

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

and

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

APPEAL BOOK AND COMPENDIUM

August 13, 2024

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its capacity as Court-Appointed
Receiver of 12175622 Canada Inc. and
GPM Food Inc.

TO: **SERVICE LIST**

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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Respondents

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TAB 1

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Court of Appeal No: COA-24-CV-0702
Court File No. CV-21-00664778-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

and

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

NOTICE OF APPEAL

(Appeal pursuant to s. 193 of the *Bankruptcy and Insolvency Act*)

MNP LTD., IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF 12175622 CANADA INC. AND GPM FOOD INC. AND WITHOUT PERSONAL OR CORPORATE LIABILITY (THE “MNP RECEIVER”), APPEALS to the Court of Appeal from the Order of Justice Steele, dated June 18, 2024, made at Toronto, Ontario at the Superior Court of Justice (Commercial List).

THE APPELLANT ASKS for:

1. An Order setting aside the Order of the Honourable Justice Steele dated June 18, 2024 (the “**June 18 Order**”) directing that KSV Restructuring Inc., in its capacity as licensed insolvency trustee of the Respondents (the “**KSV Receiver**”), is not liable or otherwise obligated to pay 12175622 Canada Ltd. (the “**Purchaser**”), the MNP Receiver as receiver of the Purchaser, or the City of Brantford (the “**City**”) the amounts set out in

the omit tax bills dated November 25, 2022 or any other omit tax bill issued by the City to the Purchaser (the “**Omit Tax Claims**”);

2. An Order that the KSV Receiver, in its capacity as receiver of the Respondents, is liable for the Omit Tax Claims;

3. Costs of the motion below and of this appeal; and

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

GROUND OF APPEAL are as follows:

1. This is an appeal from the June 18 Order, which was granted on a motion brought by the KSV Receiver with respect to the distribution of proceeds held following the sale of the assets of the Respondents (the “**Purchased Assets**”) by the KSV Receiver to the Purchaser;

2. In substance, this appeal concerns whether liability for the Omit Tax Claims should be borne by the receivership estate administered by the KSV Receiver or by the Purchaser and the receivership estate being administered by the Appellant, the MNP Receiver;

3. The Learned Judge erred in law in holding that the Omit Tax Claims had not “crystallized” prior to the issuance of the receiver’s certificate (the “**Receiver’s Certificate**”) delivered pursuant to approval and vesting order (the “**AVO**”) issued in

connection with the sale of the Respondents' assets to the Purchaser and therefore were not vested out of the Purchased Assets and extinguished as against the Purchaser;

4. The Learned Judge erred in law in holding that the Omit Tax Claims could not be vested out of the Purchased Assets and extinguished as against the Purchaser by the AVO because they had not been quantified prior to the issuance of the Receiver's Certificate and the closing of sale transaction;

5. The Learned Judge erred in law in holding that the Omit Tax Claims were not due prior to the issuance of the Receiver's Certificate and the closing of sale transaction and therefore were not vested out of the Purchased Assets and extinguished as against the Purchaser by the AVO;

6. The Learned Judge erred in law in holding the Omit Tax Claims had not arisen prior to the issuance of the Receiver's Certificate and the closing of the sale transaction and therefore were not vested out of the Purchased Assets and extinguished as against the Purchaser by the AVO;

7. The Learned Judge erred in law in distinguishing the decision of This Honourable Court in *Credit Union Central of Ontario Limited v Heritage Property Holdings Inc.*, 2008 ONCA 167, which decision held that: (i) tax liabilities due to a municipality crystallized, became due and arose prior to the granting of an AVO, notwithstanding the fact that the relevant tax liabilities had not been quantified at the date of the closing of a sale transaction pursuant to an approval and vesting order; and, (ii) approval and vesting orders provide protection to purchasers by causing the conveyance of property free and

clear of all encumbrances or claims and are a key mechanism for providing certainty at the conclusion of insolvency proceedings;

8. The Learned Judge erred in law in finding that section 307(3) of the *Municipal Act, 2001* does not make taxes assessed under the *Assessment Act* due on January 1 of the year to which they relate. The Learned Judge further erred in finding that, under section 307(3) of the *Municipal Act, 2001*, the Omit Tax Claims did not arise until November 25, 2022 when the omit tax bills were issued;

9. The Learned Judge erred in law in finding that section 349 of the *Municipal Act, 2001* applies in the present case and in failing to hold that the AVO displaces section 349 of the *Municipal Act, 2001* and establishes unqualified rights in favour of the Purchaser;

10. The Learned Judge erred in law by failing to give effect to fundamental principles of insolvency law concerning when claims crystallize and arise, including principles providing that a claim may arise before an insolvency event even though the claim may not be quantifiable at that time;

11. The Learned Judge erred by holding that the principal of the Purchaser knew that the Omit Tax Claims existed in the absence of any probative evidence to support this conclusion; and

12. The Learned Judge erred by failing to take account of evidence of the Receiver's knowledge that a reassessment would occur.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. The property involved in the appeal exceeds in value \$10,000;

2. Sections 183(2) and 193 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
3. Section 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c C.43, as amended; and
4. Leave to appeal is not required.

