: Howard Manis <hmanis@manislaw.ca>
Sent: September 22, 2024 10:42 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Pawel Fugiel <lapueinternational@gmail.com>
Cc: Maya Poliak <Maya@chaitons.com>
Subject: RE: MarshallZehr vs La Pue International

Noah,

Hope all is well.

Please be advised that our client submitted a very good unconditional offer to Colliers in the past day or two, the receipt of which has been confirmed by the sales representative at Colliers.

We look forward to hearing from the Receiver.

Howard

<image001.png>

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: August 7, 2024 6:59 PM
To: Pawel Fugiel <lapueinternational@gmail.com>
Cc: Howard Manis <hmanis@manislaw.ca>; Maya Poliak <Maya@chaitons.com>
Subject: Re: MarshallZehr vs La Pue International

Pawel, are you putting in an offer?

Noah Goldstein

416.844.4842

On Aug 7, 2024, at 4:29 PM, Pawel Fugiel
<lapueinternational@gmail.com> wrote:

Does KSV have a new buyer?

Colliers has informed me that they are not accepting any more offers because the buyer had provided the deposits and offer is firm. Can you confirm and provide more details on the transaction.

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.
C: 647.705.9810
lapueinternational@gmail.com

On Wed, Aug 7, 2024 at 3:33 PM Noah Goldstein
<ngoldstein@ksvadvisory.com> wrote:

Hi Pawel, the transaction was terminated.

Noah Goldstein

416.844.4842

On Aug 7, 2024, at 2:33 PM, Pawel Fugiel
<lapueinternational@gmail.com> wrote:

Noah,

Can you confirm the transaction with Leakshore Lux was terminated and provide a documentation about termination.

Or The Receiver (KSV) still working with the
Leakshore Lux to complete the closing?

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.

C: 647.705.9810

lapueinternational@gmail.com

<image001.png>

APPENDIX P

MORTGAGE COMMITMENT
PRIVATE AND CONFIDENTIAL

November 15, 2024

La Pue International Inc.
Mr. Pawel Fugiel
6158 Allendale Avenue
Niagara Falls ON

Re: 1st Mortgage Financing on the property located at 5528 Ferry Street Niagara Falls ON, Site Plan Approved with permits issued for the construction of 435 residential condominium units in a 30 storey building (legally described PIN: 6439-0258 FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206 CITY OF NIAGARA FALLS (the "Subject Property") (Collectively the "**Property**")

Commitment Acceptance Date:

Based upon and subject to the accuracy of information furnished to us, we are pleased to provide you, **La Pue International Inc. (the "Borrower")** the following conditional mortgage commitment (the "Commitment") for the property described below (the "Subject Property") subject to the terms (the "Terms") set out in this Commitment and subject to you satisfying all the conditions (the "Conditions") described in this Commitment, in a timely manner so that the Lender can expedite the advance on or before the Funding Date.

In all matters, time shall be of the essence. We require your executed acceptance of this Commitment by the Commitment Acceptance Date set out herein or this Commitment may be cancelled by the Lender. Furthermore, this Commitment, when accepted, will expire on the Funding Date, and may be cancelled, modified, or extended by the Lender at its sole discretion. Your acceptance of this Commitment will be your undertaking to pay all costs listed below together with all legal costs and fees incurred, whether this Charge/Mortgage is advanced. The Non-Refundable Deposit set out herein will be forfeited as liquidated damages and not as a penalty.

Loan Amount: The lesser of: (i) up to **\$22,000,000** or (ii) 60% of the satisfactory lender assessed "As Is" current Value for the subject Property including all existing mortgages (the "Loan" or "Loan Facility").

Interest Rate: The higher of (i) **12.50%** or (ii) Royal Bank Prime + 6.55% per annum calculated monthly with no deemed re-investment of monthly payments on the principal outstanding during the first 3 months after the interest adjustment date.

Amortization: Interest Only

Term: Subject to the terms of the mortgage commitment, the period (the "Term") shall commence on the Closing Date and terminate 7 months from the Interest Adjustment Date.

The borrower has the privilege to extend the mortgage for an additional three months, provided that the mortgage remains current and has never previously been in default. If an extension agreement has not been executed 30 days prior to maturity of the mortgage, Interest for the final month of the term shall be at an interest rate equal to the higher of (i) 18.00% or (ii) Royal Bank Prime + 12% per annum calculated monthly with no deemed re-investment of monthly payments on the principal outstanding until the principal amount of the charge is discharged in full.

Guarantor: 100% Guarantees from all shareholders of the Borrower as well as the following Guarantors on a joint and several basis.

Pawel Fugiel
Guarantees to be satisfactory to the Lender in its sole and absolute discretion.

Repayment: Interest Only. Payable monthly on the 1st day of the month and compounded monthly from the full interest reserve.

Interest Adjustment Date: The 1st day of the month following the first advance.

Closing Date: The initial advance of funds shall be determined upon waiver of conditions and requirements has been provided by the Lender. The estimated advance date shall be on or before **January 15th, 2025 (the "Closing Date")**. If the date of the advance is more than 3 business days past the aforesaid date, this commitment will be at the Lender's option, null and void and if the initial advance is more than 3 business days beyond the date specified, the new rate and any costs attributable thereto, will be subject to the then current market terms and conditions as at that date. The Closing Date may be amended to a later date at the sole discretion of the Lender.

Prepayment Privileges: The Loan is closed for repayment until the last day of the 6th month of the Term.

Purpose: To provide funds for the payout of the existing 1st mortgage as described in the Use of Funds attached herein, provide an interest reserve, and funding for Lender Fees, Broker Fees, Expenses, and legal fees. See Schedule attached herein and incorporated here by reference and forming an integral part of this Commitment Letter.

