

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

B E T W E E N:

MARSHALLEZEHR GROUP INC.

Applicant

and

LA PUE INTERNATIONAL INC

Respondent

**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**

**RESPONDING MOTION RECORD OF 1000835091 ONTARIO INC., THE PROPOSED
PURCHASER**

February 20, 2025

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TO: **SERVICE LIST**

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TAB 1

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

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AFFIDAVIT OF CORRADO SCIVOLETTO
(Sworn February 20, 2025)

I, CORRADO SCIVOLETTO, of the City of Vaughan, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am the President of 1001082540 Ontario Inc., the holder of the majority of the issued shares in the capital stock of 1000835091 Ontario Inc., the purchaser (the "**Purchaser**") of the property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the "**Property**"). As such, I have personal knowledge of the matters to which I herein depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

2. I provide this affidavit for the assistance of the Court in respect of a late breaking motion of La Pue International Inc. (the "**Debtor**") for, amongst other things, the right to redeem the mortgage that is the subject of this receivership.

Background

3. KSV Restructuring Inc., in its capacity as receiver of the assets, undertakings and property of the Debtor (the “**Receiver**”) and Lakeshore Luxe Design & Build Group (“**Lakeshore**”) entered into an Asset Purchase Agreement on April 4, 2024 (the “**Original Agreement**”), which was subsequently assigned to the Purchaser. Attached hereto as **Exhibit “A”** is a copy of the Original Agreement.
4. On July 12, 2024, the Receiver and the Purchaser entered into a Reinstatement Agreement (the “**First Reinstatement**”), pursuant to which the Purchaser agreed to, inter alia, increase the purchase price by \$50,000 and provide two more deposits in addition to the Second Deposit. Attached hereto as **Exhibit “B”** is a copy of the First Reinstatement.
5. In October 2024, the Purchaser and Receiver entered in a second reinstatement agreement for the Original Agreement, which was subject to the Purchaser obtaining a vendor and builder license from the Home Construction Regulatory Authority. However, due to a lack of financing, the Original Agreement was not completed. Attached hereto as **Exhibit “C”** is a copy of the second reinstatement agreement.
6. In November 2024, the Purchaser advised the Receiver that it had obtained additional financing and the parties entered into a third reinstatement agreement for the Original Agreement. A copy of the third reinstatement agreement is attached hereto as **Exhibit “D”**.
7. MarshallZehr Group Inc., the Debtor’s senior secured creditor, (“**MarshallZehr**”) has advised me that it was, and remains, prepared to finance the balance of the purchase

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price pursuant to the Original Agreement in exchange for a vendor take-back mortgage encumbering the Property. On November 18, 2024, the Purchaser delivered the entirety of the additional deposit required under the aforementioned third reinstatement agreement.

8. I am advised by my counsel that the Debtor is now attempting to have the Original Agreement set aside and has also brought a motion for an order authorizing it to redeem the mortgage given to MarshallZehr encumbering the Property (the "**Mortgage**") and to prevent the sale of the Property.

9. I want to be very clear: the Purchaser wishes to proceed with the completion of the Original Agreement. The Purchaser has an agreement of purchase and sale with the Receiver. The agreement of purchase and sale has been approved by the Court by way of an approval and vesting order issued on January 7, 2025 (the "**AVO**"). The Debtor appealed the AVO to the Court of Appeal. The Court of Appeal dismissed the appeal on January 19, 2025. The Purchaser is ready, willing and able to close the transaction contemplated by the Original Agreement (the "**Transaction**") and is prepared to do so as soon as possible. Copies of the AVO and the decision of the Court of Appeal of January 19, 2025 are attached as **Exhibits "E"** and "**F"** respectively.

10. There shouldn't be any question about the Purchaser's ability to complete the transaction. I attach to this affidavit two commitment letters indicating that the Purchaser has adequate financing to complete the Transaction. The first is a copy of a commitment letter from Vault Capital Inc. ("**Vault**") dated November 1, 2024. In this letter, Vault has unconditionally confirmed that it is prepared to advance to the Purchaser the sum of \$23,864,101.88.

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These funds will be used to complete the Transaction. (the “**Vault Letter**”). A copy of the Vault letter is attached hereto as **Exhibit “G”**.

11. The second letter is from MarshallZehr and is dated December 2, 2024. In this letter, MarshallZehr confirms that it is prepared to advance the Purchaser \$20,180,743 which is to be used to finance the Transaction (the “**MarshallZehr Letter**”). A copy of the MarshallZehr Letter is attached hereto as **Exhibit “H”**.

Prejudice to the Purchase if the Debtor is allowed to Redeem

12. As I have stated above, the Purchaser is ready, willing and able to complete the Transaction.

13. Should the Transaction not proceed, the Purchaser will experience considerable prejudice. To date, the Purchaser has incurred significant costs and will experience financial hardship if the Debtor is permitted to redeem the Mortgage. This includes interest on the Purchaser’s financing which, as matters currently stand, is about \$480,000. The Purchase has also incurred significant legal costs. I estimate those legal costs to be in the region of \$250,000.

14. If the Transaction is not completed soon, the Purchaser will be further prejudiced as the Property is in an incomplete state. In my view, any further delays in closing the Transaction will most likely result in physical deterioration of the Property, which will necessitate repairs and maintenance costs. Additionally, physical deterioration may cause potential safety hazards, which would reduce the value of the Property.

15. Through my review of the Debtor’s Motion materials, I understand that the Debtor has alleged that the Purchaser does not have the financial ability to complete the Transaction.

There is no basis for this allegation as the Purchaser has obtained unconditional financing from both Vault and MarshallZehr, and is ready, willing, and able to close the Transaction.

16. I also understand that there are currently two construction liens that continue to encumber the Property at the date of this affidavit. These construction liens have not been discharged and I do not believe the Debtor has made any provision for these construction liens to be discharged from title of the Property. I also understand, having reviewed the materials, that the Debtor may only have access to approximately \$22,000,000.00 in financing. I do not believe that this amount will be sufficient to pay out the Mortgage, the aforementioned construction liens and all the stakeholders in the Property, and that, ultimately, the Debtor is unable to redeem the mortgage on Friday, February 21, 2025.

SWORN by JACK SCIVOLETTO of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on February 20, 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Mitchell Lightowler (LSO#: 76305T)



(Signature of deponent)

JACK SCIVOLETTO

This is Exhibit "A" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Corrado Scivoletto". The signature is written in a cursive style with a large initial 'C'.

Commissioner for Taking Affidavits (or as may be)

ASSET PURCHASE AGREEMENT

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

BETWEEN:

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

- and -

Lakeshore Luxe Design & Build Group (the “**Purchaser**”)

RECITALS:

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

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

1. DEFINITIONS.

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

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

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

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

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

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

2. SCHEDULES.

The following schedules are appended to this Agreement:

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

3. AGREEMENT TO PURCHASE AND SELL.

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

4. PURCHASE PRICE.

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

5. SATISFACTION OF PURCHASE PRICE.

The Purchase Price shall be paid and satisfied as follows:

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

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

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

6. DEPOSIT.

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

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

7. APPROVAL AND VESTING ORDER.

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

8. CLOSING ADJUSTMENTS.

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

9. ASSUMED LIABILITIES.

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

10. ASSUMED AGREEMENTS OF PURCHASE AND SALE AND CONTRACTS.

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

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

11. ASSIGNMENT OF PURCHASED ASSETS.

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

12. EXCLUDED ASSETS.

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

13. CLOSING DATE.

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

14. ELECTRONIC REGISTRATION.

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

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

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

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

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

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

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

15. **PRE-CLOSING RISK.**

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

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

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

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

17. VENDOR'S REPRESENTATIONS AND WARRANTIES.

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

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

18. "AS IS, WHERE IS".

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

19. ENCROACHMENTS.

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

20. INDEMNIFICATION AND RELEASE BY PURCHASER.

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

21. NON-REGISTRATION.

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

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

22. VENDOR'S CLOSING CONDITIONS.

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

23. PURCHASER'S CLOSING CONDITIONS.

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

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

24. VENDOR'S CLOSING DELIVERIES.

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

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

25. PURCHASER'S CLOSING DELIVERIES.

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

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

26. DOCUMENTATION PREPARATION AND REGISTRATION.

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

27. LAND TRANSFER TAXES.

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

28. HARMONIZED SALES TAX.

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

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

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

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

29. Remedies for Breach of Agreement.

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

30. Termination If No Breach of Agreement.

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

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

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

31. PLANNING ACT (ONTARIO).

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

32. NOTICE.

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

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

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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 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.

This is Exhibit "B" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Corrado Scivoletto". The signature is written in a cursive style with a large initial 'C'.

Commissioner for Taking Affidavits (or as may be)

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.

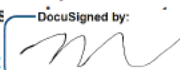
- (f) The Purchaser shall pay, as a further deposit towards the balance of the Purchase Price due on Closing, by wire transfer, the amount of [REDACTED] (the "Third Deposit") to the Vendor, in trust, on or before July 22, 2024. Provided that in the event that the Purchase Agreement is terminated due 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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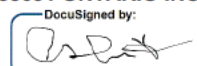
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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.

This is Exhibit "C" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Michael Scivoletto". The signature is written in a cursive style with a large initial 'M'.

Commissioner for Taking Affidavits (or as may be)

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.

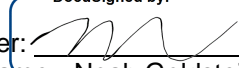
(l) Notwithstanding any provision in the Purchase Agreement to the contrary, the Parties hereby covenant and agree that the Purchaser shall assume the Assumed Agreements of Purchase and Sale ninety (90) days following the Closing Date (the "**Assumption Date**"), with a right in favour of the Purchaser 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.

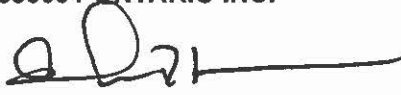
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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.

This is Exhibit "D" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Michael Scivoletto". The signature is written in a cursive style with a large initial 'M' and a distinct 'S'.

Commissioner for Taking Affidavits (or as may be)

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 -

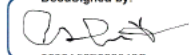
1000835091 ONTARIO INC.
(the "Purchaser")

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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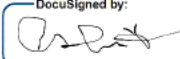
2. The Parties hereby further reinstate, confirm, ratify and agree to be bound by the terms of the Purchase Agreement, as amended by the First Reinstatement and Amending Agreement and the Second Reinstatement and Amending Agreement, in accordance with and subject to the terms and conditions hereof.
3. 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:

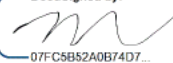
The Purchaser shall pay, as a further deposit towards the balance of the Purchase Price due on Closing, by wire transfer, the amount of [REDACTED] (the "Third Deposit") to the Vendor, in trust, within one (1) Business Day of the Effective Date. Provided that in the event that the Purchase Agreement is 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:

0933A59F063849C...

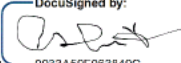
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

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.

This is Exhibit "E" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Affidavit Scivoletto". The signature is written in a cursive style with a large initial 'A'.

Commissioner for Taking Affidavits (or as may be)



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.

- [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.



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

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

THE HONOURABLE MADAM)	TUESDAY, THE 7 TH
)	
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

AIRD & BERLIS LLP

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

Kyle Plunkett (LSO #61044N)

Tel: (416) 865-3406
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Tel: 416-637-7980
Email: aho@airdberlis.com

*Lawyers for the Receiver, KSV Restructuring
Inc.*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 7TH DAY
)	
JUSTICE JANE DIETRICH)	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

AIRD & BERLIS LLP

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Adrienne Ho (LSO# 68439N)

Tel: 416-637-7980

Email: aho@airdberlis.com

Lawyers for the Receiver, KSV Restructuring Inc.

This is Exhibit "F" referred to in the Affidavit Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Affidavit Scivoletto". The signature is written in a cursive style with some overlapping letters.

Commissioner for Taking Affidavits (or as may be)

COURT OF APPEAL FOR ONTARIO

CITATION: Marshallzehr Group Inc. v. La Pue International Inc., 2025 ONCA 124

DATE: 20250219

DOCKET: M55745 & M55769 (COA-25-CV-0063)

MacPherson J.A. (Motions Judge)

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

BETWEEN

Marshallzehr Group Inc.