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Lawyers for MNP Ltd., in its capacity as
Court-appointed Receiver of 12175622
Canada Inc. and GPM Food Inc.

TO: THE SERVICE LIST

Court of Appeal No:
Court File No. CV-21-00664778-00CL

SKYMARK FINANCE CORPORATION

- and - MAHAL VENTURE CAPITAL INC. et al.
Applicant

Respondents

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

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Lawyers for MNP Ltd., in its capacity as Court-
appointed Receiver of 12175622 Canada Inc. and GPM
Food Inc.

File Number: T1033017

TAB 2



Court File No. CV-21-00664778-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM

)

TUESDAY, THE 18TH

JUSTICE STEELE

)

DAY OF JUNE, 2024

)

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION**

Respondents

ORDER

(Omit Tax Claim and Distribution)

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of Mahal Venture Capital Inc. (“**Mahal VC**”) and Golden Miles Food Corporation (together with Mahal VC, the “**Companies**”) owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario, and in its capacity as licensed insolvency trustee of the Companies, for an order, (i) ordering that the Receiver and the Mahal VC estate shall incur no liability in respect of the Omit Tax Claims (as defined in the Sixth Report of the Receiver and Third Report of the Trustee, dated March 25, 2024 (the “**Sixth Report**”)), (ii) authorizing and directing the Receiver

to make certain distributions from the proceeds of the sale of the real property owned by Mahal VC (the “**Real Property Proceeds**”) and other recoveries associated with Mahal VC (together with the Real Property Proceeds, the “**Mahal VC Proceeds**”) to Skymark Finance Corporation, acting by its receiver Alvarez & Marsal Canada Inc. (“**Skymark Receiver**”) and KLN Holdings Inc. (“**KLN**”), was heard on June 4, 2024 by judicial videoconference.

ON READING the Sixth Report, the Supplement to the Sixth Report of the Receiver, dated April 3, 2024 (the “**Supplement**”), and the Second Supplement to the Sixth Report, dated May 10, 2024 (the “**Second Supplement**”, together with the Sixth Report and the Supplement, the “**Consolidated Sixth Report**”), the Affidavit of Dale Snider, affirmed April 25, 2024 (the “**Snider Affidavit**”), and the Affidavit of Pat Telfer, affirmed May 2, 2024 (the “**Telfer Affidavit**”), and on hearing the submissions of counsel for the Receiver, MNP Inc., in its capacity as receiver of 12175622 Canada Ltd. (the “**Purchaser Receiver**”), Alvarez & Marsal Canada Inc., in its capacity as receiver of 2305145 Ontario Inc. (formerly Skymark Financial Corporation) (the “**Skymark Receiver**”), The City of Brantford (the “**City**”), Santokh Mahal and KLN Holdings Inc. (“**KLN**”) and such other parties listed on the Participant Information Form, no one else appearing although properly served as appears from the Affidavits of Service of Nancy Thompson sworn March 27, 2024 and April 4, 2024 and the Lawyer’s Certificate of Service of Chris Burr, dated May 27, 2024, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated March 27, 2024 (the “**NOM**”), the Consolidated Sixth Report, the Snider Affidavit, and the Telfer Affidavit be and hereby is abridged, such that service of the NOM, the Consolidated Sixth

Report, the Snider Affidavit and the Telfer Affidavit is hereby validated, and that further service thereof is hereby dispensed with.

OMIT TAX CLAIMS LIABILITY

2. **THIS COURT ORDERS** that the Receiver, KSV in its personal capacity, KSV in its capacity as licenced insolvency trustee of Mahal VC, and Mahal VC (collectively, the “**Omit Released Parties**”) are not, and shall not be, liable or otherwise obligated to pay 12175622 Canada Ltd. (the “**Purchaser**”), the Purchaser Receiver, or the City on account of (a) the “Omit Tax Bill” dated November 25, 2022 issued by the City to the Purchaser in the amount of \$347,819.93 (Bill No. 00001678000 000173909000), (b) the “Omit Tax Bill” dated November 25, 2022 issued by the City to the Purchaser in the amount of \$352,486.83 (Bill No. 00001678000 000176243003), (c) the “Omit Tax Bill” dated November 25, 2022 issued by the City to the Purchaser in the amount of \$391,116.18 (Bill No. 00001678000 000195558006), or (d) any other “omit” tax bill issued by the City to the Purchaser, and the Omit Released Parties are hereby released of any liability therefor.