Security: The following security for the loan shall be granted in favor of the Lender, in form and content satisfactory to the Lender and its legal counsel (hereinafter collectively referred to as the "Security")

1. A first charge (the "Charge") from the Borrower to be registered against title to the Property.
2. A direction and beneficial charge agreement granted by the Beneficial Owners, if applicable.
3. A General Security Agreement from the Borrower and Guarantor in a form satisfactory to the lender's solicitor.
4. A General Security Agreement on all movable property used in connection or arising from the Property.
5. General Assignment of Rents and Leases with specific assignment of leases as determined by the Lender.
6. Guarantee and postponement of claim from all Guarantors.
7. Pledge of each of all the shares in the capital of the Borrower.
8. An assignment of all municipal approvals and agreements, contracts, project letters of credit and all architectural and mechanical drawings.
9. Assignment and Postponement of Claim from i) all shareholders of the corporate Borrower, and ii) all related party debt holders of the corporate Borrower.
10. A statutory declaration of the Borrower in respect of the Construction Act (Ontario) and other matters relating to the Property.
11. A covenant of the Borrower and Guarantors regarding environmental matters.
12. Such further and other security as legal counsel for the Lender may reasonably require. Documentation, resolutions, legal opinions, and certificates as required by the Lender shall be in a form required by the Lender and its legal counsel, acting reasonably.

Mortgage Fee: A Mortgage Fee equal to 4% of the total mortgage amount shall be paid to the Lender and Broker for the Lender (the "Mortgage Fee").

One percent (1%) of the loan amount shall be paid as a Commitment Fee upon execution of this Mortgage Commitment (the "Commitment Fee Deposit"). The Commitment Fee Deposit is deemed earned upon acceptance of this Commitment and shall be applied as a credit towards the Mortgage Fee. The Commitment Fee shall be forfeited if the Mortgage is not advanced due to any cause whatsoever save and except for default of the Lender.

The Borrower shall be responsible for all fees, expenses, and funding requirements and a balance of the Mortgage Fee shall be payable from the closing proceeds on the closing date. The Lender Fee is deemed earned upon acceptance and execution of this Commitment. Any additional fees or costs payable to any other entity shall be for the account of the Borrower. The Mortgagor authorizes the payment of the lender and broker fee to be deducted from the funds when advanced. Borrower shall be responsible for Lender's legal fees and disbursements and all 3rd party costs. The Borrower hereby agrees to pay the reasonable legal fees required by the Lender's Solicitors for the completion of the legal services related to this Mortgage.

Confidentiality: No terms of this letter may be disclosed to any third party without the prior written consent of the lender and the borrower.

Conditions

Precedent: Prior to the Date of Advance, the Borrower for the Loan shall comply with and / or satisfy the following conditions precedent and all other conditions precedent set out elsewhere herein or in a previous Loan Proposal, all to the satisfaction of the Lender, in its sole and unfettered discretion.

- a) **Encumbrances:** There shall be no encumbrances registered on the Property, save and except those allowed by the Lender. The Borrower shall agree to a Section 118 notice being registered on title restricting any subsequent registrations without consent of the Lender.
- b) **Appraisal:** The Lender shall receive a satisfactory appraisal for the Property or a peer review of a recent appraisal report of the Property confirming the current as is value for the Property considering the current status of the project and hard costs paid to date. The total loan(s) shall not exceed 60% of the lender assessed value for the subject Property. An appraisal is to be prepared by a Bona Fide appraiser approved by the Lender to support the assessed value. The report shall be addressed to the Lender and or its assigns and lender clients, or if acceptable to the Lender, a Reliance Letter provided by the appraiser. The appraisal shall also include an AS-IF COMPLETE that supports the approval a Construction Loan for the Property, satisfactory to the Lender.
- c) **Environmental and Soil Reports:** Satisfactory Environmental Assessment and Geotechnical reports for the Property with quantum of any potential Remediation costs fully disclosed and supported with Reliance Letters addressed to the Lender.
- d) **Mortgage and Financial Forms:** The Borrower and Guarantors delivering completed and signed current Mortgage Application, Net Worth Statement and Background Check Consent Form on such forms as reasonably required by the Lender. The borrower and guarantors shall provide financial and supporting information as the lender may require, including Financial Statements and cash flow statement satisfactory to the lender.
- e) **Cash Flow:** The Borrower is required to provide evidence demonstrating its capability to cover all project expenses and mortgage interest payments, subject to the satisfaction of the Lender.
- f) **Development Budget:** Receipt of a Preliminary Budget (the "Budget") prepared by the Borrower's consultant confirming the reasonableness of the current overall budget, and that the Borrower's overall equity used in the Project is sufficient.
- g) **Project Financing:** Confirmation of construction financing for the project (referred to as the "Construction Loan") by a lender approved by the Lender with terms satisfactory to the Lender.
- h) **Confirmation of Costs to Date and Cash Equity:** The Borrower will deliver evidence of cost to date and evidence of the \$20,000,000 in invested capital paid into the project to date by the Borrower, satisfactory to the Lender.
- i) **Property Taxes and Other Charges:** Confirmation Property Taxes, Levies, Fees, Local Improvement Charges, and Other Charges that are due and payable in connection with the subject Property have been paid.
- j) **Insurance Review:** The Lender shall engage, at the Borrower's expense, the services of a 3rd party Insurance Consultant to conduct a review of the Insurance Policy for the subject Property to ensure sufficient coverage is provided for the proposed financing inclusive of construction.
- k) **Ownership:** Details of ownership and (corporate) structure including all beneficial owners and shareholders.
- l) **Third Party Contracts and Reciprocal Agreements:** Receipt and review of all third-party contracts, invoices, payables, and reciprocal agreements.
- m) **Drawings/Renderings/Studies/Marketing Materials:** The Borrower to provide all studies and reports for the project, drawings, renderings, and marketing material detailing the development.

- n) **Zoning & Site Plan Approval:** Satisfactory confirmation of the requirements under the approved ZBA & SPA with evidence that the SPA is fully endorsed with a timeline for issuance of construction permits satisfactory to the Lender.
- o) **Condominium:** Copy of the Condominium Documents provided to the purchasers.
- p) **Pre-Sales:** Confirmation of 350 firm residential unit sales totaling \$250,000,000 in sales with copies of the Purchase and Sale Agreements and reconciliation of the purchaser's deposits totaling \$44,000,000 in in Trust, satisfactory to the Lender.
- q) **HCRA/Tarion:** Evidence of HCRA and Tarion for the project, Borrower, and the builder, satisfactory to the Lender.
- r) **Use of Funds:** Confirmation of Use of Funds. The Borrower shall provide current payout/information statements for the current 1st Mortgage, and all other project costs and disbursements to be paid, satisfactory to the lender.
- s) **Liens:** The Property is to be free and clear of any liens except those approved by the Lender.
- t) **Title Search:** The Lender's legal counsel confirming clear title.
- u) **Marketability and Risk Assessment.** Satisfactory review by the Lender of the risk assessment and marketability of the project in its sole discretion.
- v) **Other Documents:** Any other documentation realized or required during the due diligence process of underwriting the loan and listed in Schedule B herein.

