



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

April 2, 2024

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERANTIONAL INC.

RESPONDENT

SECOND REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER

APRIL 2, 2024

## 1.0 Introduction

1. This report (“Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as receiver (the “Receiver”) of the assets, undertakings, and properties of La Pue International Inc. (the “Company”) acquired for, or used in relation to a business carried on by the Company.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on October 19, 2023, KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix “A”.

### 1.1 Purposes of this Report

1. The purposes of this Report are to provide evidence to the Court in support of the Receiver’s requests for an order:
  - i. directing Mr. Fugiel to comply with his obligations under the Receivership Order, including to, among other things, immediately provide to the Receiver all copies of pre-sale purchase agreements entered into between the Company and homebuyers (the “Pre-Sale Agreements”); and
  - ii. increasing the Borrowing Limit (as defined below) to \$500,000.

### 1.2 Currency

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

### **1.3 Restrictions**

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

## **2.0 Background**

1. The Company is a single purpose entity that owns the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “Real Property”).
2. Mr. Fugiel is the sole officer and director of the Company.
3. The Company planned to develop and construct on the Real Property three mid-rise buildings consisting of one mixed-use, one hotel and one residential building (the “Project”). Prior to the receivership proceedings, the Company completed significant shoring and excavation work on the Project although no other phases of construction have commenced.
4. On December 20, 2023, the Court granted an order (the “Sale Process Order”) authorizing the Receiver to retain Colliers Macaulay Nicolls Inc. to act as listing agent and approving the process for the sale of the Real Property (the “Sale Process”). The Sale Process is currently underway in accordance with the Court prescribed timelines.

### **2.1 Attempts to Obtain the Pre-Filing Agreements**

1. Over the course of the Sale Process, interested parties have requested as part of their diligence, copies of the Pre-Filing Agreements. As set out in the Receiver’s First Report to Court dated December 13, 2023 (the “First Report”), the Receiver has on several occasions requested information from Mr. Fugiel that have gone unanswered. A copy of the First Report is attached as Appendix “B” (without appendices).
2. On December 13, 2023, the Receiver emailed Mr. Pugiel to request copies of the Pre-Filing Agreements. Mr. Pugiel advised “With this very short notice, we need a time to arrange preparation for few hundreds APS hardcopies. I don’t have a copies in my possession.”. The Receiver has not received any of the Pre-Filing Agreements, despite multiple follow-up requests.

3. On March 28, 2024, the Receiver's counsel, Chaitons LLP ("Chaitons"), emailed Mr. Fugiel's counsel requesting copies of the Pre-Filing Agreements and advising that if the Receiver is not provided with the Pre-Filing Agreements "[the Receiver] will be in Court on April 11 asking for them to be produced and for costs against Pawel personally". A copy of this email chain is attached as Appendix "C". Despite requesting these agreements for months, as of the date of this Report, the Receiver has not been provided with copies of the Pre-Filing Agreements. The failure by Mr. Fugiel to provide the Pre-Filing Agreements is significantly impeding the Sale Process.
4. The Receiver and its counsel have made requests and demands for the Pre-Filing Agreements since being appointed, each in accordance with the Receiver's powers and entitlements under the Receivership Order. As outlined above, these requests and demands have had very little effect and have largely been ignored by Mr. Fugiel. This has left the Receiver with no choice but to bring the within motion, incur the costs of preparing this Report and attend at Court.

### **3.0 Borrowing Limit**

1. Pursuant to the Receivership Order, the Receiver is empowered to borrow from MZ, such monies from time to time as it may consider necessary or desirable, provided that the outstanding amount does not exceed \$100,000 (the "Borrowing Limit"), for the purpose of funding the exercise of its powers and duties. The Receivership Order provides that the Property shall be charged by way of a fixed and specific charge as security for the payment of such borrowed monies, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any person but subordinate in priority to the Receiver's Charge (as such term is defined in the Receivership Order) and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*.
2. Since the commencement of these proceedings, the Receiver has borrowed \$100,000 to fund the exercise of its powers and duties. The majority of the funds have been used to fund the winterization of the Project and to prevent any erosion to the shoring of the Project.
3. The Receiver is continuing to receive estimates from various engineers and consultants for additional work to maintain the shoring that if not completed immediately could pose safety issues and/or negatively affect the value of the Project. Based on estimates received to date, the Receiver is of the view that it will require an additional \$150,000 of availability beyond the Borrowing Limit to complete these activities. The Receiver is also requesting a buffer of \$250,000 for other unforeseen costs and to avoid having to attend Court again to increase the Borrowing Limit.