Applicant

(Respondent/Responding Party/Responding Party by way of cross-motion)

and

La Pue International Inc.

Respondent

(Appellant/Responding Party/Moving Party by way of cross-motion)

Miranda Spence and Adrienne Ho, for the respondent/moving party (M55745)/responding party by way of cross-motion (M55769), KSV Restructuring Inc., in its capacity as receiver of La Pue International Inc.

Maya Poliak, for the respondent/responding party (M55745)/responding party by way of cross-motion (M55769), Marshallzehr Group Inc.

Howard F. Manis and Daniel Litsos, for the appellant/responding party (M55745)/moving party by way of cross-motion (M55769), La Pue International Inc.

Mitch Lightowler and Piper Mckerlie, for 1000835091 Ontario Inc.

Fernando Souza, for Buttcon Limited and as agent for counsel for HC Matcon Inc.

Jason Wadden, for Anthony Defrancesco

Heard: February 7, 2025

ENDORSEMENT

[1] KSV Restructuring Inc. (“KSV”), in its capacity as court appointed receiver of all the assets, undertakings and properties of La Pue International Inc., including the real property known as 5528 Ferry Street, Niagara Falls, brings a motion seeking, *inter alia*:

- (a) a declaration that the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “*BIA*”) governs the appeal by the debtor La Pue International Inc. from the Approval and Vesting Order of Dietrich J. of the Superior Court of Justice dated January 7, 2025 (the “*AVO*”);
- (b) 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*;
- (c) an Order declining to grant leave to appeal from the *AVO*; and
- (d) an Order sealing the confidential appendices of the fifth report of the Receiver dated January 20, 2025 (the “*Fifth Report*”).

[2] In response to the receiver’s motion, the debtor La Pue International Inc. brings a cross-motion relating to the same subject matter and issues.

[3] In her decision authorizing the sale by the receiver of the subject property, the motion judge concluded, at paras 29-32:

[W]hat 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.

...

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.

...

Accordingly, I would approve the Transaction.

[4] The debtor seeks to appeal the motion judge's decision, asserting that she erred by failing to properly consider the interests of all parties and by preferring the interests of the purchaser over the interest of the debtor and its right to redeem.

[5] Appeals under the *BIA* are dealt with in s. 193:

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

(a) if the point at issue involves future rights;

(b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;

(c) if the property involved in the appeal exceeds in value ten thousand dollars;

(d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and

(e) in any other case by leave of a judge of the Court of Appeal.

[6] The debtor asserts that it has a right to appeal under s. 193(a) of the *BIA*.¹

It says that the AVO affects its future rights as well as those of 359 pre-sale purchasers that entered into pre-sale construction agreements with the debtor and the lien claimants with more than \$12,000,000 in security registered against title to the property.

[7] I do not accept this submission. In *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, Brown J.A. said, at paras. 21-23:

Although the category of “future rights” increasingly seems an anachronistic and confusing basis upon which to ground appeal rights, courts have attempted to cloak the term “future rights” with some practical meaning. In *Re Ravelston Corp.*, Doherty J.A. stated, at para. 18:

The meaning of the phrase "future rights" is not obvious. Caselaw holds that it refers to future legal rights and not to procedural rights or commercial advantages or disadvantages that may accrue from the order challenged on appeal ... Rights that presently exist, but may be exercised in the future or altered by the order under appeal are present rights and not future rights ... [Citations omitted.]

¹ In its notice of appeal, the debtor asserts that it has a right of appeal under s. 193(b) of the *BIA*; however, this submission was not pursued at the hearing of this motion. Instead, the debtor relies on ss. 193(a) and (c) of the *BIA* to submit that it has a right of appeal to this court.

Doherty J.A. went on to adopt, at para. 19, the view expressed in *Elias v. Hutchison*, at paras. 100-101, that s. 193(a) of the *BIA* “must refer to rights which could not at the present time be asserted but which will come into existence at a future time.”

More recently, Blair J.A., in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, stated, at para. 15:

“Future rights” are future legal rights, not procedural rights or commercial advantages or disadvantages that may accrue from the order challenged on appeal. They do not include rights that presently exist but that may be exercised in the future.

[8] In my view, the debtor cannot bring itself within the definitions set out in these authorities. Its rights that may be in issue in the bankruptcy proceedings may be in issue now, not in the future.

[9] The debtor’s second submission is that it has a right of appeal under s. 193(c) of the *BIA*. It says that if the transaction contemplated by the AVO is completed, it is certain that there will be a loss exceeding \$10,000 suffered by the company, its principal and the lien claimants. The debtor points out that in its factum the receiver acknowledges that the debtor’s indebtedness to the applicant continues to accrue interest at \$14,181.37 per day and the underlying debt already exceeds \$20,000,000.

[10] I am not persuaded by this submission. In *Bending Lake Iron Group, supra*, Brown J.A. said, at para. 53:

[C]ontextual factors militate against employing an expansive application of the automatic right of appeal contained in s. 193(c) and, instead, point to the need for an approach which is alive to and satisfies the needs of modern, “real-time” insolvency litigation. I shall employ such an approach in applying the following three principles that have emerged from the jurisprudence: s. 193(c) does not apply to (i) orders that are procedural in nature, (ii) orders that do not bring into play the value of the debtor’s property, or (iii) orders that do not result in a loss.

[11] In my view, the AVO in this case fits precisely into the three parameters set out by Brown J.A. in this passage, and the appeal does not meet the threshold in s. 193(c) of the *BIA*. I agree with the receiver that the AVO is procedural in nature, does not bring into play the value of the debtor’s property, and does not result in a direct loss to any interested party.

[12] The debtor’s third submission is that, if it does not have an automatic right of appeal under either or both s. 193(a) and s. 193(c) of the *BIA*, it should nevertheless be granted leave under the discretionary s. 193(e) of the *BIA*.

[13] The test for leave to appeal under s. 193(e) of the *BIA* is well established. In *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, Blair J.A. said, at para 29:

Beginning with the overriding proposition that the exercise of granting leave to appeal under s. 193(e) is discretionary and must be exercised in a flexible and contextual way, the following are the prevailing considerations in my view. The court will look to whether the proposed appeal,

Page: 7

- (a) raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this Court should therefore consider and address;
- (b) is *prima facie* meritorious, and
- (c) would unduly hinder the progress of the bankruptcy/insolvency proceedings.

[14] The debtor cannot establish any of these factors.

[15] The proposed appeal does not raise an issue of general importance to insolvency practice or to the administration of justice as a whole. I agree with the receiver that the proposed appeal is rooted in the specifics of the dealings among the receiver, the debtor and the potential purchaser.

[16] The proposed appeal is not *prima facie* meritorious. The motion judge's reasons are clear, comprehensive and, in my view, obviously correct.

[17] The proposed appeal would delay and "unduly hinder" the progress of the bankruptcy proceedings. The sooner the receiver can proceed with and finalize its professional steps, the better.

[18] The receiver's motion is granted. The debtor's cross-motion is dismissed.

[19] A sealing Order is granted with respect to Confidential Appendices 1 to 6 of the receiver's Fifth Report to the Court dated January 20, 2025.

[20] The receiver is entitled to its costs of the motion and cross-motion fixed at \$25,000, inclusive of disbursements and HST.

J.G. MacPherson J.A.

This is Exhibit "G" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Affidavit by Corrado Scivoletto". The signature is written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Effective November 1, 2024

G Group Major Mackenzie Inc.
10 Kingsbridge Garden Circle, Suite 802
Mississauga, Ontario L5R 3K6

Attention: Albert Gasparro, Stefano Guizzetti and Jack Scivoletto

Re: Vault Capital Inc. (the "**Lender**") loan to G Group Major Mackenzie Inc. (the "**Borrower**"), as guaranteed by G Group Development Corp. (the "**Corporate Guarantor**"), Albert Gasparro ("**Albert**"), Stefano Guizzetti ("**Stefano**") and Jack Scivoletto ("**Jack**", and together with the Corporate Guarantor, Albert and Stefano, the "**Guarantors**") pursuant to the commitment letter dated July 6, 2022, as amended by letter agreements dated July 25, 2022 and May 31, 2023 (collectively, the "**Commitment Letter**")

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment Letter unless otherwise indicated. The Borrower and the Guarantors are collectively referred to herein as the "Obligors". The Lender has approved the following amendments to the Commitment Letter:

1. From and after the date hereof:
 - (a) the provisions beside the heading "**Loan amount**" on Page 1 of the Commitment Letter are hereby deleted and replaced with the following:

\$23,864,101.88, representing all amounts outstanding as of the date hereof, plus interest to be accrued and added to the principal amount in accordance with this Agreement (the "**Loan**").
 - (b) the provisions beside the heading "**Term**" on Page 1 of the Commitment Letter are hereby deleted and replaced with the following:

The Loan shall mature and any outstanding balance shall become due and payable in full on May 1, 2025.
 - (c) the provisions beside the heading "**Interest Rate**" on Page 1 of the Commitment Letter are hereby deleted and replaced with the following:

10.75% fixed rate; calculated and payable monthly.

In respect of the regular monthly payments due from and after December 1, 2024 to and including February 1, 2024, all payments shall be added to the principal amount of the Loan on their due date. In respect of the regular monthly payments due from and after March 1, 2025 to and including May 1, 2025, all payments shall be made in cash on their due date.
 - (d) the chart under the heading "**Sources & Uses**" on Page 2 of the Commitment Letter is hereby deleted and replaced with the following:

Sources		Uses	
Vault 1 st Mortgage	\$24,520,000	Partially repay outstanding 1 st mtg	\$18,230,000
		Interest Reserve	\$1,450,000
		Lender's Fee	\$300,000
		Legal costs (estimate)	\$20,000
		Interest and Cost Arrears	\$4,520,000
Total	\$24,520,000	Total	\$24,520,000

- (e) paragraph 1 beside the heading "**Security**" on Page 3 of the Commitment Letter is hereby deleted and replaced with the following:

First charge over the Property in the principal amount of \$26,000,000 and all interest, costs and fees payable under the Loan to be registered in the name of TSX Trust Company. The address of service to be registered as c/o Vault Capital Inc. 41 Scarsdale Road, Unit 5, North York, Ontario M3B 2R2;

2. The Loan shall be secured by the security delivered by the Borrower and the Guarantors (collectively, the "**Obligors**") in connection with the Loan and the Commitment Letter (collectively, the "**Initial Security**") and the following documents (collectively, the "**Additional Security**" and together with the Initial Security, the "**Security**"):
- (a) a notice of charge amending agreement (the "**Notice**") in respect of the existing charge in favour of the Lender and registered against title to the Property as Instrument No. YR3458213, as amended by a notice registered as Instrument No. YR3562252 (collectively, the "**Charge**"), to *inter alia* increase the principal amount noted therein to \$26,000,000, which charge amending agreement is intended to secure the obligations under the Commitment and all present and future amounts that may be owing by the Borrower to the Lender;
 - (b) a postponement of interest from all parties having a subsequent interest registered against title to the Property;
 - (c) a postponement of shareholder(s) and/or related party loans from the shareholder(s) and/or related parties of the Borrower, if applicable; and
 - (d) such other pledges, assignments, security agreements and documents as the Lender or its solicitors may deem necessary.
3. This Agreement is conditional upon receipt by the Lender of the following, all in the form and substance satisfactory to the Lender and/or its solicitors, in their sole discretion:
- (a) a duly executed copy of this Agreement, together with the Extension Fee (as hereinafter defined);
 - (b) duly executed copies of the Additional Security, registered where required;
 - (c) a certificate or binder of insurance satisfactory to the Lender;
 - (d) confirmation that all taxes due and payable in respect of the Property have been paid.
 - (e) corporate documentation to the Lender's and its solicitors' satisfaction, where applicable including, without limitation, a status certificate, officer's certificates, resolutions, articles of incorporation, executed by-laws, corporate minute book registers and the most recent Form 1 filed with the ministry for the Borrower and the Corporate Guarantor;
 - (f) a certificate of independent legal advice for Albert in respect of this Agreement and the Additional Security; and
 - (g) an amendment to the title insurance policy issued by FCT Insurance Company Ltd. to *inter alia* increase the principal amount of the Charge, as amended by the Notice, together with payment by the Obligors of the title insurance premium in connection therewith.