Representations and Covenants:

- a) The Borrower shall be the legal and beneficial owner of a good and marketable freehold title to the Property and all personal property associated therewith. The Property and the personal property related thereto or used in connection with the operation thereof or which is necessary to the use and operation thereof, shall be free and clear of all security interests, charges, liens, mortgages, claims or other encumbrances and the Security provided for in this offer, to the complete satisfaction of the Lender.
- b) All taxes, assessments, duties and other levies and charges affecting the Property, other than amounts which are not yet due and payable, shall have been paid prior to each advance of the Loan, failing which they shall be paid from the proceeds of any advance.
- c) The Borrower shall provide to the appropriate taxation, municipal and other authorities an authorization by which the Lender or any person authorized by its legal counsel, agent or manager, shall be able to obtain, in the name of the Borrower, a confirmation from such authorities that all payments, declarations and other filings of the Borrower are up to date, whether authorities concerned have issued any or will issue any such notice concerning arrears. This authorization shall be in effect until the loan has been fully paid.
- d) Each of the Borrower and the Beneficial Owners represents and warrants to the Lender as follows, where applicable, and acknowledge and confirm that the Lender is relying upon such representations and warranties:
- e) The Borrower and each of the Beneficial Owners is a validly subsisting corporation in good standing in its jurisdiction and is duly qualified to carry on business in Ontario.
- f) Power and Authority. The Borrower has the power, authority and right (a) to enter and deliver, and to exercise its rights and perform its obligations under, the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents, and (b) to own the Project Lands and carry on its business as currently conducted and as currently proposed to be conducted by it.

- g) Execution, Delivery, Performance and Enforceability of Loan Documents. The execution, delivery and performance of each of the Loan Documents to which the Borrower is a party, and every other instrument or agreement delivered by it pursuant to any Loan Document, has been duly authorized by all actions, and each of such documents has been duly executed and delivered and constitutes a valid and legally binding obligation of the Borrower enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application limiting the enforcement of creditors' rights generally and to general equitable principles.
- h) The Borrower shall deliver the following: all title deeds, copies of all contracts affecting or relating to the property, required insurance policies, evidence of tax accounts and its status, certified copies of the Borrower's borrowing by-laws and resolutions authorizing this transaction, certified copies of Articles of Incorporations, certificate of incorporation, status of compliance of the Borrower, an original up to date survey acceptable to the Lender, and any other documents as may be reasonably required by the Lender's counsel.
- i) All security and documentation related to this Loan as required by the Lender shall have been received and reviewed to the complete satisfaction of the Lender and all other approvals required by the Lender shall have been given and satisfied.
- j) If at any time before or after the advance, there is or has been any material discrepancy or inaccuracy in any written information, statements, or representations therefore made or furnished by or on behalf of the borrower, then the lender shall be entitled forthwith to cancel the lender's obligations hereunder or declare any monies therefore advanced with interest to be forthwith due and payable and retain all fees provided by the borrower.
- k) Fiducia Ventures Inc., & CDS Financial Group Inc. (the "Lender") may participate or assign the loan at its discretion. The Borrower acknowledges that the lender is syndicating all or a portion of the loan and will utilize the services of a Mortgage Administrator on terms and all terms are conditional on successful completion of the syndication failing which this commitment shall be null and void. The Lender and its Lawyer shall be satisfied with the title to the Property in their sole and unfettered discretion.
- l) No Breach or Event of Breach will have occurred and be continuing the initial Funding Date or would result from making the requested advance.
- m) The lender has been satisfied with the feasibility of the Borrower's representations as it relates to the purpose and uses of funds as proposed herein.
- n) The Borrower is not now and will not be at the Date of Advance a non-resident of Canada within the meaning of the Income Tax Act (Canada).

The following requirements have been met to the Lender's satisfaction, prior to any advances:

Security in Place: All security being in place in form and content satisfactory to the Lender, the Borrower and its solicitors acting reasonably.

Execution of Documents: The Borrower, if any, executing all documents necessary to give effect to the Mortgage and further including but not limited to the mortgage agreement, which shall contain *inter alia* the provisions, set out in Schedule "A".

Title: The Lender being satisfied with the title to the properties and obtaining at the Borrower's expense a satisfactory Title Insurance Policy for the Mortgage.

Work Orders etc.: The Lender obtaining satisfactory evidence that there are no outstanding work orders or notices of violations from any governmental departments affecting the Property.

Fire: If required, the Borrower providing the Lender with satisfactory evidence that the Property has no infractions outstanding on file under the appropriate Fire Code. The Lender may be willing to accept coverage by way of satisfactory title insurance in place.

Costs Borne by the Borrower: The Borrower paying for all costs incurred by either the Borrower or the Lender including legal, appraisal, insurance consulting as well as other costs that arise in relation to the Loan.

Insurance: Receipt by the Lender of evidence that proper and adequate insurance is in place. The Borrower's risk advisor to review and ensure policy complies. The Borrower shall maintain public liability insurance to such amounts of not less than \$5,000,000 on a per-occurrence basis. The Insurer or Insurers shall sign each policy of insurance and the policy shall contain a clause showing loss payable the mortgagees as their interest may appear in the first instance. Each policy of insurance shall show loss payable to the mortgagees as their interest may appear. All insurance policies shall be in form and scope satisfactory to the Lender and its solicitors and the premiums on it shall be paid for a period of not less than six months. A third-party consultant shall review and approve the policies to their sole satisfaction at the Borrower's cost.

Financing Potential. The Lender being satisfied in its sole and entire discretion that the market conditions at Closing will be favourable towards refinancing of the Loan.