INTERIM DISTRIBUTION

Omit Tax Claims Distribution

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to make the following distributions from the Mahal VC Proceeds, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver:

- (a) \$1,242,300 to the Skymark Receiver; and
- (b) \$257,700 to KLN.

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

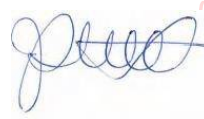
- (a) the pendency of these proceedings; and
- (b) the bankruptcy proceedings commenced in respect of the Companies on or about November 15, 2021,

the distributions authorized by Paragraph 3 hereof (the “**Distributions**”) shall be binding on KSV, in its capacity as licensed insolvency trustee of the Companies, and any successor licensed insolvency trustee that may be appointed in respect of the Companies, and shall not be void or voidable by creditors of the Companies, nor shall the Distributions constitute nor be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, nor shall the Distributions constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation and shall, upon the receipt thereof by the recipients, be free of all claims, liens, security interests, charges or encumbrances.

MISCELLANEOUS

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.



Digitally signed
by Jana Steele
Date: 2024.07.11
13:00:40 -04'00'

Court File No.: CV-21-00664778-00CL

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

ORDER
(Omit Tax Claim and Distribution)

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Lawyers for the Receiver and Trustee

TAB 3



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-21-00664778-00CL
CV-22-00692309-00CL

DATE: June 4, 2024

NO. ON LIST: 1 &2

TITLE OF PROCEEDING: SKYMARK FINANCE CORPORATION v. MAHAL VENTURE
CAPITAL INC. et al

AND

PRICEWATERHOUSECOOPERS INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
AND MANAGER OF BRIDGING FINANCE INC. ET AL v. SKYMARK FINANCE CORPORATION
et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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Vininsky, Mitch	Receiver	mvininsky@ksvadvisory.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Ray, Tyler	Bridging Receiver	tyler.ray@pwc.com

ENDORSEMENT OF JUSTICE STEELE:

Overview

- [1] This motion arises following a sale by a receiver of certain assets in respect of which an approval and vesting order was granted. Several months following the closing of the transaction, the municipality issued omit tax bills in respect of taxation years prior to the sale.
- [2] The issue before the Court is who, as between the vendor and the purchaser, is liable for the payment of the tax. It is a matter of interpretation of the agreement between the parties and the approval and vesting order granted by the Court.
- [3] KSV Restructuring Inc. (the “Receiver”), the receiver of the assets of Mahal Venture Capital Inc. (“Mahal VC”) and Golden Miles Food Corporation (“Golden Miles”), brings the motion seeking an order that the Receiver and Mahal VC are not liable to pay 12175622 Canada Ltd. (the “Purchaser”) or the City of Brantford (the “City”) on account of the Omit Tax Claims. Alvarez & Marsal, the receiver for Skymark Finance Corporation, supports the position of the Receiver.
- [4] MNP Ltd. (the “Purchaser’s Receiver”), the receiver of the Purchaser, takes the position that the Receiver is liable for the Omit Tax Claims. Santokh Mahal supports the position of the Purchaser’s Receiver.
- [5] Mr. Mahal was the principal behind Mahal VC and Golden Miles and was also the principal behind the Purchaser.
- [6] For the reasons set out below, I have determined that the Purchaser’s Receiver is liable for the Omit Tax Claims.

Background

- [7] The Receiver was appointed over the property of Mahal VC and Golden Miles on October 1, 2021.
- [8] On November 22, 2021, the Court approved a sale process for the Receiver to sell the property of Mahal VC and Golden Miles.
- [9] On or about October 27, 2021, the Receiver notified the City that it required a statement of property tax arrears in respect of the real property located at 155 Adams Boulevard, Brantford (the “Real Property”).
- [10] On or about October 28, 2021, the City provided a statement of account for the Real Property showing minimal outstanding taxes. The City advised the Receiver that “this property is still not properly assessed” and that the City had submitted a request to MPAC in the spring [2021]. The City further noted that “[t]his will result in additional taxes being added to the property and omitted tax notices being issued.”
- [11] On November 15, 2021, the Receiver filed an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* on behalf of the debtor companies pursuant to paragraph 3(r) of the receivership Order. KSV was appointed as the Trustee of the debtor companies.
- [12] In January 2022 the Receiver followed up with the City regarding the MPAC assessment and inquired as to whether MPAC had a timeline for the completion of the assessment. In addition, the Receiver asked whether the City could estimate the approximate assessment value range for the Real Property. The City replied that MPAC had responded to the City’s inquiry and had requested building permit information, which the City provided to MPAC. The City followed up with MPAC on January 18, 2022 to get an update and timeline for the valuation of the Real Property.
- [13] On or about February 7, 2022, MPAC notified the City that there was a freeze on inspections (due to COVID restrictions) until the end of February.
- [14] On March 18, 2022, the Purchaser and the Receiver entered into the agreement of purchase and sale pursuant to which the Purchaser agreed to buy substantially all of the assets and property of Mahal VC and Golden Miles, including the Real Property (the “Transaction”).
- [15] Farm Credit Canada (“FCC”) provided financing to the Purchaser for the Transaction.
- [16] On April 11, 2022, the Court granted an approval and vesting order with respect to the Transaction.
- [17] The Transaction closed on May 18, 2022.