4. As a condition hereof, the Borrower shall pay to the Lender an extension fee in the amount of \$286,370 (the "**Extension Fee**"), which fee is earned as of the date hereof and secured by the Security delivered in connection with the Commitment.
5. From and after the date hereof, the Obligors acknowledge and agree that the Security:
 - (a) has not been discharged, waived or varied except as provided in this Agreement;
 - (b) is binding upon the Obligors party thereto as though each, as applicable, was an original signing party thereof;
 - (c) is valid and enforceable in accordance with its written terms;
 - (d) shall constitute, and shall be held by the Lender as general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, present or future, direct or indirect, contingent or not, matured or not; and
 - (e) shall be deemed to be amended *mutatis mutandis* as provided herein and is also hereby amended *pro tanto* to give effect to this Agreement.
6. The Obligors hereby represent and warrant to the Lender that:
 - (a) the Obligors each have the power and authority, and the legal right, to execute, deliver and perform this Agreement;
 - (b) the Obligors have taken all necessary action to authorize the execution, delivery and performance of this Agreement;
 - (c) no consent or authorization of, filing with, notice to or other act by, or in respect of, any corporate, governmental or regulatory authority, or any other person is required in connection with this Agreement, the execution, delivery, performance, validity or enforceability of this Agreement, except consents, authorizations, filings and notices which have been obtained or made and are in full force and effect;
 - (d) this Agreement has been duly executed and delivered by the Obligors and constitutes legal, valid and binding obligations of the Obligors enforceable against the Obligors in accordance with their terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);
 - (e) each of the representations and warranties made by the Obligors herein or pursuant to the Security and other documents now or hereafter delivered under or in connection with the Commitment Letter is true and correct on and as of the on which all conditions precedent have been satisfied as if made on and as of such date (except that any representation or warranty which by its terms is made as of an earlier date shall be true and correct as of such earlier date);
 - (f) no default has occurred and is continuing, or will result from this Agreement; and
 - (g) no event or condition that with notice, lapse of time or both would result in a material adverse effect has occurred and is continuing.
7. The Obligors shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement.

8. The Obligors shall execute such further assurances with respect to this Agreement and the Commitment Letter as may be required to evidence the true intent and meaning of this Agreement.
9. This Agreement is supplemental to and shall be read with and be deemed to be part of the Commitment Letter, which shall be deemed to be amended mutatis mutandis as herein provided. Any reference to the Commitment Letter in any agreements or documents entered into in connection with the Commitment Letter shall mean the Commitment Letter as amended hereby and all such agreements and documents are also hereby amended pro tanto to give effect to this Agreement.
10. All the terms and conditions of the Commitment Letter, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
11. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.
12. This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Obligors irrevocably submit to the non-exclusive jurisdiction of the courts of such Province and acknowledge the competence of such courts and irrevocably agree to be bound by a judgment of any such court.
13. This Agreement may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[The remainder of this page is blank. Signature page follows.]

Yours truly,


VAULT CAPITAL INC.

Per: 
Name: Roy Thomas
Title: Managing Director, Commercial Lending

I have authority to bind the Corporation.

ACCEPTED as of the date first written above.

G GROUP MAJOR MACKENZIE INC.


Per: 
Name: Jack Scivoletto
Title: President

I have authority to bind the Corporation.


G GROUP DEVELOPMENT CORP.

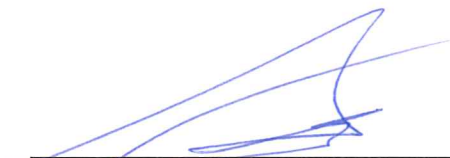
Per: 
Name: Jack Scivoletto
Title: President

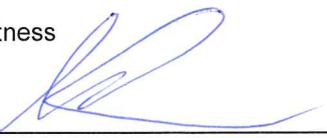
I have authority to bind the Corporation.

Witness 
Name:


Albert Gasparro

Witness 
Name:


Stefano Guizzetti

Witness 
Name:


Jack Scivoletto

This is Exhibit "H" referred to in the Affidavit of Corrado Scivoletto
sworn February 20, 2025

A handwritten signature in blue ink, appearing to read "Michael Scivoletto". The signature is written in a cursive style with a large initial 'M'.

Commissioner for Taking Affidavits (or as may be)



Monday, December 2, 2024

1000835091 Ontario Inc.
2921 Langstaff Road
Vaughan, Ontario, L4K 4W7

Attention: Anthony De Francesco and Jack Scivoletto

Dear Anthony De Francesco and Jack Scivoletto,

RE: Acquisition financing for The Stanley District property

Project Name: The Stanley District (Acquisition) – MZGI 585

This commitment letter confirms that MarshallZehr Group Inc. is prepared to provide financing as detailed in the document herein, conditional on the terms and conditions contained in this letter agreement (this "**Commitment**"). Upon execution by the Lender and the Obligors, this Commitment will constitute an agreement which shall bind each of them, subject to and in accordance with the terms hereinafter set out. All capitalized terms not otherwise defined in this Commitment shall have the meanings ascribed thereto in Appendix B.

A. LOAN

1. **Borrower:** 1000835091 Ontario Inc. (the "**Borrower**").
2. **Guarantors:** Anthony De Francesco, and Aura Developments Inc., together with such other related parties as the Lender may deem advisable, in its sole discretion (collectively, the "**Guarantors**").
3. **Obligors:** Means, collectively, the Borrower and the Guarantors (collectively, the "**Obligors**" and each, an "**Obligor**").
4. **Lender:** MarshallZehr Group Inc. and/or such other assignees or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan (the "**Lender**").
5. **Project Description** Those lands and premises together with all fixtures and improvements now or hereafter situate thereon municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in Appendix A (the "**Property**").

The Project is to consist of a multi-tower development that, when complete, will consist of 889 residential units and 20,210 SF of commercial space distributed across three buildings (total GFA of 798,937 SF). These three buildings will be developed in two phases, the first of which (Tower C) is currently under construction (collectively, the "**Project**"). Additionally, the Lender understands that the Project has all the approvals required to proceed with development/construction of Tower C.

6. **Loan Amount** The lesser of:
 - i) \$20,180,743 (the "**Loan**" or "**Loan Amount**") to be advanced through multiple facilities as follows:

Facility/Tranche	Amount
Facility 1 (Land Acquisition)	\$ 18,000,000
Facility 2 (Working Capital)	2,180,743
Total Loan Amount	\$ 20,180,743



- ii) An amount sufficient to satisfy the non-cash portion of the Project Property acquisition.

Facility 1 and Facility 2 shall rank pari passu.

7. Interest Rate:

The Loan shall bear interest at the following rates (collectively, the “**Interest Rate**”):

Facility/Tranche	Interest Rate	Floor Rate
Facility 1 (Land Acquisition)	Prime + 6.55% per annum	12.50%
Facility 2 (Working Capital)	Prime + 6.55% per annum	12.50%

Interest shall accrue commencing on the date of each Advance to the Lender’s trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest-only payments in respect of the Loan shall be paid from a) the Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligor’s own cash resources.

Prime shall be defined as the Bank of Montreal Prime Business Rate of Interest (the “**Prime Rate**” or “**Prime**”).

8. Fees:

Notwithstanding **Article A.23** of this Commitment Letter, the Borrower shall pay the following fees (collectively, the “**Fees**”) to the Lender and the transaction mortgage broker, to the extent applicable:

Fee:	Amount
Lender Fee	\$ 303,000
Administration Fee	\$ 5,000
Final Discharge Fee	\$ 1,000
Pre-Payment Fee (per pre-payment)	\$ 1,000

The Lender Fee, and Administration Fee shall each be deemed to be fully earned by the Lender and/or broker, as applicable, and both payable and non-refundable to the Borrower at the time of the Initial Advance.

In the event that the Initial Advance does not occur on or prior to the Outside Date for any reason whatsoever, the (i) balance of the Lender Fee, and Administration Fee shall immediately become due and payable by the Obligor to the Lender and (ii) Obligor shall be responsible for all expenses incurred by the Lender to date in connection with this Commitment, including, without limitation, the cost of any third-party reports issued and/or in process and all legal fees and disbursements in connection with the Loan and/or the recovery of any portion of the balance of the unpaid Lender Fee, and Administration Fee, to the extent applicable.

All applicable Fees are further detailed in Appendix G. The Borrower hereby acknowledges and agrees that the Fees set out above and in Appendix G herein are a genuine pre-estimate of the value of the services performed by the Lender and/or its Affiliates for same and are not a penalty or additional interest under the Loan.



- 9. Term:** The Loan shall mature (the “**Term**”) and any outstanding balance shall become due and payable in full on the date (the “**Maturity Date**”) that is the earlier of a) seven (7) months commencing from the Interest Adjustment Date and b) the date on which the Lender demands repayment of the Loan.
- 10. Extension:** The Borrower may request one (1) extension of the Maturity Date for a period of six (6) months (the “**Extension Term**”), which shall be at the sole discretion of the Lender and shall, at minimum, require:
- that there has been no default under this Commitment or the Security;
 - the payment of a fully earned extension fee (the “**Extension Fee**”) to the Lender in an amount equal to one percent (1.00%) of either of the (i) Loan Amount, or (ii) outstanding principal balance of the Loan if the Loan has been fully advanced and repayment by the Borrower has begun; and
 - sixty (60) days prior written notice by the Borrower to the Lender prior to the Maturity Date.

The interest during the Extension Term shall be calculated and compounded at the same Interest Rate applicable during the Term. A title search of the Property will be conducted by the Lender’s solicitor upon the request by the Borrower of an Extension Term and at the Borrower’s expense. The Borrower will be responsible for any reasonable costs associated with each Extension Term.

- 11. Wrap-Up Period** Commencing the final month (the “**Wrap-Up Period**”) of the Term, or the Extension Term, as applicable, interest shall accrue at Prime + 11.55% (Floor: 17.50%) (the “**Wrap-Up Rate of Interest**”). If there are multiple facilities or tranches, interest shall accrue at the Wrap-Up Rate of Interest and be calculated, compounded, and payable in the same manner as prior to entering the Wrap-Up Period for each applicable facility or tranche.
- 12. Expenses** All reasonable expenses of the Lender and the Borrower shall be paid by the Borrower including (but not limited to), the cost of any third-party reports, all legal costs regardless of whether the Borrower proceeds with the Loan, and any cost recovery of unpaid amounts, if required. Upon request by the Borrower, the Lender shall provide an estimate of the legal fees to be incurred by the Lender in connection with the preparation of the Security and the Initial Advance. Upon execution by the Borrower of this Commitment, the Obligors shall be responsible for all reasonable legal fees actually incurred by the Lender in connection herewith.
- 13. Demand and Cancellation** The Lender may, on demand, require immediate payment of all amounts outstanding or accrued in connection with this Commitment and the Loan. The Lender may at any time, for any reason, and without notice, cancel the undrawn portion of the Loan.
- 14. Purpose** The Loan shall at all times be used for the purposes described herein and for no other purpose without the prior written consent of the Lender.