Material Change: It is a condition for disbursement of funds that in the Lender's opinion the financial position of the Borrower, and any of the property given as security, and the Borrower's representations and warranties, shall not have suffered any adverse change; nor shall there be any action, suits, or pending proceedings of which the Borrower has knowledge except as otherwise disclosed to the Lender; and that no event shall have occurred, which materially and adversely affects the whole or part of the value of the property or the financial position of the Borrower. No change in the ownership of the Property is permitted without the consent of the Lender, such consent may be unreasonably withheld.

Non-Merger: The Borrower's obligations contained in this Commitment shall survive the execution and registration of the Mortgage and any other security documentation and all advances of funds under the Mortgage, and the Borrower agrees that those obligations shall not merge in the execution and registration of the Mortgage and other security. All terms and conditions of our Mortgage and other security documentation shall form part of this Commitment.

Lender's Solicitor: The Lender being satisfied with the Lender's Solicitor's opinion on title, security and the validity, legality, and binding effect of all aspects of this Mortgage transaction. The Borrower agrees that the Lender's solicitors shall prepare all mortgage and other documents related to this Mortgage for review and approval by the Borrower and his solicitor, such approval not to be unreasonably withheld.

Identification: Pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act"), the Lender is required to ask for identification of the Borrower and for information with respect to the source of funds, used in connection with the Borrower's equity in the Property. The Borrower hereby covenants and agrees to provide prior to the first advance, such identification and information as may be reasonably required to ensure the Lender's compliance with the Act.

Information: The Borrower and Guarantors authorize the Lender to request, on their behalf, at any time or from time to time, information regarding any prior or other encumbrance affecting the Property, or any other real or personal property of the Borrower or the Guarantors, including (without limitation) statements regarding any such encumbrance affecting the property or any property. Authorize the Lender to provide to any other party with an interest in any property of the Borrower or the Guarantors, or any assignee or potential assignee of the Charge information regarding the Loan and/or the Security, including (without limitation) a statement of indebtedness for the Loan.

Cancellation: The Lender shall have the right to terminate and cancel its agreement to provide the mortgage to the Borrower and shall be relieved of all obligations in connection therewith if the Borrower fails or is unable or unwilling to comply with the terms and conditions of this Commitment letter on or before the Closing Date including failing or refusing to execute documentation requested by the Lender or accepting the funds when advanced.

In the event the Loan is not advanced, and the Commitment is terminated, through no fault of the Lender, the Deposit shall not be refundable to the Borrower and may be retained by the Lender as liquidated damages, unless if caused by the default of the Lender. In addition, no termination of this Commitment shall limit or restrict or otherwise affect in any way: (i) the obligations of the Borrower to pay to the Lender any third-party fees, costs, and expenses in connection with the Loan; and (ii) any rights and remedies of the Lender against the Borrower arising from any breach of the Commitment by the Borrower including any claim for damages.

It is understood that the Lender has entered into this Commitment based on representations made by the Borrower and, if at any time there is or has been any material discrepancy or inaccuracy in any written or oral information, statements or representations heretofore or hereafter made or furnished to the Lender by or on behalf of the Borrower concerning the security or the Borrower's financial condition, then the Lender shall be entitled in its sole discretion to withdraw or cancel any obligation hereunder and decline to advance funds and in addition to forfeiture of the Deposit.

This Commitment shall be binding on the Borrower and Guarantors, and their successors and assigns. Where this Commitment has been executed by more than one person as Borrower or a Guarantor, the liability of the persons executing this Commitment as Borrower, or a Guarantor is joint and several and every reference in this Commitment to the "Borrower" or a "Guarantor" shall be construed as meaning each person who has executed it as well as all of them.

No term or condition of this Commitment or any of the Security may be waived or varied orally or by any course of conduct of the Lender. Any amendment to this Commitment or the Security must be in writing and signed by the Lender.

No waiver by the Lender of its rights or remedies hereunder shall be considered a waiver of any other or subsequent right of or remedy of the Lender, no delay or omission in the exercise or enforcement by the Lender of any right or remedy of the Lender and no exercise or the enforcement of such right or remedy shall be held to exhaust any right or remedy of the Lender. The Borrower and Guarantors acknowledge and agree that the Lender shall have the right to sell, transfer, assign or syndicate its rights under this Commitment and/or the Loan or any part thereof to any person, persons, corporation, corporations, or trust without further notice to, or the consent of, the Borrower and any reference to the Lender herein shall include its successors and assigns.

This Commitment is open for acceptance by the Borrower until end of day November 15th, 2024, by which time and date a copy of this Commitment duly executed the Borrower shall be delivered to the Lender together with any payment required hereunder. If this Commitment is not accepted by the aforementioned time and date, it will, at the option of the Lender, become null and void and of no force and effect.

Yours very truly,



Fiducia Ventures Inc, c/o
CDS Financial Group Inc.
(the "Lender")

Solicitor for the Lender:

Simon Ashby

Sociétaire Sénior | Senior Associate

KRB Avocats | Lawyers

100-310 Miwate Private | Ottawa (Ontario) K1R 0E2

T: (613) 704-3354 | F: (514) 221-2319

s.ashby@krblaw.ca

www.krblaw.ca

BORROWER ACCEPTANCE

The Borrower accept the foregoing and agree to comply with all the terms and conditions of this Commitment and acknowledge that they have reviewed this commitment by executing where indicated below, initialing each page, and returning the same by no later than the November 15, 2024, after which this letter becomes void and may not be accepted without the further written concurrence of the mortgagee.

We acknowledge and accept the above-mentioned terms and conditions on this:

15th day of November, 2024.

BORROWER: La Pue International Inc.



Name

I have authority to bind the Corporation

GUARANTOR ACCEPTANCE

The Guarantor accepts the foregoing and agree to comply with all the terms and conditions of this Commitment and acknowledge that they have reviewed this commitment by executing where indicated below, initialing each page, and returning the same by no later than the November 15th, 2024, after which this letter becomes void and may not be accepted without the further written concurrence of the mortgagee.