4. Given the foregoing, the Receiver requests that the Borrowing Limit be increased to \$500,000. If the Receiver is not able to borrow the additional funds, it will not be able to commission the additional work, which may result in safety issues and in the material deterioration in the value of the Project to the detriment of its stakeholders. The Receiver understands that MZ has consented to the increase in the Borrowing Limit and has agreed to make these funds available to the Receiver.

#### 4.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## **Appendix “A”**

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

THE HONOURABLE MR. ) THURSDAY, THE 19<sup>TH</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF OCTOBER, 2023  
 )

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

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

**ORDER  
(Appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of La Pue International Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto.



**ON READING** the affidavit of Cecil Hayes sworn June 7, 2023 and the Exhibits thereto, the affidavit of Cecil Hayes sworn on October 16, 2023 and the affidavits of Pawel Fugiel sworn on July 5, July 17, August 9, 2023 and October 18, 2023, and on hearing the submissions of counsel for the Applicant and for the Respondent, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

### **APPOINTMENT**

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

### **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking

of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

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

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

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

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

6. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon

application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

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

**RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this



Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

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

### **PIPEDA**

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

identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

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

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

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

### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider

necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### **RETENTION OF COUNSEL**

24. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

### **SERVICE AND NOTICE**

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

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal

delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

#### **GENERAL**

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

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

30. **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.

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

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

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

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

 Digitally signed by  
Mr. Justice  
Cavanagh

---

## SCHEDULE "A"

**Municipal Address:** 5528 Ferry Street, Niagara Falls, Ontario

**PIN:** 64349-0285 (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"

### RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of La Pue International Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 15<sup>th</sup> day of June, 2023 (the "**Order**") made in an application having Court file number CV-●, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**KSV RESTRUCTURING INC.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

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

Name:

Title:

MARSHALLZEHR GROUP INC.  
Applicant

-and-

LA PUE INTERNATIONAL INC.  
Respondent

Court File No. CV-23-00695238-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Appointing Receiver)**

**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Maya Poliak** (LSO #54100H)  
Tel: (416) 218-1161  
E-mail: maya@chaitons.com

**Laura Culleton** (LSO #82428R)  
Tel: (416) 218-1128  
E-mail: laurac@chaitons.com

**Lawyers for the Applicant**

## **Appendix “B”**



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

**December 13, 2023**

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERANTIONAL INC.

RESPONDENT

FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER

DECEMBER 13, 2023

## 1.0 Introduction

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

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide an update on the receivership proceeding;
  - b) advise the Court of the status of purchase agreements that were entered into between homebuyers (the “Homebuyers”) and the Company prior to these receivership proceedings;

- c) provide the Court with information in support of the Receiver's request for an order, among other things, approving a process pursuant to which the Real Property is to be marketed for sale by the Receiver (the "Sale Process"), including the retention of Colliers Macaulay Nicolls Inc. ("Colliers") to act as listing agent pursuant to the terms of a listing agreement attached as Appendix "A" (the "Listing Agreement").

## **1.2 Currency**

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

## **1.3 Restrictions**

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

## **2.0 Background**

1. The Company is a single purpose entity that owns the Real Property. Pawel Fugiel is the sole officer and director of the Company ("Fugiel").
2. The Company planned to develop and construct on the Real Property three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Property (the "Project").
3. Following its appointment, on October 23, 2023, the Receiver wrote to Fugiel to request information regarding, among other things, the Company's creditors. In November 2023, the Receiver also requested during telephone conversations with Fugiel that he provide, among other things, the Company's books and records. Despite numerous follow up attempts via email and telephone calls, the information requested by the Receiver has not been provided.

## **2.1 Homebuyers**

1. Prior to the receivership proceedings, the Receiver understands the Company pre-sold over 350 condominium units (the "Pre-Sale Units") and collected approximately \$42.7 million in deposits.
2. The Receiver has confirmed that the deposits are being held in trust with an escrow agent, Sullivan Mahoney LLP (the "Escrow Agent"), in accordance with the terms of a Deposit Trust Agreement among the Company, Sovereign General Insurance Company ("SGIC"), the surety, and the Escrow Agent.



3. In order to keep Homebuyers apprised of developments in the receivership proceedings, the Receiver has requested that Fugiel provide copies of all agreements of purchase and sale regarding the Pre-Sale Units. The Receiver intends to provide the Court an update at the return of this motion regarding the status of its request.

## **2.2 Secured Creditors**

1. Pursuant to a commitment letter dated November 15, 2021, as amended, MarshallZehr agreed to provide a loan of \$12,375,000 to the Company secured by a mortgage on the Property (the "Loan") for the purpose of refinancing the existing mortgage on the Real Property.
2. In addition to the mortgage granted by the Company in connection with the Loan, the following parties have registered charges on title to the Property subsequent to the registration of MarshallZehr's mortgage:
  - SGIC has registered a charge in the amount of \$12.0 million; and
  - Five construction lien claimants have registered charges totalling approximately \$12.9 million.
3. According to a search of the *Personal Property Security Act* (Ontario) registry system, MarshallZehr, SGIC, Policaro Leasing Ltd. and Newroads Automotive Group Ltd. have financing statements registered against the Company.