15. Sources and Uses of Funds

Uses	
Land Costs	22,586,475
Financing Costs	1,594,268
Total Uses	\$ 24,180,743

Sources	
Facility 1 (Land Acquisition)	18,000,000
Facility 2 (Working Capital)	2,180,743
Cash Equity	4,000,000
Total Sources	\$ 24,180,743



- 16. Initial Advance and Draw** The first advance and draw (the “**Initial Advance**” and “**Draw 1**”, respectively) shall be advanced upon satisfaction of the conditions contained herein, including without limitation, **Articles B. 1.** thereof.
- 17. Order of Advances** *[Intentionally Deleted – N/A]*
- 18. Interest Reserve** At the time of an Advance, the Lender may, at its sole discretion, request sufficient funds from the Borrower to fund ongoing interest (the “**Interest Reserve**” or “**Reserve**”) during the Term.
- The Interest Reserve shall be held in the Lender’s trust account and shall be deemed to be principal advanced. The Reserve, together with any interest earned thereon will be pledged by the Borrower to the Lender as security for the Loan. In the Event of Default under this Commitment and/or the Security, the Lender may apply, in its sole discretion, all or any part of the Reserve for payment of any principal, interest, fees, costs or other amounts payable under the Security.
- In consideration of each Advance by the Lender to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Borrower, the Borrower hereby irrevocably authorizes and directs the Lender to:
- a) request funds from the Borrower, as it may determine in its sole discretion, to fund the Reserve; and
 - b) automatically debit the Interest Reserve for all payments of interest required hereunder;
- and this shall be the Lender’s good, sufficient and irrevocable authority for so doing.
- 19. Partial Discharges and Mandatory Repayment** *[Intentionally Deleted – N/A]*
- 20. Voluntary Pre-Payment** The Loan may be prepaid in whole or in part at any time or times on the following terms:
- a) upon at least sixty (60) days’ prior written notice by the Borrower to the Lender in a form specified by the Lender;
 - b) in an amount not less than \$100,000 (the “**Pre-Payment Proceeds**”) or, if a lesser amount, upon the Lender’s prior written consent; and
 - c) payment by the Borrower to the Lender of the Pre-Payment Fee together with its solicitors’ reasonable legal fees in respect thereof.
- Any payments received by the Lender pursuant to this **Article A. 20** shall be applied towards repayment of the Loan in the order set out in **Article A. 21** below.
- 21. Allocation of Proceeds** The Pre-Payment Proceeds, as the case may be, shall be applied in the following order:
- a) as repayment of all accrued and unpaid interest due under the Loan; then
 - b) as repayment of the outstanding principal balance due under Facility 1 and Facility 2 on a proportionate basis.
- 22. Special Provisions** The following special provisions shall apply to the Loan:
- 22.1. Syndication of the Loan** *[Intentionally Deleted – N/A]*



22.2. Permitted Encumbrances

The Lender hereby acknowledges and consents to the following charges/mortgages of land that have been or will be registered against title to the Property as of the date of the Initial Advance (collectively, the “**Permitted Encumbrances**”):

Prior Ranking:

- a) No prior ranking Permitted Encumbrances.

Subordinate Ranking:

- a) No subordinate ranking Permitted Encumbrances

The Borrower shall not enter into any further financing of the Property and/or the Project subsequent to the Loan, secured or unsecured, without the prior written consent of the Lender, which consent shall be in the Lender’s sole discretion.

22.3. Standby Interest

The Initial Advance and Draw 1 shall be completed on the date (the “**Standby Date**”) that is not less than (3) business days following the later of:

- a) notification by the Lender to the Borrower that the Loan has been successfully syndicated; or
- b) Receipt by the Lender of the Borrower’s executed advance requests in the forms provided by the Lender.

In the event that the Initial Advance and Draw 1 has not been fully advanced to the Borrower by the Standby Date, for any reason other than a default by the Lender, interest will commence on the Standby Date (the “**Standby Interest**”) on any unadvanced portion of Draw 1 and will become due and payable monthly at a rate equal to the applicable Interest Rate set out herein until the earlier of Draw 1 being fully advanced and the termination of this Commitment without Draw 1 having been made. Any accrued and unpaid Standby Interest shall be payable at the time that Draw 1 is fully advanced by the Lender to the Borrower and shall be deducted therefrom.

In the event that this Commitment is terminated prior to the advance of Draw 1, the amount of Standby Interest shall immediately become due and payable by the Obligors in addition to any other rights and/or remedies which the Lender may have against the Obligors hereunder, at law or otherwise. The Obligors hereby acknowledge and agree that the Standby Interest is a reasonable estimate of the fees to be incurred by the Lender, which amount is deemed not to be a penalty.

22.4. Other Terms

The definitions, terms and conditions set out in Appendices attached to this Commitment shall form a part hereof as if incorporated herein.

23. Borrower’s Right to Cancel this Agreement

The Borrower shall have the option to cancel this Commitment at any time prior to the Outside Date and complete the acquisition of the Property through their own resources. In the event of such cancellation, the Borrower shall not be required to pay the fees listed in **Article A.8** of this Commitment letter but shall be obligated to reimburse the Lender for all expenses incurred by the Lender in connection with the Loan, including but not limited to legal, administrative, and due diligence costs as outlined in **Article A. 12**.



B. TERMS AND CONDITIONS

The Loan terms and conditions shall be such terms and conditions as the Lender may from time to time require and shall include, but not be limited, to the following:

1. **Initial Funding Conditions**

The Lender shall not be required to advance any funds prior to the Borrower having fulfilled, to the Lender's satisfaction, the following conditions:

 - 1.1. **Security to Be Delivered**

All the Security, ancillary loan agreements and documents, and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required. Please refer to **Article C** herein.
 - 1.2. **Financial Performance**

The Lender, in its sole discretion, shall have satisfied itself with the financial performance and condition of each of the Obligors. The Obligors shall provide within ten (10) Business Days of the date of execution of this Commitment, at a minimum, the following deliverables:

 - a) Corporate Obligors shall provide externally accountant prepared Notice to Reader annual financial statements for its two most recently ended fiscal years.
 - b) Corporate Obligors shall provide corporate Notice of Assessments for its two most recently ended fiscal years.
 - c) Personal Obligors shall provide Notice of Assessments received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
 - d) Personal Obligors shall provide the Lender's form of Personal Net Worth Statement with supporting documentation.
 - e) All Obligors shall complete the Lender's form of Mortgage Application. To facilitate the Lender's due diligence regarding the creditworthiness of the Obligors, each of the Obligors shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each Obligor.
- 1.3. **Project Conditions**

The Borrower shall deliver the following to the Lender within ten (10) Business Days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance:

 - a) A copy of the agreement of purchase and sale (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Property, confirming a purchase price of not less than \$22,000,000.
 - b) *[Intentionally Deleted – N/A]*
 - c) *[Intentionally Deleted – N/A]*
 - d) *[Intentionally Deleted – N/A]*
 - e) *[Intentionally Deleted – N/A]*
 - f) A soils-test/geotechnical report (load bearing capacity) by a professional engineer as is acceptable to the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and



recommendations, if any, which may be contained in such soils-test/geotechnical report. If deemed necessary by the Lender in their sole discretion, this report and the Project will be reviewed by a separate engineering professional engaged by the Lender at the Borrower's expense.

Such soils-test/geotechnical report must be addressed to the Lender or be accompanied by a reliance letter from the engineer to the Lender and shall confirm that the Lender can rely upon such report for lending purposes.

- g) A satisfactory Phase I environmental site assessment report conducted and prepared by a Lender approved engineer (and any further environmental site assessment reports, environmental remediation plans, environmental risk assessments and/or Record of Site Condition, as may be required by the Lender or the approved engineer, in their respective and sole discretion). If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate environmental professional engaged by the Lender at the Borrower's expense and the Borrower will provide an appropriate emergency response plan for the Project and related activities.

Any reports, both Phase I and supplemental reports, are to be accompanied by a reliance letter from the engineer(s) permitting the Lender to rely on the reports.

- h) All architectural and engineering plans, drawings and specifications upon which construction of the Project is based, including without limitation, all structural, architectural, mechanical, electrical, landscape and interior design and specifications (collectively, the "**Project Plans**").
- i) A survey of the Project by an Ontario licensed land surveyor showing access to the Property from public thoroughfares and indicating no encroachments, easements or rights of way, except those that do not encroach or hinder the Borrower's ability to construct the Project in accordance with the proposed Project Plans. If no survey is available at the time of the Initial Advance, the Lender, in its sole discretion, may rely upon the title insurance policy to be obtained in connection with the Loan.
- j) Evidence confirming zoning approval, development permit and partial/full building permit availability to construct and develop the Project, together with evidence satisfactory to the Lender, in its sole discretion, that the full building permit will be issued by the applicable Governmental Authority in time to meet the Project Schedule.
- k) *[Intentionally Deleted – N/A]*
- l) Discharge statement from MarshallZehr Group Inc. confirming the outstanding principal balance.
- m) *[Intentionally Deleted – N/A]*
- n) *[Intentionally Deleted – N/A]*
- o) *[Intentionally Deleted – N/A]*
- p) *[Intentionally Deleted – N/A]*
- q) Proof of \$4,000,000 in invested capital in the Project and means to cover any potential closing costs, if required, satisfactory to the Lender.



- r) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 92%. For the purpose of calculating the Loan to Value ratio in the absence of current market values:
 - i. The Loan amount shall include all outstanding debt obligations including the prior ranking Permitted Encumbrances, unapproved subordinate debt, and outstanding Project accounts payable.
 - ii. The Value shall be calculated by utilizing the acquisition price of the land at the time of the Initial Advance underwriting unless otherwise agreed to by the Lender.
- s) *[Intentionally Deleted – N/A]*
- t) Evidence of the existence, details, and signing authorities related to a separate Project specific bank account, through which, all Project related transactions will flow. The Borrower shall execute the Lender's form of pre-authorized debit form, which shall authorize the Lender to automatically debit the Borrower's account with the Lender for all interest payments required in connection with the Loan.
- u) Confirmation satisfactory to the Lender that all property taxes for the Property are current and have been paid.
- v) Evidence of appropriate insurance coverage in accordance with the requirements contained in Appendix C, subject to satisfactory review by the Lender and the Lender's insurance consultant.
- w) Applicable Advance Requests in the forms provided by the Lender.
- x) MarshallZehr Group Inc., or a related party, may post two MarshallZehr Group Inc. signs on the Property (on each main street).
- y) Receipt by the Lender's solicitors of completed Agent Examination of Identification Forms for each of the Obligors and any other due diligence materials required in connection therewith to permit the Lender to comply with its obligations under the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (Canada).
- z) Receipt by the Lender's solicitors of the corporate documentation for all corporate Obligors which shall include, without limitation, an up to date organizational chart for each of the corporate Obligors together with copies of the articles of incorporation, by-laws and corporate minute book registers.
- aa) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.

1.4. Special Conditions

The Borrower shall deliver the following to the Lender within five (5) Business Days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance:

- a) All relevant information (market value, term, rights of assignment, rights of redemption, etc.) pertaining to the guaranteed investment certificate that is to be pledged as security for the Loan, satisfactory to the Lender. Such GIC(s) shall have a minimum value of \$8,000,000. The Borrower may substitute the above GIC with an alternative liquid asset worth a minimum of \$8,000,000 and subject to the Lender's approval and satisfaction.



C. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the “**Security**”) duly registered where applicable subject only to the Permitted Encumbrances, if any, and all in the form and on the terms acceptable to the Lender’s solicitor:

1. **Mortgage** A 1st mortgage registered on the The Stanley District (Acquisition) – MZGI 585 Project Property in the amount of \$24,220,000, plus any accrued contingent payments. The mortgage will be registered at the Wrap-Up rate of Interest being the Prime Rate plus 11.55% (Floor Rate: 17.50%).
2. **Collateral Mortgage** *[Intentionally Deleted – N/A]*
3. **General Security Agreement of the Borrower** A General Security Agreement of the Borrower providing a first (1st) priority security interest over all of the present and future assets and undertaking of the Borrower.
4. **General Security Agreement of the Guarantors** A General Security Agreement of the Guarantors providing a security interest over all of the present and future assets and undertaking of the Guarantors.
5. **Assignment of Insurance** An assignment of the Borrower’s insurance policies relating to the Property.
6. **Assignment of Material Contracts** An assignment of the Borrower’s construction contracts, including without limitation all the Project Documents and the Project Plans.
7. **Assignment and Pledge of Securities** An assignment and pledge of, *inter alia*, all term deposits, guaranteed investment certificates, cash collateral in respect of any Letters of Credit issued and/or the Reserve.
8. **Assignment of Leases** A general assignment of leases and rents registered on title to the Property.
9. **Assignment of Agreements of Purchase and Sale** A general assignment of all third-party purchase and sale agreements for the Units together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender, upon default of the Borrower.
10. **Assignment of Purchaser Deposits** An assignment of all Purchaser Deposits subject only to any prior security interest of the Deposit Insurer, to the extent applicable.
11. **Assignment of Cash Security** An assignment and pledge of all securities posted in relation to the Project and Property, including, but not limited to, cash security posted (i) directly with Tarion (ii) directly with a Governmental Authority, and/or (iii) with a financial institution as security for letters of credit for the Project. The Borrower covenants to deliver the Lender’s form of executed direction to the party holding the cash security accordingly (i.e. Tarion, City/Municipality, Financial Institution, etc.) directing that all releases/reductions in the cash security are delivered to the Lender.
12. **Assignment of GICs or other Liquid Asset** An assignment and pledge of the Borrower’s, or Borrower’s Affiliates’, guaranteed investment certificate(s) amounting to not less than \$8,000,000.