- [18] At the time of closing, an undertaking to readjust was executed by the parties, which provided for a 45-day readjustment period (expiring on July 4, 2022). The Receiver undertook to re-adjust all items on the statement of adjustments during such period. This undertaking included municipal property tax.
- [19] In connection with the closing of the Transaction, the Receiver obtained tax certificates for the Real Property from the City, which disclosed that \$167,560 was due and owing in respect of property taxes, water arrears, interest and penalties as of the anticipated closing date.
- [20] On or about May 25, 2022, the Receiver paid the City the outstanding taxes on the Real Property of \$167,402.
- [21] On or about October 28, 2022, MPAC reassessed the taxes (\$1,091,423) based on the value of the building on the Real Property.
- [22] On November 24, 2022, the City issued Omit Tax Bills to the Purchaser in the total amount of \$1,091,423 in respect of the taxation years 2020, 2021 and 2022.
- [23] The Purchaser provided the Receiver with the Omit Tax Bills on February 24, 2023.
- [24] On March 5, 2023, the Purchaser appealed the tax reassessment, which appeal was subsequently withdrawn.
- [25] In August 2023 the Receiver obtained authorization from the Court to reserve \$1,500,000 from the sale proceeds pending the Court's determination of the Omit Tax Claims issue.

Analysis

- [26] As noted above, the only issue for the Court on this motion is who, as between the Receiver and the Purchaser's Receiver, is responsible to pay the Omit Tax Claims.
- [27] The Receiver takes the position that under both the asset purchase agreement and the approval and vesting order, the liabilities in respect of the Omit Tax Claims belong to the Purchaser/Purchaser's Receiver.
- [28] The Purchaser's Receiver takes the opposite position.

Summary

- [29] Although the Purchaser's Receiver places some emphasis on the fact that the Receiver was aware that there was an MPAC reassessment, in my view this matter turns on the terms of the relevant documents. The Receiver may have known that there was an MPAC

assessment, but the Receiver did not know the timing or the likely quantum of the reassessment, if any. In addition, because the principal of the Purchaser was the same as the principal of the debtor companies, Mr. Mahal would have had knowledge regarding the changes made to the land and the potential for a tax reassessment. Further, the tax assessment information provided on the Closing indicated that it was subject to reassessment.

- [30] As discussed in further detail below, it is my view that the relevant documentation supports the Receiver's position that the Purchaser's Receiver is liable for the Omit Tax Claims. The Asset Purchase Agreement ("APA") and Approval and Vesting Order ("AVO") provide that the Purchaser is responsible for the "Permitted Encumbrances," which include encumbrances for taxes that relate to or secure Liabilities that are not yet due or are not in arrears. The APA also provides that the Purchaser assumes only the "Assumed Liabilities," which are liabilities related to the purchased assets that arise on or after the Closing Date. As noted above, the Receiver provided an undertaking to readjust "all items on the Statement of Adjustments" within 45 days from the closing date of the Transaction. Accordingly, had there been a tax reassessment within the 45-day period, it would have been covered by the undertaking.
- [31] The Purchaser's Receiver's position is that under the *Municipal Act*, reassessed taxes are deemed to have been assessed as at January 1 of the year in which the reassessment is made. However, this does not mean the taxes were outstanding liabilities on the Closing Date. The liability in respect of the Omit Tax Claims could not have arisen until the Omit Tax Bills were issued on November 25, 2022. The Omit Tax Bills themselves, issued on November 2022, refer to the amount past due as \$0 and set out the future instalment payments for the amounts due under those bills.
- [32] It is important for a purchaser buying assets out of a bankruptcy to be able to rely on the Court's approval and vesting order. That does not change in the instant case. The AVO issued by the Court reflected the terms on permitted encumbrances that were present in the contractual deal of the parties, and, in this case, the contractually permitted encumbrances would include the liability in question.