Guarantor: *Pawel Fugiel*

SCHEDULE "A"

Source and Use of Funds (Estimated)

Internal Estimate for Sources and Uses - Not for 3rd Party Reliance			
Estimate Sources		Estimated Uses	
Loan	\$22,000,000	Refinance	\$20,000,000
		Interest Reserve to RAD (3 months)	\$1,375,000
		Est. Interest Adjustment Pmt (days)	\$0
		Mortgage Lender / Origination Fee	\$880,000
		Estimated Legals & Reports	\$50,000
Borrower Cash or Funding / Credits	\$305,000		
TOTAL	\$22,305,000		\$22,305,000

Subject to the Lender's Approval

SCHEDULE "C:

MORTGAGE CHARGE TERMS

Cancellation/Termination of This Mortgage Commitment:

This Commitment shall expire unless funds are advanced by the Advance Date. The Lender, may however, in their sole discretion, extend the Advance Date and, unless otherwise agreed by the Lender, any such extension shall be in writing. In addition to the rights of cancellation/termination provided in other sections of this Mortgage Commitment,

A) this Mortgage Commitment will be automatically cancelled if the Lender determines, acting in their sole discretion, that there has been a deterioration in the Borrower(s) creditworthiness between the date of this Mortgage Commitment and the Advance Date,

B) the lender may also, in their sole discretion, change or cancel this Mortgage Commitment in the following circumstances:

- i) if the Lender has not received the Borrower(s) signed acceptance of this Mortgage Commitment by the Sign Back Deadline;
- ii) if the Lender determines that there has been a material misrepresentation of fact contained in the Borrower(s) application, this Mortgage Commitment or any other documentation provided by the borrower(s) and their agents.
- iii) If the Lender determines that there has been a material change to the Borrower(s) financial status;
- iv) If the Borrower(s) are unable to satisfy any of the Commitment Conditions no less than five (5) business days prior to the Advance Date or the Funding Conditions no less than one (1) business day prior to the Advance date, or
- v) If the Principal Amount to be advanced is not advanced by the Advance Date.

In the event that the Lender cancels this Mortgage Commitment, the Borrower(s) acknowledge(s) that the Lender shall be entitled to retain any Commitment Fee they have collected that the Lender will be under no obligation to advance any monies to the Borrower(s). The Borrowers acknowledge they still be responsible for lender's lawyer's legal fee and disbursements.

"SCHEDULE OF FEES"

(This Schedule of Fees is attached to, and forms part of the Mortgage Commitment)

THE AMOUNT LISTED IN THIS SCHEDULE SUPERSEDE ANY AMOUNTS THAT MAY BE CONTAINED IN THE CHARGE OR STANDARD CHARGE TERMS. NOTWITHSTANDING anything to the contrary contained in the Standard Charge Terms (and in the event of any contradiction the following provisions shall prevail), the Borrower(s) covenants and agrees with the Lender as follows:

Mortgage Renewal, Extension and Holding Over:

The borrower shall pay the mortgage full amount including all charges and fees by Maturity date, otherwise mortgage will be considered in default. In the event that the mortgage loan is not repaid upon maturity, unless the Lender has received at least thirty (30) days' notice and has agreed to an extension or renewal or holding over agreement in writing the interest rate on the mortgage loan shall continue as written and agreed in the mortgage commitment terms, compounded and calculated monthly with no deemed re-investment of monthly payments on the principal outstanding until the total amount of the charge is discharged in full.

The Lender, notwithstanding anything herein before provided, upon the Maturity Date of the Charge, shall be entitled to enter into an agreement with the Borrower to extend the Maturity Date, amend the interest rate or any of the other terms of this Charge without the requirement to obtain the postponement of any subsequent encumbrancer to such amendments and any subsequent encumbrancers shall take title to their security subject to this provision and be subordinated to such amendments.

If the Loan is not repaid in full on or before the Maturity Date, the Borrower shall be required to pay the Lender a Holding Over Interest Bonus, in addition to any and all other rates, fees, and costs to be paid to the Lender by the Borrower pursuant to this Commitment Letter. More particularly, this interest bonus shall be earned by and payable to the Lender monthly, in advance, on the first business day of each month and shall be payable at the rate equal to the higher of (i) 18.00% or (ii) Royal Bank Prime + 10.8% per annum calculated monthly (the "Holding Over Interest Bonus") with no deemed re-investment of monthly payments on the principal outstanding until the Mortgage is discharged in full. The Borrower hereby acknowledges that the requirement to pay the Holding Over Interest Bonus does not constitute an extension of the Loan nor is it a penalty or fee but rather additional interest to be added to the final discharge amount of the Loan. If the Loan is not repaid in full by the Maturity Date, the same shall constitute default by the Borrower under the Commitment and Security Documents notwithstanding payment of the Holding Over Interest Bonus. The Borrower further acknowledges that the Lender, at its option, may add the Holding Over Interest Bonus to the outstanding principal balance of the Loan and the Security for the Loan also secures the Holding Over Interest Bonus.

Mortgage Statement Fee:

The Borrower(s) shall pay to the Lender's lawyer Mortgage Statement Fee of (\$450.00), for each occurrence, that the Lender is required to prepare a mortgage statement. (This does not include nor form part of any legal fees which are to be charged for the preparation and discharge of the mortgage. Further, the Borrower(s) are responsible for any and all legal fees due and payable to the Lender's solicitor in relation to the mortgage loan).

Mortgage/ Administrative Preparation Fee:

The Borrower(s) shall pay to the Lender Discharge Preparation Fee of (\$450.00), for each Occurrence, for the preparation and review of documentation plus HST. (This does not include or form part of any legal fees which are to be charged for the preparation and discharge of the mortgage. Further, the Borrower(s) are responsible for any and all legal fees due and payable to the Lender's solicitor in relation to the mortgage loan).

Discharge Registration Fee:

The Borrower(s) shall pay any out-of-pocket expenses incurred in relation to the preparation and registration of discharge documentation. (This includes but is not limited to the Government Registration Charge for the registration of a Discharge of Charge).