The Borrower may substitute the above GIC with an alternative liquid asset worth no less than \$8,000,000, subject to the Lenders approval and satisfaction. If this option is exercised, the Lender shall require an assignment and pledge of this alternative liquid asset.
13. **Letter of Credit Indemnity** An indemnification agreement from the Borrower in favour of the Lender in respect of any Letter of Credit issued, to the extent applicable;



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|------------------------------------|--|
| 14. Guarantees | An unlimited joint and several guarantees from each of the Guarantors. |
| 15. Deficiency Agreement | A joint and several cost overrun and deficiency agreement executed by the Obligors agreeing to fund costs not included or in excess of the Project Budget. This Deficiency Agreement is in addition to the Guarantee. |
| 16. Environmental | An unlimited Environmental Undertaking and Indemnity from the Obligors and Environmental Review Checklist from the Borrower. The Environmental Undertaking and Indemnity is in addition to the Guarantee. |
| 17. Security Opinion | A favourable letter of opinion from the Borrower's solicitors containing the usual corporate opinions relating to the corporate Obligors, including, without limitation as to the enforceability of the Security. |
| 18. Insurance | Proof of appropriate insurance satisfactory to the Lender's insurance consultant and in accordance with the requirements set out in Appendix C. |
| 19. Title Insurance | A policy of title insurance satisfactory to the Lender and its solicitors. |
| 20. Taxes | Evidence that the realty taxes relating to the Property have been paid to date. |
| 21. Postponement | A postponement, subrogation and assignment from each of the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender. |
| 22. Priorities Agreements | If required, a priorities agreement in connection with any Permitted Encumbrances, satisfactory to the Lender and the Lender's solicitors. |
| 23. Restriction on Register | An authorization from the Borrower to the Lender and its solicitors directing the Lender's solicitors to register a notice pursuant to Section 118 of the <i>Land Titles Act</i> (Ontario) on title to the Property restricting the Borrower from further charging the Property without the prior consent of the Lender. |
| 24. Further Security | Such further security, guarantors and ancillary documents and agreements as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security. |

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D. BORROWERS COVENANTS

The Obligors hereby covenant and agree as follows:

1. **Affirmative Covenants** So long as any amount under the Loan is outstanding or available, the Borrower covenants and agrees with the Lender that unless the Lender otherwise consents in writing:
 - 1.1. **Punctual Payment** The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon, and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
 - 1.2. **Corporate Existence and Conduct of Business** The Borrower shall, and the Borrower shall cause the corporate Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licenses and qualifications to carry on business in any jurisdiction in which it or they carry on business and the Borrowers shall, and the Borrower shall cause the corporate Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
 - 1.3. **Compliance with Legislation** The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all requirements of all Environmental Laws and to preserve and keep in full force and effect all franchises, licenses, rights, privileges and permits necessary to enable each of the Obligors to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licenses, rights, privileges and permits.
 - 1.4. **Litigation** The Borrower shall promptly give written notice to the Lender of any litigation, proceeding, or dispute affecting it or any of the other Obligors or any of their respective Affiliates and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding, or dispute.
 - 1.5. **Reporting Requirements** The Borrower shall deliver, or cause to be delivered, to the Lender all items specified in Appendix F in the form and at the time specified therein.

The Lender, acting reasonably, may request such other financial information, reporting, certificates, projections of income and cash flow, and any information affecting the financial condition of the Project, the Property and/or the Obligors' business that are not directly specified in Appendix F. This list and the reporting items stated in this Commitment are not exhaustive and the Lender, acting reasonably, may also request such other qualitative information including expected pre-sales, expected closings and associated timing, closed transactions, and editorial updates including Project status, and photos showing progress at a reporting frequency prescribed at the time of request.
 - 1.6. **Rights of Inspection** At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make copies of and abstracts from the records and its physical and computer books of account with respect to the Project and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).
 - 1.7. **Project Specific** The Borrower shall:
 - a) comply in all relevant aspects with the provisions of the Construction Act;



- b) as and when requested by the Lender, provide the Lender complete records relating to all holdbacks, including cancelled cheques, bank statements, WSIB certificates, statutory declarations, and completion certificates, as the Lender may reasonably require;
- c) provide a covenant that the Borrower will supply to the Lender a statutory declaration in conjunction with each Borrower Draw, confirming the status of the Holdbacks as at the date of the statutory declaration;
- d) substantially complete the Project in accordance with the approved Project Plans, the Project Budget and Project Schedule;
- e) pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under all contracts and agreements relating to the Project, obtain all necessary approvals for construction and use of the Project, comply with all governmental rules and regulations, permit reasonable inspections, by the Lender and its agents of the Project and all records pertaining to the Project;
- f) make and ensure that all payments due to the architect, general contractor, all contractors, sub-contractors, and all other suppliers of materials and services of any kind to the Project are made when and as they become due in compliance with the terms of their respective contracts and the provisions of the Construction Act;
- g) fund all Project Costs in excess of the Project Budget from cash resources derived from outside the Loan and the Project. In this regard, the Obligors shall be jointly and severally liable to immediately cover any such excesses as soon as same arise and/or are identified by the Lender;
- h) ensure that no liens are registered against the Property or its assets. In the event that a lien aforesaid is registered, the Borrower shall cause such lien to be vacated or discharged within ten (10) days of the earlier of the date (i) of registration (ii) that the Borrower has received written notice thereof and (iii) that the Borrower has been provided written notice thereof by the Lender, with any payment being made from financial resources derived from outside of the Loan; and
- i) grant the Lender the right to approve professional services involved in the Project. Such professional reports and services include, but are not limited to, appraisals, environmental reports, geotechnical reports, quantity surveyors, and auditors.

1.8. Insurance

The Borrower shall maintain, or shall cause to be maintained, appropriate insurance coverage as agreed with the Lender or any insurance consultant engaged by the Lender to assess the required coverage during the Project. All insurance shall be in accordance with the requirements contained within Appendix C.

1.9. Notices

The Borrower shall promptly give notice to the Lender of:

- a) Any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
- b) All claims, proceedings, suits, actions or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action, or litigation is covered by insurance);
- c) the occurrence of any Default or Event of Default; and
- d) any other matter or event that has a Material Adverse Effect.



- 1.10. Use of Advances** The Borrower shall use all Borrower Draws in accordance with the specific purposes set out herein and in the applicable Advance Request.
- 1.11. Payment of Taxes, etc.** The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
- a) Pay or cause to be paid all rents, taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
 - b) Withhold, deduct and collect all taxes required to be withheld, deducted and collected by it, and remit such taxes to the appropriate Governmental Authority at the time and in the manner required; and
 - c) Pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an encumbrance upon any of the Property, except when and so long as any such rents, taxes, rates, levies, assessments, fees, dues or obligations constitute a Permitted Encumbrance and the validity thereof is in good faith being contested by such Obligor.
- 1.12. Project Documents, Leases, and Permitted Encumbrances** The Borrower shall ensure that all Project Documents and Permitted Encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any material documents or Permitted Encumbrances. The Borrower shall not default under any Lease related to any Property and shall advise the Lender immediately following being so notified of any breach thereof.
- 1.13. New Project Documents** The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a Project Document and shall provide a copy of such agreement to the Lender.
- 1.14. Security** The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender and its solicitors, in their sole discretion.
- 1.15. Maintain Security** The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or encumbrance whatsoever other than Permitted Encumbrances and the Security, whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant's interest in the Property, if applicable).
- 1.16. Environmental Law** The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
- a) notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;
 - b) provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and
 - c) execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by



Applicable Laws of the Property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Obligors hereby irrevocably constitute and appoint the Lender the true and lawful attorney of each of them, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.

- 1.17. Operation and Repair** Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of the Property and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with the Property and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Commitment, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to the Property in order to review the state and condition the same are in.
- 1.18. Maintain and Operate** The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Project, in a proper and efficient manner so as to preserve and protect the Property.
- 1.19. Payment of Preferred Claims** The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in an encumbrance against the assets of any Obligor arising under Applicable Law.
- 1.20. HST Filings** The Borrower shall file on a monthly basis all returns and other documents necessary to obtain the refund of HST in respect of the Project and apply the amount of any such refund to payment of Project Costs.
- 1.21. Lease Attornment** Subject to the requirements, if any, within any Leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such Leases and deliver to the Lender such instruments of attornment, postponement or subordination as the tenants under such Leases are required to provide and as the Lender may reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such Leases.
- 1.22. Expropriation** Any awards or payments received by an Obligor for expropriation of any portion of the Property, which are, in respect of any single payment or award, equal to or greater than \$1,000 shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay the Loan.
- 1.23. Condominium Registration** *[Intentionally Deleted – N/A]*



2. Financial Covenants So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Obligors covenant and agree with the Lender that:

2.1. Project Net Equity The Obligors shall maintain throughout the Term a minimum combined net equity in the Project equal to \$4,000,000. For the purposes of this paragraph "**Project Net Equity**" shall be equal to:

	cost of the Property, as determined by the Lender (to a maximum value of \$22,000,000)
+	cost of the Project completed to date (exclusive of Property value) as determined by the Lender
-	project payables
-	Purchaser Deposits paid into the Project
-	Holdbacks
-	unsubordinated Project financing
-	the aggregate amount of Lender Advances to date under the Loan
-	all recaptured Project expenses, including HST, previously funded by the proceeds of the Loan herein
=	Project Net Equity

2.2. Project Loan to Value Ratio (LTV) The Borrower shall, at all times, maintain a LTV ratio of less than 92.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in **Appendix F** the LTV ratio shall be calculated in accordance with the parameters defined in **Article B. 1.3(r)**.

2.3. Maximum Borrowing The Borrower shall ensure that Advances under this Commitment do not exceed the most current calculation of the Maximum Borrowing. "**Maximum Borrowing**" shall be equal to the Loan Amount (as defined in **Article A. 6**).



- 3. Negative Covenants** So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Obligors covenant and agree with the Lender that, unless the Lender otherwise consents in writing:
- 3.1. Sale of Guarantors** The Borrower shall not, and shall cause every other Person with an ownership interest in a Guarantor (other than the Borrower) not to, sell, transfer, assign, convey or otherwise dispose of its ownership interest in any of the Guarantors (other than the Borrower) to any Person except another Affiliate of the Borrower (but only if such Guarantor remains a direct or indirect wholly-owned Subsidiary of the Borrower) or except with the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed.
- 3.2. No Merger, Amalgamation, Etc.** Except as otherwise permitted hereunder, no Obligor shall enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise).
- 3.3. No Sale, etc. of Property Interests** No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of its respective interest in the Property except pursuant to a Permitted Encumbrance.
- 3.4. No Additional Encumbrances or Financing** No additional encumbrances or financing, subject to **Article A. 22.2**, will be permitted without the prior written consent of the Lender, which consent shall be in its sole discretion. In the event that the foregoing covenant is not complied with, the entire amount of outstanding principal, interest, fees and all other amounts due under the Commitment and the Security shall become immediately due and payable by the Borrower.
- In the event that the Lender consents to any such additional subordinate financing aforesaid, such consent shall be conditional upon the subordinate lender entering into an unconditional postponement, subordination and permanent standstill agreement whereby, *inter alia*, the subordinate lender shall agree to a) issue zero dollar discharges on a per Unit basis and b) execute all postponements and consents as may be required to development the Project, in each case, within two (2) Business Days immediately following request therefor by the Borrower and/or the Lender.
- 3.5. No Dissolution** No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower upon the Lender's prior written consent, such consent not to be unreasonably withheld or delayed. The parties agree that the Lender's consent will not have been unreasonably withheld if, in the Lender's sole discretion, the Lender's credit risk or the Security will be adversely affected by the proposed transaction.
- 3.6. Non-Arm's Length Transactions** No Obligor shall enter into any contract relating in any manner to the Property with an Affiliate for the sale, purchase, lease or other dealing in any property other than at a consideration which is no more than the fair market value of such property or other than at a fair market rental as regards leased property.
- 3.7. Negative Pledge** Except for the Permitted Encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other encumbrance against the Property without the Lender's prior written consent.
- 3.8. No Changes to Project Documents** No Obligor shall amend, surrender or terminate any Project Document without the prior written consent of the Lender, which consent is not to be unreasonably withheld or delayed.
- 3.9. No Changes to Leases** No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any Lease, without the consent of the Lender which consent is not to be unreasonably withheld or delayed. For



the sake of clarification, amendments related to the term, rent or premises to be rented shall be considered material.