## **3.0 Sale Process**

### **3.1 Request for Proposals from Realtors**

1. Following its appointment, the Receiver solicited proposals from two realtors to act as listing agent to market and sell the Real Property. The retention of the selected realtor is subject to Court approval. KSV has previously worked with each of the prospective realtors and each of the realtors has considerable experience selling residential development land in the Niagara area.
2. The Receiver requested that each realtor provide background information regarding each firm's experience, a marketing plan for the Real Property, an estimate of the value of the Property and the realtor's proposed commission structure.
3. Both realtors submitted proposals.
4. The Receiver recommends that the Court approve the Receiver retaining Colliers as listing agent for the Real Property for the following reasons:
  - a) MarshallZehr, as the largest secured creditor, supports the retention of Colliers;
  - b) the Colliers team managing the mandate has experience selling residential sites in the Niagara area,
  - c) Colliers managed the sale of the Real Property in 2018;

- d) KSV has previously retained the Colliers team that will be responsible for this mandate on other similar mandates where the Colliers team achieved strong results; and
- e) Colliers’s proposed commission rate is reasonable based on KSV’s experience selling real estate. The commission rate is acceptable to MarshallZehr.

### 3.2 Sale Process

1. The recommended Sale Process is summarized in the table below. All dates reflected below will commence running from the date that the Court grants an order approving the Sale Process.

Summary of Sales Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Prepare marketing materials	<ul style="list-style-type: none"> <li>➤ Colliers and the Receiver to:               <ul style="list-style-type: none"> <li>○ prepare a teaser and confidential information memorandum (“CIM”) for each Project;</li> <li>○ populate virtual data rooms for each Project; and</li> <li>○ prepare a confidentiality agreement (“CA”).</li> </ul> </li> </ul>	2 weeks
Prospect Identification	<ul style="list-style-type: none"> <li>➤ For the Real Property, Colliers to:               <ul style="list-style-type: none"> <li>○ develop master prospect lists;</li> <li>○ prioritize prospects;</li> <li>○ have pre-marketing discussions with targeted prospects;</li> <li>○ engage in discussions with planners, consultants and municipalities; and</li> <li>○ consult with the Receiver regarding the above.</li> </ul> </li> </ul>	
<i>Phase 2 – Marketing and Diligence</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including:               <ul style="list-style-type: none"> <li>○ sending offering summary and marketing materials, including marketing brochure to each Colliers’ client base, including specifically targeted prospects;</li> <li>○ publishing the acquisition opportunity in such journals, publications and online as the realtor and the Receiver believe appropriate to maximize interest in this opportunity;</li> <li>○ posting “for sale” signs on each Real Property, to the extent applicable;</li> <li>○ engaging in direct canvassing of most likely prospects and tailoring the pitch to each of these candidates based on the brokers knowledge of these parties;</li> </ul> </li> </ul>	Commencing January 8, 2024

Summary of Sales Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>o posting the acquisition opportunity on MLS for each Project on an unpriced basis, if requested by the Receiver; and</li> <li>o meeting with prospective bidders to explain the potential of each site.</li> <li>➤ Receiver and its legal counsel to prepare a Vendor’s form of Purchase and Sale Agreement (the “PSA”) which will be made available to prospective purchasers in each virtual data room.</li> <li>➤ Colliers to provide additional information to qualified prospects which execute the CA, including access to data rooms and a copy of the CIM.</li> <li>➤ Colliers and Receiver to facilitate diligence by interested parties.</li> </ul>	
Stage 2 – Bid Deadline	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit offers in the form of the PSA, with any changes to the PSA blacklined.</li> </ul>	Estimated date is 5 weeks from the marketing launch. Subject to market response and timing of winter holidays.
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers and Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Colliers to collect, summarize and provide to the Receiver commentary on initial bids received to the Receiver. Receiver will consult with Mortgagees on the offers received.</li> <li>➤ Short listing of bidders.</li> <li>➤ Bidders may be asked to improve their offers. The Receiver may invite parties to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk. The Receiver may also seek to clarify terms of the offers submitted and to negotiate such terms.</li> <li>➤ The Receiver will be at liberty to consult with MarshallZehr regarding the offers received, subject to any confidentiality requirements that the Receiver believes appropriate.</li> <li>➤ The Receiver will select the successful bidder(s), having regards to, among other things: <ul style="list-style-type: none"> <li>o total consideration (cash and assumed liabilities);</li> <li>o form of consideration, including the value of any carried interest;</li> <li>o third-party approvals required, if any;</li> </ul> </li> </ul>	2 weeks from offer bid deadline.