N.S.F or Default Payment Fee:

The Borrower(s) shall pay the amount of \$35.00 for each occurrence of NSF or a default Payment, plus \$50.00 / diem added and payable for each occurrence that a payment is not made when due or the outstanding balance is not paid in full on the Maturity Date and the mortgage loan has not been renewed. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

Missed or Late Payment Fee:

The Borrower(s) shall pay the amount of (\$200.00), for each missed or late installment and for the replacement of each cheque or other instrument not honoured when presented for payment. If any cheque has been provided to the Lender which is either late or returned for any reason, the replacement amount must be paid by way of certified cheque or bank draft. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

Property Tax Administration Fee:

The Borrower(s) shall pay the amount of (\$250.00) Two Hundred and Fifty Dollars, for each occurrence, that the Borrower(s) are unable to provide proof/or evidence that the Property Taxes are paid up to date, at the request of the Lender. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

Insurance Administration Fee:

The Borrower(s) shall pay the amount of Two Hundred and Fifty Dollars, for each occurrence, that the Borrower(s) are unable to provide proof/or evidence of a current and effective insurance policy noting the Lender as "loss payee" under the said policy, at the request of the Lender. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

Payment Deferral Fee:

Should the Borrower(s) request a deferral of payment, and same has been approved by the Lender, the Borrower(s) shall pay to the lender a Payment Deferral Fee of (\$250.00), for each such occurrence. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

Post-Dated Cheques:

The Borrower(s) are to provide the Lender with 6 post-dated cheques prior to the funding of the mortgage loan and upon each half-year anniversary of the mortgage loan. Should the Borrower(s) fail to provide the 12-post-dated cheque payable to the Lender; the Borrower(s) shall pay to the Lender a Post-Dated Cheques Fee of Two Hundred and Fifty Dollars (\$250.00), for each such occurrence. Such fees will be added to the principal amount outstanding not paid within five days of occurrence. Failure to provide such cheques shall constitute a default under the Mortgage at the sole option of the Lender.

Legal / Demand Letters:

Should the Lender or their solicitor be required to send a letter to you in relation to your Mortgage Loan and any default or demand letters thereto, the Borrower(s) shall pay the Lender or lender's lawyer the sum of Five Hundred Dollars (\$500.00) for each such occurrence. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

3 months interest bonus and Power of Sale Upon default:

3 Months interest bonus due upon default. The lender has the right to initiate power of sale proceedings upon the default of 3 months of payment without further notice to the borrower or his representative. In case of default proceedings, an administration fee of \$ 6,500.00 will be charged for each action or proceeding.

The Mortgagee's additional administration and servicing fees are and shall be as follows:

Default Proceedings:	Payable for each step in any legal action or proceeding instituted	\$6,500.00
Admin Renewal Fee:	Minimum admin fee charged upon each renewal	\$450.00
Mortgage Statements:	Minimum fee for preparation of each statement by the mortgagee or mortgagee lawyer	\$ 450.00
Possession:	For attendance to take possession following default by the lender	\$6,500.00
Administration Fee:	Administration fee upon discharging your mortgage.	\$ 450.00
Maintenance:	For administering maintenance and security of the property in mortgagee's possession per day.	\$ 350.00

45540496.3

APPENDIX Q

From: Maya Poliak <Maya@chaitons.com>
Sent: November 25, 2024 12:12 PM
To: Pawel Fugiel
Cc: Howard Manis; Noah Goldstein
Subject: RE: Proposed financing with La Pue International Inc. - 5528 Ferry Street, Niagara Falls, ON

Pawel,

As our office has previously advised you and your legal counsel, your offer was not considered until we received evidence that you or your lender had the financial ability to fund your proposed transaction. We also advised you and your legal counsel on November 15, 2024 that the Receiver was reviewing another offer and that it was not prepared to await for receipt of your information. We did not receive evidence of financing from you to support your offer. As such, the Receiver entered into another transaction.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Pawel Fugiel <lapueinternational@gmail.com>
Sent: Friday, November 22, 2024 9:16 PM
To: Maya Poliak <Maya@chaitons.com>
Cc: Howard Manis <hmanis@manislaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: Re: Proposed financing with La Pue International Inc. - 5528 Ferry Street, Niagara Falls, ON

CAUTION: [External]

Maya

When the receiver entered into a sale transaction, today?

What was the reason my offer was rejected ?

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.
C: 647.705.9810
lapueinternational@gmail.com

On Fri, Nov 22, 2024 at 12:53 PM Maya Poliak <Maya@chaitons.com> wrote:

Howard,

The Receiver has now entered into a transaction for the sale of the Property. We are in the process of canvassing dates with the Court. Please advise if your client intends to oppose the sale and if there are dates that you are not available to attend a hearing in the month of December.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Howard Manis <hmanis@manislaw.ca>
Sent: Friday, November 22, 2024 11:13 AM
To: Pawel Fugiel <lapueinternational@gmail.com>
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Maya Poliak <Maya@chaitons.com>
Subject: RE: FW: Proposed financing with La Pue International Inc. - [5528 Ferry Street, Niagara Falls, ON](#)

CAUTION: [External]

Noah and Maya,

Please confirm today that our client's Offer is acceptable to the Receiver as the lender has insisted upon that before providing confirmation of funds as it does not wish to do so without assurance that there would be a firm transaction.

We await hearing from you today.

Howard



Howard F. Manis

MANIS LAW

• Bankruptcy & Insolvency • Commercial

(416) 417-7257

hmanis@manislaw.ca

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 2300 Yonge Street, Suite 1600, Toronto

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From: Pawel Fugiel <lapueinternational@gmail.com>

Sent: November 21, 2024 3:44 PM

To: Howard Manis <hmanis@manislaw.ca>

Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Maya Poliak <Maya@chaitons.com>

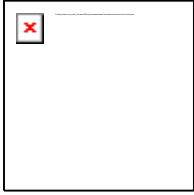
Subject: Re: FW: Proposed financing with La Pue International Inc. - [5528 Ferry Street, Niagara Falls, ON](#)

Hi Noah,

I noticed that Howard forgot to send the updated commitment with his email, outlining the conditions that have been satisfied, and ready to move forward with the new lender.

Thank you,

Pawel Fugiel
C.E.O



La Pue International Inc.

[6158 Allendale Ave | Niagara Falls | ON | L2G 0A5 | Canada](#)

Direct: 647.705.9810

lapueinternational@gmail.com

On Thu, Nov 21, 2024 at 2:56 PM Howard Manis <hmanis@manislaw.ca> wrote:

Good afternoon,

Please see the email exchange below as we expect to have what you need by the end of the day tomorrow assuming all goes as expected.