3.10. Dealing with Leases

Notwithstanding the immediately preceding paragraph above, no Obligor shall enter into any new Leases or amend, renew, terminate, forfeit or cancel any existing Leases, in each case, in respect of all of portion of the Property unless:

- a) such Lease and/or amendment, extension, termination, forfeiture or cancellation are made on arm's length terms and in good faith; and
- b) such Leases and/or amendment, extension, termination, forfeiture or cancellation reflects good business practice, as determined by the Lender, in its sole discretion.

3.11. Concerning Leases Generally

Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligors shall accept or require payment of rent or other moneys payable by a tenant under any Lease that would result in more than three months of such rent or other moneys being prepaid under such Lease other than:

- a) prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease;
- b) amounts representing a bona fide pre-calculation of any amount (which is required to be paid under such Lease) in addition to basic rent, including amounts payable with respect to taxes and maintenance of the applicable Property and overage and percentage rents; or
- c) Lease surrender payments made by the tenant under such Lease; and/or
- d) except for any renewals or extensions of existing Leases pursuant to the terms thereof, each of the Obligors shall not hereafter enter or purport to enter into or suffer to exist any Lease in respect of any Project except if the Security shall have priority over such Lease and such Lease shall provide that it is subordinated to the Security and contain a covenant of the tenant thereunder obligating such tenant if and whenever required by the Lender to attorn to and become the tenant of the Lender or any purchaser from the Lender, for the then unexpired residue of the term of, and upon all of the terms and conditions of such Lease.

3.12. No Waiver

Except as otherwise provided pursuant to **Article F**, no Obligor shall waive, or agree to waive, any failure of any party to any Permitted Encumbrance, Project Document or Lease to perform any material obligation thereunder or suffer or permit anything allowing any party thereto to terminate any such agreement or consent to any assignment thereof by any party thereto unless the same is in the ordinary course of business, is in accordance with good business practice and the same would not have a Material Adverse Effect.

3.13. No Name Change

No Obligor shall change its name without first giving notice to the Lender of its new name and the date when such new name is to become effective.

3.14. No Change of Chief Executive Officer

No Obligor shall change its chief executive office or the location of the offices where it keeps its records respecting receivables and rents or move any of the inventory, securities or equipment from the present locations thereof without prior written notice to the Lender.

The Obligors hereby acknowledge and agree that a breach of any of the foregoing covenants contained in this **Article D** shall constitute an Event of Default, entitling the Lender to terminate this Commitment subject to and in accordance with the provisions of **Article F** hereof.



E. TERMINATION PROVISIONS

The Lender shall have the right to terminate this Commitment and its obligation to provide the Loan to the Borrower in the event that any of the following should occur:

1. **Non-Compliance with Terms** The Obligors fail or are unable or unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this Commitment and/or the Security within the time indicated for such compliance.
2. **Non-Execution of Documents** The Obligors fail or refuse to execute any documentation requested by the Lender's solicitors or to deliver such documentation to them.
3. **Outside Date** The Initial Advance has not been fully advanced on or before **January 31, 2025** (the "**Outside Date**").
4. **Non-Acceptance of Borrower Draw** The Borrower refuses to accept either the Initial Advance or a Borrower Draw when so advanced by the Lender.
5. **Default** The Borrower and/or the Guarantors commit a Default that remains uncured in accordance with **Article F** hereof.
6. **Non-Compliance with Construction Act** The Borrower has not complied with all the provisions of the Construction Act to the satisfaction of the Lender's solicitors.
7. **Non-Satisfaction of Due Diligence** The Lender's solicitors, acting reasonably, are not satisfied with the title to the Property.

If, in accordance with the foregoing, the Lender elects to terminate this Commitment prior to the advance of the entire Loan, the amounts so advanced, if any, together with interest and fees thereon shall become immediately due and payable.

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F. DEFAULT PROVISIONS

The content of this Default Provisions section shall be subject to the restrictions of any priority agreement(s) between the Lender and any other Permitted Encumbrance holders.

- 1. Events of Default** The occurrence of any one or more of the following events shall constitute an Event of Default under this Commitment (an “**Event of Default**” or “**Default**”):
- 1.1. Payment of Principal** If the Borrower defaults in the payment of the principal of any Lender Advance made under the Loan when due and payable, without any requirement by the Lender to provide notice of the same;
- 1.2. Payment of Interest and Fees** If the Borrower defaults in the payment of:
- a) any interest (including, if applicable, default interest) due on any Advance under this Commitment;
 - b) any Fees with respect to this Commitment; or
 - c) any other amount not specifically referred to herein payable by the Borrower to the Lender hereunder when due and payable;
- and such default continues for **three (3)** Business Days after notice of such default has been given by the Lender to the Borrower;
- 1.3. Covenants or Obligations** If any Obligor neglects to observe or perform any covenant or obligation contained in any Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this **Article F. 1.**) and, such Obligor shall fail (in the case of those defaults which can be rectified by such Obligor) to remedy such default within a period of **thirty (30)** days after the giving of notice, unless the Lender (having regard to the subject matter of the default) shall have agreed to a longer period and, in such event, within the period agreed to by the Lender;
- 1.4. Cross Default** If a default or an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of any Obligor or of any Affiliate (as that term is defined in the Business Corporations Act (Ontario)) of any Obligor has occurred and is continuing; provided, however, that if such default or event of default under such indenture or instrument shall be remedied or cured by such Obligor or Affiliate of such Obligor or be waived by the holders of such indebtedness before any judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action on the part of the Lender;
- 1.5. Priority Encumbrance Cross Default** If an event of default as defined in any indenture or instrument which is a Permitted Encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
- 1.6. Bankruptcy or Insolvency Order** If a decree or order of a court of competent jurisdiction is entered adjudging any Obligor a bankrupt or insolvent, or approving as properly filed a petition seeking the winding-up of such Obligor, under the Companies’ Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against, or against any substantial part of the assets of any Obligor or material subsidiary or ordering the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of **ten (10) Business Days**;



- 1.7. Insolvency** If any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency;
- 1.8. Trustee or Receiver Appointed** If any proceedings are commenced against, or steps are taken by, any Obligor for the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of such Obligor or of all or any substantial portion of its assets, or seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights and in the case of any such proceedings commenced against such Obligor, such proceedings are not stayed or dismissed within **ten (10) days** after the commencement thereof;
- 1.9. Dissolution, Liquidation or Wind-Up Proceedings** If proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within **thirty (30) days** of the commencement thereof;
- 1.10. Material Provision or Agreement Null and Void** If any material provision of this Agreement or of any Material Document ceases to be in full force and effect (other than through the normal expiration of the stated term of such Material Document pursuant to the terms thereof) or is declared null and void or invalid or any breach or default shall occur under any Material Document that has a Material Adverse Effect and such breach or default is not remedied within **ten (10) Business Days** of such occurrence or such longer or shorter cure period as may be allowed the applicable Obligor pursuant to the terms of such Material Document;
- 1.11. Judgements** If a judgment or decree for payment of money due in an amount of \$5,000 or more (in any single instance or in the aggregate for all such judgments and decrees against each of the Obligors) shall have been obtained or entered against any Obligor (except in the case of any such judgment or decree in respect of which recourse is limited to property which is not subject to the Security hereunder) and such judgment or decree shall not have been, and remain, vacated, discharged or stayed pending appeal within the applicable appeal period;
- 1.12. Incorrect Representation or Warranty** If any representation or warranty made or deemed to be made by any Obligor in any Document or in any certificate or other document at any time delivered in connection with this Commitment to the Lender shall prove to have been incorrect or misleading in any material respect on and as of the date thereof and with respect to any such incorrect or misleading representation or warranty that is capable of being cured, such incorrectness or misleading aspect continues for a period of **ten (10) Business Days** or more;
- 1.13. Invalid Security** If any of the Security shall cease to be a valid and perfected first priority security interest as against third parties subject only to Permitted Encumbrances and such state continues for more than **two (2) Business Days**;
- 1.14. Material Adverse Effect** If the Lender determines, in their sole discretion acting reasonably, that there has been a material change in the business, assets, properties, liabilities, operations, condition (financial or otherwise) of the Obligors, individually, or its subsidiaries taken as a whole or the ability to perform its obligations under the Commitment (a "**Material Adverse Effect**");
- 1.15. Creditor Seized Property** If the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied



- or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of **thirty (30) days** or such shorter period as would permit any property or any part thereof to be sold thereunder;
- 1.16. Assignment, Disposition or Conveyance** If any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;
- 1.17. Default Under Permitted Encumbrance or Material Document** If there is a default by any Obligor under any Permitted Encumbrance, or Material Document in respect of the Project and such default has a Material Adverse Effect and is not rectified within **five (5) Business Days**; or
- 1.18. Financial Covenant Default** If there is a default by the Borrower of any of the Financial Covenants outlined in **Article D. 2.**;
- 1.19. Merger or Amalgamation** If any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor's undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or
- 1.20. Environmental** If any Obligor violates or breaches any requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of **thirty (30) days** or **ten (10) Business Days** less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited.

For greater certainty, none of the foregoing events shall constitute an Event of Default hereunder if the default is cured or remedied within the time limited therefor pursuant to the applicable provision of this **Article F. 1.**

- 2. Acceleration and Demand** Upon the occurrence of any Event of Default that has not been cured within the timelines set out herein, the Lender by written notice to the Borrower (an "**Acceleration Notice**") shall be entitled to:
- a) declare the Loan and the right of the Borrower to apply for further Lender Advances and Borrower Draws to be terminated;
 - b) declare all Obligations (whether matured or unmatured, drawn or undrawn) of the Borrower to the Lender (including, without limitation, all unpaid fees whether or not deemed earned) to be immediately due and payable (or to be due and payable at such later time as may be stated in such notice) without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by Borrower;

Upon the occurrence of an Event of Default specified in **Article F. 1.1**, the Loan shall automatically terminate and all Obligations specified in **Article A** shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower;

Immediately upon the occurrence of an Event of Default specified in **Article F. 1.** or at the time stated in an Acceleration Notice, the Borrower shall pay to the Lender all amounts owing or payable in respect of all Obligations of such Borrower specified in **Article A**, failing which all rights and remedies of the Lender under the Documents, at law, in equity or otherwise shall thereupon become enforceable and shall be enforced by the Lender.



3. Appointment of Receiver

Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the Security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their instead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the Security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.

In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:

- a) as a whole or in various units;
- b) by a public sale or call for tenders by advertising such sale; and
- c) by private sale.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.