Asset Purchase Agreement and Approval and Vesting Order

- [33] I now address the relevant provisions of the APA and the AVO in greater detail. The Receiver submits that the Omit Tax Claims were "Assumed Liabilities," which were assumed by the Purchaser under the asset purchase agreement. In addition, the Receiver submits that the Omit Tax Claims were "Permitted Encumbrances" that remained with the property on the sale pursuant to the terms of the APA and the AVO.
- [34] Section 2.2 of the APA provides that at closing the Purchaser agrees to assume only the "Assumed Liabilities":

2.2 At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities other than the Assumed Liabilities, except as required under Applicable Law. [emphasis added]

- [35] “Assumed Liabilities” is defined in the APA to include: “all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date.”
- [36] The Omit Tax Claims relate to the Purchased Assets because they are tax liabilities that were assessed on the Real Property that was purchased.
- [37] The parties disagree on whether the Omit Tax Claims are liabilities “arising on or after the Closing Date [May 18, 2022].”
- [38] The Receiver submits that because the Omit Tax Claims were made in November 2022, more than six months after closing, they arose after the Closing Date even though they are in respect of a pre-closing period tax liability.
- [39] The Purchaser’s Receiver submits that the liability for the Omit Tax Claims arose before the closing of the transaction. The Purchaser’s Receiver states that the fact that the quantum of the liability was not assessed until after the close of the Transaction does not impact when the liability arose.
- [40] The Purchaser’s Receiver points to section 307(3) of the *Municipal Act, 2001*, which provides that taxes assessed under the *Assessment Act* (as was the case here) are deemed to have been imposed and to be due on January 1 of the year to which they relate unless the by-law imposing the tax provides otherwise. The Purchaser’s Receiver submits that under this provision the Omit Tax Claims were due January 1, 2020, January 1, 2021 and January 1, 2022. I am not persuaded by this argument because the contracting parties specifically addressed the division of liabilities between them. The *Municipal Act* contemplates that assessed taxes may be recovered from the taxpayer originally assessed for them and from any subsequent owner of the assessed land: s. 349, *Municipal Act, 2001*.
- [41] I am of the view that the Omit Tax Claims are “Assumed Liabilities.” The liability for the Omit Tax Claims did not arise until the bills were issued about 6 months after the Transaction closed. In the APA, the parties contractually set out who was to be responsible for what, and specifically carved out certain liabilities that the purchaser would assume on closing. The parties also contemplated a 45-day adjustment period following closing. The Omit Tax Claims are a liability related to the purchased assets that clearly arose after the closing date. As noted above, the bills themselves in respect of the Omit

Tax Claims, which were issued months after the 45-day adjustment period, refer to the amount past due as \$0 and set out the payment schedule for future instalments.

- [42] I am also of the view that the Omit Tax Claims (and any encumbrance that secures them) were not claims that were vested out of the Real Property under the APA or the AVO (discussed below).
- [43] Section 2.1 of the APA provides that the vendor will sell to the purchaser its interest in the purchased assets, free of all encumbrances, other than “Permitted Encumbrances:”
- 2.1 At the Closing Time, on and subject to the terms and conditions of this Agreement, the Sale Procedure and the Approval and Vesting Order, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the Debtors’ and the Vendor’s right, title and interest, if any, in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order.
- [44] “Permitted Encumbrances” is defined in the APA to include: “Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested.”
- [45] The Receiver’s position is that the Omit Tax Claims, and any corresponding encumbrances, were not yet due or were not in arrears as of the closing date of the Transaction. The Receiver notes that the Omit Tax Claims were not even made until November 25, 2022, more than six months after the closing of the Transaction.
- [46] The terms of the approval and vesting order are consistent with the APA. Section 4 of the AVO provides that the purchased assets will be delivered and vest in the Purchaser free and clear of any security interests, other than the permitted encumbrances listed on Schedule “C” to the Order, which includes:
- (a) Encumbrances to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due and in arrears, the validity of which is being contested.
- [47] The Purchaser’s Receiver points to the Court of Appeal’s decision in *Credit Union Central of Ontario Limited v. Heritage Property Holdings Inc.*, 2008 ONCA 167, 99 C.B.R. (6th) 273 (“*Heritage Property*”). The Purchaser’s Receiver submits that *Heritage Property* precludes the Court’s acceptance of the Receiver’s position that the Omit Tax Claims are the Purchaser’s obligation.