Howard



Howard F. Manis

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From: Pawel Fugiel <lapueinternational@gmail.com>

Sent: November 21, 2024 11:31 AM

To: Howard Manis <hmanis@manislaw.ca>

Subject: Re: Proposed financing with La Pue International Inc. - [5528 Ferry Street, Niagara Falls, ON](#)

Please share this with the receiver , we almost there!

--

PAWEL FUGIEL

LA PUE INTERNATIONAL INC.

C: 647.705.9810

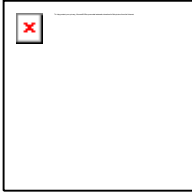
lapueinternational@gmail.com

On Thu, Nov 21, 2024 at 10:07 AM Pawel Fugiel <lapueinternational@gmail.com> wrote:

Howard, Please see response from Albert below and commitment signed and attached. Most of the conditions are waived.

Thank you,

Pawel Fugiel
C.E.O



La Pue International Inc.
[6158 Allendale Ave | Niagara Falls | ON | L2G 0A5 | Canada](#)
Direct: 647.705.9810

lapueinternational@gmail.com

----- Forwarded message -----

From: **Albert Guido** <aguido@fiducia.ca>

Date: Wed, Nov 20, 2024 at 6:36 PM

Subject: Fwd: Proposed financing with La Pue International Inc. - [5528 Ferry Street, Niagara Falls, ON](#)

To: Pawel Fugiel <lapueinternational@gmail.com>

Thank you Pawel, for providing the executed engagement letter this afternoon.

Our lawyer will proceed to send the updated commitment tomorrow, outlining the conditions that have been satisfied and confirming proof of funds availability for the proposed loan.

I will also follow up tonight with the signed engagement letter and details regarding the work fee payment.

Thank you,
Albert

|||

APPENDIX R

Court of Appeal File No.:
Court File No.: CV-23-00700695-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant
(Respondent)

- and -

LA PUE INTERNATIONAL INC.

Respondent
(Appellant)

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

NOTICE OF APPEAL

THE APPELLANT, La Pue International Inc. (“**La Pue**” or the “**Appellant**”), appeals to the Court of Appeal for Ontario from the Endorsement and Order of the Honourable Justice Jane Dietrich (the “**Motion Judge**”) dated January 7, 2025, made at Toronto, Ontario whereby the learned Motion Judge granted an Order (the “**Order**”) approving the asset purchase agreement dated April 4, 2024, as amended thereafter (the “**APA**”), entered into between Lakeshore Luxe Design & Build Group (“**Lakeshore**”) and KSV Restructuring Inc. (the “**Receiver**”), in its capacity as receiver over all the assets, undertakings and properties of La Pue, and vesting in 100835091 Ontario Inc. (the “**Purchaser**”) as assignee of Lakeshore, La Pue’s right title and interest in and to the purchased assets, including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “**Real Property**”).

THE APPELLANT ASKS that the Order be set aside and an Order be granted as follows:

- a) An Order permitting and directing La Pue to exercise its right of redemption and payout the indebtedness owed to the Applicant/Respondent on Appeal, Marshallzehr Group Inc.;

THE GROUNDS OF APPEAL are as follows:

- b) The learned Motion Judge erred in law and fact by failing to consider, or properly consider, the interests of all parties, as required pursuant to the governing principles set out in case law and applicable to the Court's approval of sales transactions.
- c) The learned Motion Judge failed to consider the interests of La Pue, the claimants with liens registered against title to the Real Property and the 359 pre-sale purchasers that entered into preconstruction agreements (the "**Preconstruction Agreements**") with La Pue for the purchase of condominium units.
- d) The learned Motion Judge erred in law and fact by approving the Order and vesting in the Purchaser title in the Real Property, as the Purchaser is not registered with the Home Construction Regulatory Authority and thereby precluded from assuming the Preconstruction Agreements and resulting in a termination thereof.
- e) The Learned Motion Judge failed to consider, or properly consider, the Purchaser's failure to pay deposits to the Receiver on three separate occasions and the corresponding financial ability of the Purchaser to complete the sales transaction.
- f) The learned Motion Judge erred in law and fact by preferring the interests of the Purchaser over the interests of La Pue and its right to redeem and payout the indebtedness owed to Applicant/Respondent on Appeal, Marshallzehr Group Inc.
- g) The learned Motion Judge failed to consider evidence supporting La Pue's financial ability to exercise its right of redemption, including but not limited to, the lender's

letter dated November 21, 2024 evidencing proof of funds and an email from La Pue's lender sent on December 16, 2024 confirming that the funds are available.

- h) The learned Motion Judge erred in fact by finding that the purchase price submitted by the Purchaser is superior to the offer submitted by La Pue's principal.
- i) La Pue's right to redeem and payout the indebtedness owed to the Applicant/Respondent on Appeal, Marshallzehr Group Inc. would create a more satisfactory result for all interested stakeholders insofar as there would be no shortfall or deficit on the indebtedness, the Preconstruction Agreements would remain in place and the lien claimants security would not vest in the purchase price and be discharged from title to the Real Property.
- j) The learned Motion Judge erred in fact by finding that there are no unusual or exceptional circumstances that exist to support granting La Pue's right to redeem.
- k) By denying La Pue's request to exercise its right of redemption, the learned Motion Judge erred in law.
- l) If required or necessary, a stay of the Order appealed from pending the hearing of this appeal by this Honourable Court and directing the Receiver not to close the sale transaction with the Purchaser pending the hearing of the within Appeal.
- m) Such further and other grounds as counsel may advise and this Honourable Court may permit

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- n) Rule 61.04 of the *Rules of Civil Procedure*.
- o) Sections 6(1)(b) and 134(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

- p) Sections 193(b), 193(c), 195 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3.
- q) Rule 31 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368.
- r) Leave to appeal the Order is not required.
- s) Such further and other statutes/rules as counsel may advise and this Honourable Court may permit.

DATE: January 16, 2025

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dlitsos@manislaw.ca

Lawyers for the Appellant,
La Pue International Inc.