4. Application of Payments Following Demand and Acceleration

Except as otherwise agreed to by the Lender in its' sole discretion, any sum received by the Lender at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in **Article F. 1.**, which the Lender is obliged to apply in or towards the satisfaction of sums due from the Borrower under any Document shall be applied by the Lender in accordance with amounts owed to the Lender by the Borrower in respect of each category of amounts set forth below, each such application to be made in the following order with the balance remaining after application in respect of each category to be applied to the next succeeding category:

- a) in or towards payment of any expenses and fees then due and payable to the Lender hereunder and owing by the Borrower (including, without limitation, in the case of the Borrower, any such fees and expenses owing whether or not deferred or contingent);
- b) in respect of amounts due and payable by such Borrower to the Lender by way of interest and fees (including, without limitation, in the case of the Borrower, any such interest and fees owing whether or not deferred or contingent);



- c) in respect of any other amount (other than Loan) not hereinbefore referred to in this **Article F. 4** which are then due and payable by the Borrower hereunder such Borrower under any Document (including, without limitation, in the case of the Borrower, any such other amounts owing whether deferred or contingent);
- d) in or towards repayment to the Lender of the principal advanced to such Borrower then outstanding hereunder; and
- e) any remaining amounts to be released to the Borrower or as required by the loan.

For certainty, unless otherwise agreed by the Lender, all amounts owing by the Borrower in each of the above-noted categories (whether directly or indirectly by virtue of Guarantees) shall, within each category, rank *pari passu* and be applied *pro rata* to the Obligations owing by the Borrower within such category based on the respective outstanding amounts.

5. Remedies Cumulative

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Lender under the Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement therein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for the same default or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement therein contained, and any indulgence granted thereby, shall be deemed not to be a waiver of any subsequent default. The Lender may, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise for any available relief or purpose including but not limited to:

- a) the specific performance of any covenant or agreement contained in the Documents;
- b) enjoining a violation of any of the terms of the Documents;
- c) aiding in the exercise of any power granted by the Documents or by law; or
- d) obtaining and recovering judgment for any and all amounts due in respect of the Advances or amounts otherwise due hereunder or under the Documents.

To the extent permitted by Applicable Law, Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of the Lender's rights or remedies under the Documents.

6. Set-Off

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Lender is authorized at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in **Article F. 1.** which has not theretofore been waived or rescinded by the Lender and from time to time thereafter without notice to Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing to the Lender for the account of the Borrower against and on account of the obligations and liabilities of the such Borrower to the Lender or such Lender under this Commitment, including, without limitation, contingent or deferred obligations of the Lender.

7. Cash Collateral Accounts

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in **Article F. 1.** and in addition to any other rights or remedies of the Lender hereunder, the Lender shall thereafter be entitled to deposit and retain in an account to be maintained by the Lender, and which for the purposes hereof shall be considered to be the Lender's account and not the Borrower's account



bearing interest for the Borrower at the rates of interest of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms, amounts which are received by the Lender from the Borrower to the extent that and for so long as such amounts either may be required to satisfy any Obligations of such Borrower or are actually used to satisfy any such Obligations; provided that if such amounts are no longer required or not so used, the Lender shall forthwith return the same together with interest accrued thereon to the Borrower.

8. Lender May Perform Covenants

If the Borrower shall fail to perform any covenant on its part herein contained, the Lender may, upon prior notice to the Borrower, perform any of the said covenants capable of being performed by the Lender and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds and shall be entitled to reimbursement of any such expenditure. All amounts so paid by the Lender hereunder shall be repaid by the Borrower on demand and therefore, shall bear interest at the rate set forth in **Article A. 7** from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.

9. Administration Fee Payable in Default

In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000 for each month or part thereof that the Borrower and/or any Guarantor is in default of its obligations under the Commitment, Loan or Security. The said sum or sums are agreed to be liquidated damages to cover the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be a charge upon the Project and its assets and interest shall accrue thereon as if they were Loan principal.

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G. GENERAL PROVISIONS

1. The Lender shall have no obligation to advance funds unless and until all of the above terms and conditions have been deemed by the Lender to be complete, true and otherwise in all respects satisfactory, in the Lender's sole discretion.
2. No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantors.
3. The Lender's solicitors shall be:
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario
Attention: Robert Miller
4. The Borrower's solicitors shall be:
DLA Piper
333 Bay Street
Toronto, Ontario
Attention: Daniel Shapira
5. The Borrower shall bear any and all reasonable legal costs of the Lender.
6. Time is of the essence in this Commitment.
7. This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
8. The Obligors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
9. The waiver by the Lender of any breach or Default by the Obligors of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or Default by them. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
10. Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment, the Lender, in its sole discretion may determine which shall take precedence and govern.
11. This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.
12. From time to time, the Lender publishes advertisements or announcements of completed transactions. The advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones, social media, investor brochures or information displayed on the internet and/or the Lender's intranet. The Obligors consent to the publication of an advertisement or announcement of the transaction contemplated by this Commitment. The Obligors covenant and agree to permit the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished Projects) of the Property for the possible use in internal or external marketing programs.



13. Any word importing the singular or plural shall include the plural and singular, respectively. If any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Any word incorporating persons of either gender, or firms, or corporations shall include persons of other gender, and firms, and corporations were the context so requires.
14. The headings and section numbering appearing in this Commitment are included only for convenience of reference and in no way define, limit, construe, or describe the scope or intent of any provision of this Commitment.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied at the sole discretion of the Lender and its solicitors.

By signing this Commitment, pertaining to **The Stanley District (Acquisition) – MZGI 585**, the Borrower and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower and the Guarantors, including reports from other credit grantors, consumer reporting agencies, and credit bureau.

Unless this Commitment is accepted by the Borrower and all required Guarantors within **five (5) Business Days** of the date hereof by delivery of a fully executed copy to the Lender, then, at the Lender's sole option, the Commitment shall be terminated.

This Commitment is not binding until it has been approved and signed back by an officer of the Lender, MarshallZehr Group Inc.

Yours truly,

MARSHALLZEHR GROUP INC.

Per: 
 BOX SIGN 4YWYXRQL-18KXJVKJ

Name: Cecil Hayes
 Title: President

I have the authority to bind the Corporation



Acknowledged and agreed at Vaughan this 2nd day of December, 2024.

Borrower:

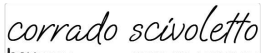
1000835091 Ontario Inc.



Per: boxSIGN 1VW9WXLZ-18KXJVKJ

Name: Anthon De Francesco

Title: President



Per: boxSIGN 4693L72P-18KXJVKJ

Name: corrado scivoletto

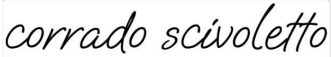
Title: director

I/we have authority to bind the Corporation

The following parties execute this Commitment in their capacities as guarantors only.

Guarantors:

Aura Developments Inc.



Per: boxSIGN 4693L72P-18KXJVKJ

Name: corrado scivoletto

Title: director

Per: _____

Name:

Title:

I/we have authority to bind the Corporation



boxSIGN 1VW9WXLZ-18KXJVKJ I/S

Anthony De Francesco

Lana simard

Witness:



APPENDIX "A"
PROPERTY AND PERMITTED ENCUMBRANCES

- 1. Project Property**
- a) 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 R0718049), 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 R0441658 AS IN SN754703 CITY OF NIAGARA FALLS
- PIN 64349-0258 (LT)
- 2. Permitted Encumbrances**
- [Intentionally Deleted – N/A]*

[End of Appendix A]

**APPENDIX "B"
DEFINITIONS**

1. **"Advances"** means collectively, the Initial Advance, a Lender Advance and a Borrower Draw and **"Advance"** means any one (1) of them as the context so requires.
2. **"Affiliate"** means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate and **"Affiliates"** means more than one (1) of them. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
3. **"Applicable Laws"** means all statutes, laws, by laws, regulations, ordinances, orders, codes, rules and requirements of governmental or other public authorities having jurisdiction in force from time to time and includes all Environmental Law.
4. **"Business Day"** means any day which is not a Saturday, Sunday, or day observed as a holiday under the Applicable Laws in the province in which the Project is located.
5. **"Condominium Act"** means the *Condominium Act, 1998* (Ontario).
6. **"Construction Act"** means the *Construction Act* (Ontario).
7. **"Deposit Insurer"** means a deposit bonding and deposit insurance company acceptable to the Lender as the surety for bonds and/or excess deposit insurance issued to Tarion and/or purchasers of Units pursuant to the terms of the agreements of purchase and sale made between the Borrower and such purchasers thereunder.
8. **"Environmental Law"** means the statutes, regulations, policies, directives, orders, approvals, and other legal requirements of any Governmental Authority or the common law which affect the Project, the Property, the Borrower's and/or Guarantors' respective business, and which impose any obligations relating to protection, conservation, or restoration of the environment.
9. **"Fiscal Quarter"** means the four (4), three (3) month financial accounting periods for the Borrower, commencing on the first day immediately following the Borrower's year end, in each year.
10. **"Governmental Authority"** means any government, parliament, legislature, municipal council, or other regulatory or legislative authority, agency, commission, department or board of any government, parliament, legislature, municipal council or any political subdivision thereof, or any court or any other law, by-law, regulation or rule-making entity (including self-regulating and industry boards, associations and entities of all kinds empowered by legislation, by-law, proclamation, order, the exercise of prerogative power or regulation charged with the administration, regulation or enforcement of Applicable Laws or such board's, association's or entity's own codes, ordinances, orders, decrees, edicts, rules, by-laws, regulations policies, voluntary restraints, practices or guidelines), having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing (including any arbitrator with the authority to bind the parties at law) or any other authority, agency, commission, department, association or board charged with the administration, regulation or enforcement of Applicable Laws.
11. **"Hard Costs"** means the amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with the construction of the Project, all as more particularly set out in the Project Budget.



12. **"Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to any Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.
13. **"HCRA"** means the Home Construction Regulatory Authority and/or its successors and assigns.
14. **"Holdbacks"** means any amounts required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the Construction Act.
15. **"HST"** means any goods and services tax, harmonized sales tax or similar value added tax exigible or applicable in the Province of Ontario pursuant to the *Excise Tax Act* (Canada) as amended from time to time and/or any successor legislation.
16. **"Interest Adjustment Date" or "IAD"** means the date that is the first (1st) of the month following the date of the Initial Advance.
17. **"Lease"** means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Property.
18. **"Letter of Credit"** means a standby letter of credit, commercial or letter of guarantee, as applicable, issued by an Affiliate of the Lender, to the extent applicable.
19. **"Person"** means any individual, partnership, corporation, trust, trustee or other entity or any combination of them.
20. **"Project Budget"** means the budget of all Project Costs, which has specified on a line-by-line basis, all Project Costs, as prepared by the Borrower, and approved by the Lender, and as may be amended from time to time with the consent of the Lender, which consent shall be in the Lender's sole discretion.
21. **"Project Costs"** means the aggregate of all Hard Costs and all Soft Costs expended or to be expended to construct the Project in accordance with the Project Documents and Project Schedule.
22. **"Project Documents"** Means the plans and specifications (including all structural, architectural, mechanical, electrical, landscape and interior design and specifications) pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender, as amended from time to time with the consent of the Lender, in its sole discretion.
23. **"Project Schedule"** means the schedule Project activities provided to and approved by the Lender and the, as same may be amended from time to time with the consent of the Lender, in its sole discretion.
24. **"Purchaser Deposits"** means the deposits paid by purchasers of Units under the agreements of purchase and sale.
25. **"Requirements of Environmental Law"** means all requirements of Applicable Laws and of any Governmental Authority relating to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Substance) and the assets and undertaking of such Person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation;



(c) consumer, occupational or public safety and health (as they relate to exposure to a Hazardous Substance); and (d) Hazardous Substance or conditions.

- 26. "Soft Costs"** means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, insurance, bonding costs, legal fees, promotions of the Project, financing, leasing, pre-operating costs and all other costs related to the Project, except Hard Costs and the cost of acquiring the Property.
- 27. "Tarion"** means Tarion Warranty Corporation and/or its successors and assigns.
- 28. "Unit"** means a "unit" (as defined in the Condominium Act) comprising part of the Project for use as a residence and/or ancillary uses together with the common elements and exclusive use interests appurtenant thereto, to the extent applicable.