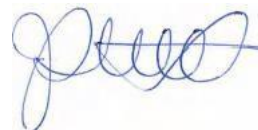
- [48] The Court of Appeal in *Heritage Property* considered a similar issue; however, the key documents in that case were different. In *Heritage Property* the motion judge had determined that the AVO “d[id] not grant title to the purchaser free and clear of the contingent potential tax liability to be determined by a reassessment”: *Credit Union Central of Ontario Limited v. Heritage Property Holdings Inc.*, 36 C.B.R. (5th) 121 (Ont. S.C.) (“*Heritage Property (ONSC)*”), at para 24 [emphasis removed]. The Court of Appeal allowed the appeal and found that the Receiver was responsible for the increased realty taxes up to the closing date. The Court of Appeal in *Heritage Property*, at para. 27, stated that the increased realty taxes were “a future claim for realty taxes that existed at the time of closing but remained to be quantified.” Under the terms of the AVO, the Court of Appeal determined that the purchaser took the property free and clear of the increased realty taxes.
- [49] The Receiver submits that *Heritage Property* is clearly distinguishable upon its facts. I agree.
- [50] In *Heritage Property*, the AVO considered by the Court of Appeal had similar language vesting the purchased property in the buyer free and clear of all encumbrances, other than permitted encumbrances. Where that case differs is the Schedule “C” permitted encumbrances. In *Heritage Property*, the “[permitted] encumbrances listed relate to subdivision control by-laws and Hamilton Airport zoning regulations”: *Heritage Property*, at para 15. This is very different from the permitted encumbrances in Schedule “C” in the instant case. As noted above, the permitted encumbrances in the instant case specifically refer to encumbrances to taxes arising by operation of law that relate to or secure liabilities that are not yet due.
- [51] Further, the language vesting the property in the purchaser in *Heritage Property* is broader than the instant case. In *Heritage Property*, the Court order provided that the purchaser was vested in the property free and clear of “any and all estate, right, title, interest, hypothecs, [...] taxes, [...] whether such claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, contractually, by operation of law or otherwise [...]”: *Heritage Property*, at para 14 [emphasis added]. The vesting language in the order in the instant case does not include, among other things, the underlined language from the vesting order in *Heritage Property*.¹

¹ Paragraph 4 of the AVO provided: 4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “Receiver’s Certificate”), all of the Receiver’s and the Companies’ right, title and interest in and to the Purchased Assets described in the APA 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, 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 McEwen dated October 1, 2021; (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; and (iii) those Claims listed on Schedule “B” hereto (all of which are collectively referred to as the “Encumbrances”, which terms shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “C”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or

- [52] All the parties agree that vesting orders are important, and purchasers need to be able to rely upon them. However, they disagree as to whether the terms of the vesting order in the instant case, and, in particular, the carve out for permitted encumbrances, included the Omit Tax Claims.
- [53] In my view, the permitted encumbrances, which were permitted to remain on the transferred property, include the Omit Tax Claims. The Omit Tax Bills were issued months after the transaction closed, and months after the 45-day adjustment period provided for in the undertaking. The contracting parties turned their minds to what the permitted encumbrances would be in the APA and then replicated that language in the AVO. I am of the view that the tax liability was not yet “due” at the time of closing. As noted above, this is supported by the Omit Tax Bills themselves, which when issued in November 2022 referred to the amount past due as \$0 and set out the future schedule for when instalment payments were to be due.

Disposition

- [54] The Purchaser’s Receiver is responsible for the Omit Tax Bills.



Date of Release: June 18, 2024

TAB 4

Court File No. CV-21-00664778-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

NOTICE OF MOTION
(Distribution and Discharge)
Returnable April 5, 2024

KSV RESTRUCTURING INC., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of Mahal Venture Capital Inc. (“**Mahal VC**”) and Golden Miles Food Corporation (“**Golden Miles**” and, together with Mahal VC, the “**Companies**”) owned or used in connection with the flour mill (the “**Flour Mill**”) located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the “**Real Property**” and together with the Flour Mill, the “**Property**”), and in its capacity as licensed insolvency trustee of the Companies (the “**Trustee**”), will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on April 5, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

Zoom Coordinates to be provided by the Commercial List Office.

Please advise if you plan to attend the motion by emailing Daniel Loberto at daniel.loberto@blakes.com.

THE MOTION IS FOR:

- (a) An Order, substantially in the form of the draft Order included in the Motion Record of the Receiver, dated 27, 2024 (the “**Distribution and Discharge Order**”), *inter alia*:
 - (i) ordering that the Receiver, KSV in its personal capacity, KSV in its capacity as licenced insolvency trustee of Mahal VC, and Mahal VC are not, and shall not be, liable or otherwise obligated to pay 12175622 Canada Ltd. or the City of Brantford on account of the Omit Tax Claims (as defined in the Sixth Report of the Receiver and Third Report of the Trustee, dated March 26, 2024 (the “**Sixth Report**”));
 - (ii) authorizing and directing the Receiver to make certain distributions from the proceeds of the sale of the real property owned by Mahal VC (the “**Real Property Proceeds**”) and other recoveries associated with Mahal VC (together with the Real Property Proceeds, the “**Mahal VC Proceeds**”) to

Skymark Finance Corporation, acting by its receiver Alvarez & Marsal Canada Inc. (“**Skymark Receiver**”), KLN Holdings Inc. (“**KLN**”), 1989474 Ontario Inc. (“**198 Ontario**”, and together with 7539088 Canada Inc., the “**Orr Plaintiffs**”), and Vicano Construction Limited (“**Vicano**”), as applicable;