Summary of Sales Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>o conditions, if any, and time required to satisfy or waive same; and</li> <li>o such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant.</li> </ul>	
Sale Approval Motion(s) and Closing(s)	➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer(s), on not less than 7 calendar days' notice to the service list and registered secured creditors.	15 to 30 days from the date that the selected bidder confirms all conditions have been satisfied or waived
Closings	➤ Following Court approval	ASAP

2. The Sale Process will be subject to the following additional terms:

- a) the Real Property will be marketed on an “as is, where is” basis;
- b) the Receiver will be entitled to extend any deadlines in the Sale Process if it considers it appropriate or necessary in the circumstances;
- c) the Sale Process will not commence until January 2024 which will ensure all interested parties have time to review the marketing materials;
- d) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s);
- e) any transaction will be subject to Court approval;
- f) Marshallzehr will have the right to credit bid the debt owing to it in respect of a Real Property at the conclusion of the Sale Process if the offers are not sufficient to repay its mortgages on such Real Property in full;
- g) the Receiver and MarshallZehr have been discussing the sale of the Real Property with several interested parties. Accordingly, the Receiver has negotiated a carveout from the Listing Agreement for these parties (“Prior Interested Parties”). If a transaction is closed with any of the Prior Interested Parties, Colliers will receive a work fee of \$100,000. In addition, if MarshallZehr credit bids its debt to purchase the Real Property, Colliers will receive a work fee of \$100,000. The work fee is significantly less than the commission to which Colliers would otherwise be entitled to.

### 3.3 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Sale Process for the following reasons:
  - a) Colliers's team has extensive experience selling undeveloped residential properties and its commission structure is consistent with market rates;
  - b) MarshallZehr supports the engagement of Colliers and the proposed Sale Process;
  - c) the Sale Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis in order to obtain the highest and best price;
  - d) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and to submit offers. The Receiver will also have the right to extend or amend timelines, as it considers necessary, to maximize value. Colliers believes that the duration of the Sale Process is sufficient to fully canvass the market;
  - e) the Sale Process includes procedures commonly used to sell real estate development projects, including by KSV in other court-supervised real property sale processes; and
  - f) there will be no delay commencing the Sale Process as each of the realtors is preparing its marketing materials, working on their prospect lists and, with the Receiver, updating data rooms.

### 4.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## **Appendix “C”**

**From:** Maya Poliak <Maya@chaitons.com>  
**Sent:** Thursday, March 28, 2024 3:10 PM  
**To:** Mark Russell <MR@friedmans.ca>  
**Cc:** Bill Friedman <wf@friedmans.ca>  
**Subject:** RE: La Pue

Hi Mark and Bill

We need these agreements asap. It's been months since we have first asked for them and Pawel promised to deliver them. If you don't have them, then your client does and we are failing to understand why they haven't been provided or why he has stopped responding to the Receiver. Can you please communicate with Pawel and provide us with a definitive timeline for when these can be delivered to us. Again, if we don't get them early next week, we will be in Court on April 11 asking for them to be produced and for costs against Pawel personally.

---

**Maya Poliak** | Partner  
Chaitons LLP | T: 416.218.1161

---

**From:** Mark Russell <[MR@friedmans.ca](mailto:MR@friedmans.ca)>  
**Sent:** Thursday, March 28, 2024 12:40 PM  
**To:** Maya Poliak <[Maya@chaitons.com](mailto:Maya@chaitons.com)>  
**Cc:** Bill Friedman <[wf@friedmans.ca](mailto:wf@friedmans.ca)>  
**Subject:** Re: La Pue

CAUTION: [External]

Maya,

I am away from the office until Tuesday. We don't have the APSs that I am aware of. Who advised you that we did and when?

Regards,  
Mark

On Mar 28, 2024, at 10:22 AM, Maya Poliak <[Maya@chaitons.com](mailto:Maya@chaitons.com)> wrote:

Mark

As you are aware we are lawyers for KSV Restructuring Inc., in its capacity as court-appointed receiver of La Pue. The Receiver has on multiple occasions requested that Mr. Fugiel provide copies of existing agreements of purchase and sale. This issue was also raised with the Court in the Receiver's last report.

Despite repeated requests from the Receiver that have now gone on for months, to date, we have not received copies of these agreements. Your client is in contempt of the Receivership Order for failing to provide these. I understand that your office has copies of these agreements Please arrange for a time this week when the Receiver can attend at your office to pick up those agreements. If these are not received from your office or your client forthwith, we will seek an order from the Court compelling your client to produce same. The Receiver's next attendance before the Court is scheduled for April 11, 2024 and materials will be served early next week.



**Maya Poliak | Partner**  
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