TO: SERVICE LIST

MARSHALLZEHR GROUP INC.
Applicant (Respondent on Appeal)

- and -

LA PUE INTERNATIONAL INC.
Respondent (Appellant)

Court File No. CV-23-00700695-00CL
Court of Appeal File No.

COURT OF APPEAL FOR ONTARIO

Proceedings Commenced at TORONTO

NOTICE OF APPEAL

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Lawyers for the Appellant,
La Pue International Inc.

MARSHALLZEHR GROUP INC.
Applicant (Respondent in Appeal)

- and - **LA PUE INTERNATIONAL INC.**
Respondent (Appellant)

Court of Appeal File No.
Court File No. CV-23-00700695-00CL

COURT OF APPEAL OF ONTARIO
Proceedings commenced at Toronto

**THE FIFTH REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER OF LA PUE INTERNATIONAL INC.
DATED JANUARY 20, 2025**

AIRD & BERLIS LLP

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*Lawyers for KSV Restructuring Inc., in its capacity
as Receiver of La Pue International Inc.*

TAB 3

SERVICE LIST
(as at January 16, 2025)

Receiver's URL: <https://www.ksvadvisory.com/experience/case/lapue>

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<p>AIRD & BERLIS LLP 181 Bay Street, Suite 1800 Toronto, ON M5J 2 T9</p> <p>Kyle Plunkett Tel: 416-865-3406 Email: kplunkett@airdberlis.com</p> <p>Adreienne Ho Tel: 416-637-7980 Email: aho@airdberlis.com</p> <p>Miranda Spence: Tel: 416-865-3414 Email: mspence@airdberlis.com</p> <p>Matilda Lici Tel: 416-865-348 Email: mlici@airdberlis.com</p> <p>Lawyers for the Receiver</p>	<p>MANIS LAW 2300 Yonge Street, Suite 1600 Toronto, Ontario M4P 1E4</p> <p>Howard F. Manis Tel: (416) 364-5289 Email: hmanis@manislaw.ca</p> <p>Daniel Litsos Email: dlitsos@manislaw.ca</p> <p>Lawyers for the Respondent, La Pue International Inc.</p>

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<p>WEIRFOULDS LLP</p> <p>66 Wellington Street West, Suite 4100 Toronto, ON M5K 1B7</p> <p>Dylan Dilks Tel: (416) 947-5075 Email: ddilks@weirfoulds.com</p> <p>Lawyers for Kada Group Inc.</p>	<p>PAVEY LAW LLP</p> <p>73 Water Street North, suite 200 Cambridge, ON N1R 7L6</p> <p>Andrew Beney Tel: (519) 621-7260 Email: beney@paveylaw.com</p> <p>Lawyers for HC Matcon Inc.</p>
<p>TT GALBRAITH ELECTRIC LTD</p> <p>2 -213 Bunting Road St. Catherines, ON LM2 3Y2</p> <p>James Galbraith Tel: (905) 246-4797 Email: trent@ttjelectric.net</p>	<p>BISCEGLIA & ASSOCIATES</p> <p>9100 Jane Street, Building A, Suite 200 Toronto, ON L4K 0A4</p> <p>Emilio Bisceglia Tel: (905) 695-5200 Email: ebisceglia@lawtoronto.com</p> <p>Fernando Souza Tel: (905) 695-1500 Email: fsouza@lawtoronto.com</p> <p>Lawyers for Buttcon Limited</p>
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<p>JOHN P. MULLEN LAW 218 Export Blvd., Suite 106 Mississauga, ON L5S 0A7</p> <p>John Mullen Tel: (905) 501-8778 Email: John@jmmullenlaw.ca</p> <p>Lawyers for Tomasz Sobota, Andrejz Zalewski and Daniela Lupu</p>	<p>TUFMAN & ASSOCIATES 439 University Avenue, suite 2300 Toronto, ON M5G 1Y8</p> <p>Marek Tufman Tel: (416) 360-1689 Email: mzt@litigationcanada.com</p>
<p>PALLET VALO LLP 77 City Centre Drive, West Tower, Suite 300 Mississauga, ON L5B 1M5</p> <p>Maria Ruberto Tel: (289) 805-3441 Email: mruberto@pallettvalo.com</p> <p>Lawyers for Astro Excavating Inc.</p>	<p>WILLING LAW 180 Talbot Street South Essex, ON N8M 1B6</p> <p>Amanda Willing Tel: (519) 980-3476 Email: amanda@willinglaw.com</p> <p>Lawyers for Sandeep Saroya</p>
<p>MALGORZATA BOLAND</p> <p>Email: mkulanin@gmail.com Email: boland82003@yahoo.com</p> <p>Home Buyer</p>	<p>ENERCARE 7400 Birchmount Road Markham, ON L3R 5V4</p> <p>Andrew Ottaway (In-House Counsel) Tel: (416) 649-1943 Email: Andrew.Ottaway@enercare.ca</p> <p>Creditor</p>

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<p>CORSIANOS LEE VASHISHTH LLP 6 Ronrose Drive, Suite 301 Vaughan, ON L4K 4R3</p> <p>Jacob Lee Tel: (905) 370-1093 Email: jlee@clvlaw.ca</p>	<p>PAVEY LAW LLP 73 Water Street North, Suite 200 Cambridge, ON N1R 7L6</p> <p>Meagan Swan Tel: (519) 621-7260 Email: Swan@paveylaw.com</p> <p>Lawyers for HC Matcon</p>
<p>HOME CONSTRUCTION REGULATORY AUTHORITY 40 Sheppard Avenue West Toronto, ON M2N 6K9</p> <p>James Ryu Tel: (800) 582-7994 Email: james.ryu@hcraftario.ca</p>	<p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2</p> <p>Adam Slavens Tel: (416) 865-7333 Email: aslavens@torys.com</p> <p>Lawyers for Tarion Warranty Corporation</p>
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63135973.1

MARSHALLZEHR GROUP INC.
Applicant (Respondent in Appeal)

- and - **LA PUE INTERNATIONAL INC.**
Respondent (Appellant)

Court of Appeal File No.
Court File No. CV-23-00700695-00CL

COURT OF APPEAL OF ONTARIO
Proceedings commenced at Toronto

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as Receiver of La Pue International Inc.*