- (iii) approving the Sixth Report and the Receiver’s activities described therein;
- (iv) approving the Receiver’s interim statement of receipts and disbursements for the period ending March 8, 2024 (the “**R&D**”);
- (v) approving the fees and disbursements of the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”), for the period of August 1, 2023 to February 29, 2024;
- (vi) releasing the Receiver and Blakes from claims arising prior to the date of the Distribution and Discharge Order and, subject to the delivery of the Completion Certificate (as defined in the Sixth Report), claims arising during the period beginning on the date of the Distribution and Discharge Order and ending on the Termination Time (as defined in the Distribution and Discharge Order);
- (vii) discharging the Receiver; and
- (viii) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:*Background*

1. KSV was appointed Receiver of the Companies pursuant to an order of the Court made October 1, 2021 (the “**Receivership Order**”). The resulting receivership proceedings are referred to herein as the “**Receivership Proceedings**”.
2. The principal purpose of the Receivership Proceedings was to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies’ creditors.
3. On November 15, 2021, the Receiver filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 on behalf of the Companies pursuant to paragraph 3(r) of the Receivership Order. KSV was appointed as Trustee by the Office of the Superintendent of Bankruptcy (Canada).
4. On April 11, 2022, the Court granted an order in the Receivership Proceedings approving the sale of substantially all of the Property to 12175622 Canada Inc. (the “**Purchaser**”). The Purchaser is owned and controlled by Santokh Mahal (“**Santokh**”), the owner and sole officer and director of Golden Miles, and the father of Jesse Mahal, the owner and sole officer and director of Mahal VC. The resulting sale transaction produced the aggregate net proceeds of \$18.47 million, with \$16 million of Real Property Proceeds, and \$2.47 million allocated to the personal property owned by Golden Miles (the “**Personal Property Proceeds**”).
5. Pursuant to the Order of Justice Cavanagh, dated August 23, 2023 (the “**First Interim Distribution Order**”), the Court authorized the Receiver to make certain interim and final distributions of the Real Property Proceeds and the Personal Property Proceeds, and maintain the

following holdbacks from the Real Property Proceeds: (i) \$600,000 (the “**Mahal VC Cost Reserve**”), (ii) \$3,650,000 (the “**Orr Holdback**”), and (iii) \$1,500,000 (the “**Omit Tax Reserve**”).

6. The Receiver currently holds approximately \$6.79 million after accrued costs, all of which is allocated to Mahal VC (being the remaining Mahal VC Proceeds). All distributions of Personal Property Proceeds to secured creditors of Golden Miles have been completed, and the remaining Personal Property Proceeds are being held by the Trustee, subject to unsecured creditor distributions to be made in the Golden Miles bankruptcy proceedings.

Omit Tax Claims

7. The Receiver holds the \$1,500,000 Omit Tax Reserve in respect of certain “omit” property tax claims, defined in the Sixth Report as the “**Omit Tax Claims**”, that the Purchaser has claimed are an obligation of the Receiver.

8. The Receiver is not liable for the Omit Tax Claims. The Receiver’s analysis of its position on the Omit Tax Claims was first communicated to stakeholders in August 2023, in the Fifth Report of the Receiver, dated August 15, 2023 (“**Fifth Report**”), and is reiterated in the Sixth Report.

9. The Receiver is now seeking an order that the Receiver, KSV in its personal capacity, KSV in its capacity as licenced insolvency trustee of Mahal VC, and Mahal VC are not liable to pay the Omit Tax Claims, and authorizing it to make a distribution of the Omit Tax Reserve to Mahal VC creditors in accordance with their respective entitlements.

10. Provided that the Court grants the order requested by the Receiver with respect to the Omit Tax Claims, the Receiver intends to distribute the Omit Tax Reserve to the Skymark Receiver and KLN as follows:

- (a) \$1,242,300 to the Skymark Receiver; and
- (b) \$257,700 to KLN.

Disputed Transfer

11. The Receiver currently holds \$1,047,826 in connection with a dispute between KLN and Skymark regarding the validity of a transfer of a mortgage interest against the Mahal VC Property (the “**Disputed Transfer**”).

12. Based on the relative priorities of all stakeholders with a claim against Mahal VC, the amount withheld on account of the Disputed Transfer is either payable to KLN, or it is payable to the Skymark Receiver. It is a binary issue: no other creditor or stakeholder has a claim to the funds, in the Receiver’s view.

13. The Skymark Receiver and KLN have resolved the issues underlying the Disputed Transfer, and the Skymark Receiver is expected to bring a motion in the Skymark receivership proceedings seeking Court approval of the corresponding settlement agreement.

14. The Receiver understands that the Skymark Receiver and KLN have agreed that each of them will receive 50% of the \$1,047,826 held back on account of the Disputed Transfer. The Receiver is accordingly seeking an order, subject to this Court approving the KLN settlement in

the Skymark receivership proceedings, authorizing it to distribute \$523,913 to Skymark and \$523,913 to KLN.