[End of Appendix B]

**APPENDIX "C"
INSURANCE REQUIREMENTS**

1. General

The following shall be provided with respect to insurance on the Project:

- a) Proof of appropriate Commercial Liability insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured and loss payee, and coverage of not less than the amount deemed adequate by the Lender's insurance consultant.
- b) Proof of Builders' All Risks property insurance in connection with the Project, including rental loss insurance, if applicable, with responsible and reputable insurance companies in such amounts equal to 100% of projected Hard Costs and not less than 25% of all Soft Costs, plus 100% of finance charges.
- c) If applicable, Boiler and Pressure Vessel insurance including rental loss, for such amount as may be acceptable to the Lender, all with such deductibles as are customary in the case of businesses of established reputation engaged in the same or similar businesses and, in an event, as are acceptable to the Lender. The Lender shall be added as an additional insured to the liability policies.
- d) Other insurance including, but not limited to, Environmental Insurance, Pollution Insurance, and Key Persons Insurance, as the Lender's insurance consultant may deem necessary given the nature of the Project. The amount of coverage required shall be reasonably determined by the Lender's insurance consultant.

2. Insurance Policies

All such insurance policies shall:

- a) Name the Lender as mortgagee thereunder as its interest may appear;
- b) Name the Lender as additional insured and loss payee;
- c) Have attached the Insurance Bureau of Canada standard mortgage clause;
- d) Provide that no cancellation, termination, or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
- e) Provide that proceeds of all insurance for physical damage and rental losses shall be payable to the Lender or as it may direct; and
- f) Otherwise be in such form as the Lender and/or the Lender's insurance consultant shall reasonably require.

3. Application of Proceeds

So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be, with the approval of the Lender:

- a) Applied in reduction of amounts outstanding hereunder; or
- b) Released to the Borrower subject to compliance with such conditions as the Lender may require.



4. Other Conditions

- a) If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction in the Loan Amount outstanding hereunder.
- b) The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder.
- c) In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the Property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to the Loan Amount owing by the Borrower hereunder, each of the Borrower (on its own behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.
- d) The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of the insurance coverage required hereunder, including certificates of renewal as soon as they are available.

5. Insurance Consultant

The Borrower acknowledges that all policies of insurance shall be subject to review and approval by an insurance consultant acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the Security and for each insurance renewal throughout the Term.



6. Broker Contact Information and Release

Please provide the following information for our records:

Insurance Broker	
Brokerage Name:	
Contact Name:	
Address:	
City:	
Phone #:	
Email Address:	

The Borrower and persons otherwise connected with this Commitment, hereby authorize the above noted insurance broker to release insurance information required by the Lender and their insurance consultant for this transaction.

The Borrower and persons otherwise connected with this Commitment, hereby authorize the Lender to release information necessary to determine insurance requirements, as needed, to the Lender's insurance consultant for the purposes of conducting an insurance review.

Borrower:

1000835091 Ontario Inc.

Per: _____

Name:

Title:

I/we have authority to bind the Corporation

[End of Appendix C]



**APPENDIX "D"
PROJECT PRO FORMA**

[Intentionally Deleted – N/A]

[End of Appendix D]



**APPENDIX "E"
MINIMUM SELLING PRICES**

[Intentionally Deleted – N/A]

[End of Appendix E]



APPENDIX "F"
REPORTING REQUIREMENTS

Annual	
1. Annual Financial Statements of the Corporate Obligor(s)	<p>As soon as available and, in any event, within ninety (90) days after the end of each of the Corporate Obligors' fiscal years, copies of such Obligors' annual Notice to Reader financial statements prepared by an external professional accountant shall be provided to the Lender.</p> <p>Statements shall be prepared on a consolidated basis and, in each case, consisting of a balance sheet, statement of profit and loss, and statement of changes in financial position for each such year, together with the notes thereto, all prepared in accordance with generally accepted accounting principles consistently applied.</p>
2. Annual Corporate Notice of Assessment	<p>As soon as available and, in any event, within sixty (60) days after each of the Corporate Obligors' corporate tax deadline, copies of such Obligors' Notice of Assessment shall be provided to the Lender.</p> <p>If such Notice(s) of Assessment show a balance owing, such Obligor(s) shall provide proof of payment for the balance.</p>
3. Annual Personal Notice of Assessment	<p>As soon as available and, in any event, within sixty (60) days after each of the Personal Obligors' corporate tax deadline, copies of such Obligors' Notice of Assessment shall be provided to the Lender.</p> <p>If such Notice(s) of Assessment show a balance owing, such Obligor(s) shall provide proof of payment for the balance.</p>
4. Annual Personal Net Worth Statement(s)	<p>As soon as available and, in any event, by the anniversary of the previously received personal net worth statement, an updated personal net worth statement with supporting documentation for each of the Personal Obligors shall be provided to the Lender.</p>
Quarterly	
1. Quarterly Compliance Certificates	<p>As soon as available and, in any event, within thirty (30) days after the end of each of the Borrower's Fiscal Quarters, a loan compliance certificate, in a form and substance satisfactory to the Lender, shall be provided to the Lender.</p>
Other	
1. Property Tax Information	<p>As soon as available, the Borrower shall provide a copy of the property tax bill(s) for the Project to the Lender. On each tax instalment date, as specified on the property tax bill(s), the Borrower shall provide proof of property tax payment to the Lender.</p>
2. Insurance	<p>As soon as available and, in any event, no later than thirty (30) days prior to the insurance expiry date(s), the Borrower will provide a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender, as specified in Appendix C, is adequate and still in effect.</p>

[End of Appendix F]



**APPENDIX "G"
FEE DETAILS**

The Obligors hereby acknowledge (i) having received and had explained to each of them all of the possible fees and charges set forth in this Commitment, including, without limitation, the Fees in this Appendix G, which would be in addition to the principal and interest due hereunder and (ii) that all such fees and charges are reasonable and reflect a reasonable pre-estimate of Lender's actual costs with respect to same.

- 1. Lender Fee** The Lender Fee shall be earned by the Lender execution of this Commitment. The Lender Fee shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Obligors. The Obligors hereby acknowledge and agree that the Lender Fee is a reasonable estimate of the fees to be incurred by Lender in connection with the due diligence and underwriting required hereunder, which amount is deemed not to be a penalty.
- 2. Administration Fee** The Administration Fee shall be earned by the Lender upon execution of this Commitment as compensation for the setup of administration files and completion of all regulatory documentation. The Administration Fee shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Borrower.
- 3. Final Discharge Fee** The Final Discharge Fee shall be paid to the Lender upon final discharge of the Security from the Project as compensation for administering the final discharge.
- 4. Pre-Payment Fee** The Pre-Payment Fee shall be paid to the Lender upon each and every pre-payment request.
- 5. Due Diligence Expenses and Fees** The Borrower shall be responsible for the Lender's legal and other, professional fees and out of pocket expenses in connection with the Loan.
- 6. Accrued Interest** The Obligors hereby acknowledge and agree that interest shall accrue as of the date that the Initial Advance and/or a Lender Advance is deposited into the Lender's trust account. In the event that this Commitment is terminated following the date of such deposit aforesaid, the Obligors hereby acknowledge and agree that such interest up to the date of termination shall immediately become due and payable hereunder, notwithstanding no Advance having been made to the Borrower.

[End of Appendix G]

**APPENDIX "H"
OTHER TERMS**

- 1. Maximum Rate of Return**

The parties agree that notwithstanding any agreement to the contrary, no interest on the credit advanced will be payable in excess of Applicable Laws. If the effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles would exceed sixty (60%) percent (or such other rate as the Parliament of Canada may deem from time to time as The Criminal Rate) on the credit advance, then (1) the amount of any fees, bonus, commissions or like charges payable in connection therewith will be reduced to the extent necessary to eliminate such excess; (2) any remaining excess that has been paid will be credited toward prepayment of the credit advanced; and (3) any overpayment that may remain after such crediting will be returned forthwith upon demand. In this paragraph the terms "interest", "Criminal Rate" and "credit advanced" have the meaning ascribed to them in Section 347 of The Criminal Code; and "credit advanced" has the same meaning as "Loan" referred to elsewhere in this Commitment.

- 2. Right of First Opportunity**

The Borrower shall grant to the Lender a right of first opportunity (the "**Right of First Opportunity**") with respect to providing any further financing required for the Project, including, without limitation, arranging replacement or additional financing for the Project as contemplated herein, and financing for any further development of the Project or of any improvements thereon (the "**Further Financing**"). Prior to consulting with any other lender with respect to any Further Financing, the Borrower shall provide to the Lender in writing a request for such Further Financing with all information necessary for the Lender to process the request and the Lender shall have a period of **sixty (60) days** after receipt of same (the "**Opportunity Period**") to provide to the Borrower a mortgage commitment letter to provide the Further Financing. The Borrower hereby undertakes not to communicate with any other lender with respect to provision of the Further Financing during the Opportunity Period, and to fully cooperate with the Lender in good faith during the Opportunity Period to provide such further information as the Lender may require in pursuit of its Right of First Opportunity.

- 3. Right of First Refusal**

The Borrower shall grant to the Lender a right of first refusal (the "**Right of First Refusal**") with respect to providing any Further Financing required for the Project. Upon receipt by the Borrower of any written offer of financing received from any other party, including but not limited to term sheets, mortgage commitments, and funding agreements (the "**Third-Party Funding Offer**"), the terms of which the Borrower is prepared to accept, the Borrower shall provide to the Lender a copy of the Third-Party Funding Offer and all information relevant to it. Upon receipt of same, the Lender shall have a period of **fourteen (14) days** (the "**Matching Period**") to provide a mortgage commitment letter to the Borrower containing financing terms that are substantially the same or better as the Third-Party Funding Offer (the "**Matching Offer**"). The Borrower hereby undertakes, in the event that the Lender submits to the Borrower a Matching Offer within the Matching Period, to accept the Matching Offer and forthwith provide to the Lender such information and execute such documentation as is reasonably required by it in connection with that acceptance. In the event that the Lender fails to deliver to the Borrower a Matching Offer within the Matching Period, the Borrower shall be at liberty to accept the Third-Party Funding Offer. The Borrower hereby undertakes to fully cooperate with the Lender in good faith during the Matching Period to provide such information as the Lender may require in pursuit of its Right of First Refusal.



- 4. Time and Place of Payments** Payments due by the Borrower under the Commitment are to be made to the Lender by way of:
- a) pre-authorized debit payment;
 - b) wire payment;
 - c) electronic fund transfer (EFT);
 - d) bank draft; and/or
 - e) certified cheque.
- Payments shall be made no later than 1:00 P.M. (Eastern Daylight Time) on the date scheduled for payment. Payments made after such time shall be treated as having been received on the next Business Day. Whenever any payment is due on a day that is not a Business Day, then such payment will be due on the next Business Day, and interest will accrue to such Business Day. Any payments returned NSF will incur a fee of \$500, per occurrence.
- Payments made in person shall be made at the Lender's offices at 100-412 Albert Street, Waterloo, Ontario.
- 5. Principal Payments** There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable at the Maturity Date.
- 6. Beneficial Owner** In the event that the Borrower holds title to the Property as nominee and bare trustee for the sole use, benefit and advantage of another Person (the "**Beneficial Owner**"), the Borrower and Beneficial Owner shall grant to the Lender a trustee and beneficial owner agreement (in form and content satisfactory to the Lender and its solicitors, in their sole discretion) prior to the Initial Advance, and all the covenants, agreements, rights, obligations, representations, warranties and other provisions set out in this Commitment relating to the Borrower shall apply, *mutatis mutandis*, to the Beneficial Owner.
- 7. Assignment by the Lender** The Obligors acknowledge and agree that the Lender may transfer and assign, without their consent and without prior notice to them, the Lender's rights and obligations under this Commitment and the Security to any other Person.

[End of Appendix H]

MARSHALLZEHR GROUP INC.
Applicant

and

LA PUE INTERNATIONAL INC.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at TORONTO

**AFFIDAVIT OF JACK SCIVOLETTO
SWORN FEBRUARY 20, 2025**

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Lawyers for the Purchaser

RCP-F 4C (September 1, 2020)

MARSHALLEZEHR GROUP INC.
Applicant

and

LA PUE INTERNATIONAL INC.
Respondent

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

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

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

Proceeding Commenced at TORONTO

**RESPONDING MOTION RECORD OF 1000835091 ONTARIO INC., THE
PROPOSED PURCHASER**

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