Orr Holdback

15. The Receiver currently holds the Orr Holdback, being \$3,650,000 of the Mahal VC Proceeds that was held-back from distribution by the Receiver to Skymark pursuant to the First Interim Distribution Order, pending the resolution of a trust claim made by certain third parties against Skymark and related entities (the “**Orr Plaintiff Dispute**”).

16. The Skymark Receiver and the Orr Plaintiffs have formally settled the Orr Plaintiff Dispute, and such settlement was approved by the Order of Justice Steele, dated February 22, 2024.

17. The Orr Holdback was taken from the Skymark interim distribution under the First Interim Distribution Order, and is thus payable to the Skymark Receiver, or as the Skymark Receiver directs. The Receiver is willing to make distributions of the Orr Holdback as directed by the Skymark Receiver and Orr Plaintiffs, up to the full amount of the Orr Holdback, and a distribution to the Skymark Receiver of approximately \$121,000 of interest accrued on the Orr Holdback.

18. The Receiver therefore now seeks an order of this Court authorizing it to make distributions to the Skymark Receiver and/or 198 Ontario, in such amounts as the Skymark Receiver and the Orr Plaintiffs may direct, up to the full amount of the Orr Holdback, as well as authorization to distribute the interest accrued on the Orr Holdback to the Skymark Receiver.

Vicano Disputed Amount

19. As discussed in the Supplement to the Fifth Report, dated August 22, 2023, Vicano disputes the Receiver's analysis with respect to Vicano's entitlement to distributions on account of Vicano's lien claims against the Mahal VC Property.

20. The Receiver distributed \$1,659,413 to Vicano pursuant to the First Interim Distribution Order, which represents 10% of the amount of Vicano's total lien claim that is not disputed. The disputed amount for distribution purposes, being (at most) \$71,096 (the "**Vicano Disputed Amount**"), remains unresolved.

21. The Vicano Disputed Amount is payable to either (a) Vicano, if the Vicano Disputed Amount is properly owing in priority to Vicano, or (b) to Skymark and KLN, in accordance with their relative priorities.

22. The Receiver will continue to work with Vicano to resolve this dispute. In order to avoid the Receiver having to come back to Court to seek a distribution order for a relatively small amount, the Receiver is seeking the Court's authorization to make a distribution to Vicano, Skymark and KLN of up to the aggregate of \$71,096, with the prior written consent of the Skymark Receiver, KLN and Vicano.

Mahal VC Cost Reserve

23. The Receiver currently holds the Mahal VC Cost Reserve (originally in the amount of \$600,000), which was held back as a reserve for the professional costs to resolve the Omit Tax Reserve claim, the Orr Plaintiff Dispute and to complete the administration of the Receivership Proceedings. The Receiver currently holds \$460,709 of the Mahal VC Cost Reserve.

24. If the Court grants the orders requested by the Receiver in respect of the Omit Tax Reserve the only remaining material open issue in these proceedings will be resolved, and a portion of the Mahal VC Cost Reserve can be distributed to Mahal VC creditors in accordance with their respective priorities. The Receiver proposes to continue to hold \$200,000 plus HST of the Mahal VC Cost Reserve, to fund the Remaining Activities (defined below) and the resolution of the dispute with Vicano.

25. The Receiver therefore seeks an order authorizing it to distribute up to \$260,709 of the Mahal VC Cost Reserve to creditors, in accordance with their relative entitlements, as follows:

- (a) \$215,919 to the Skymark Receiver; and
- (b) \$44,790 to KLN.

Final Distribution

26. The Receiver is seeking the Court's authorization to distribute the balance of the Real Property Proceeds, net of its costs, to the Skymark Receiver and KLN, at such time as the Receiver has completed the Remaining Activities (as defined below).

Approval of R&D

27. The R&D reflects that there is approximately \$6.9 million in the Receiver's estate account after accrued costs, which is allocated to Mahal VC. The Receiver confirms that none of the remaining funds are allocated to Golden Miles (all Personal Property Proceeds are now held by the Trustee, and so not reflected in the Receiver's records).

28. The Receiver seeks an order approving the R&D.

Approval of the Receiver's Fees & Activities

29. The activities of the Receiver since the Fifth Report are detailed in the Sixth Report. These activities have been necessary and consistent with the Receiver's duties and powers in the Receivership Order, and undertaken with efficiency and reasonableness, in the interests of the Companies' stakeholders generally. Accordingly, they ought to be approved.

30. The fees and disbursements of the Receiver and Blakes have been incurred in good faith, the rates are consistent with the rates charged by other comparable firms practicing in the area of insolvency in the Toronto market, and they are fair and reasonable.

31. The Receiver proposes to withhold \$200,000 plus HST from the Real Property Proceeds, to be applied by the Receiver against its fees and expenses, and those of its counsel, incurred between March 1, 2024 and the Termination Time (as defined in the Distribution and Discharge Order), and seeks the approval of the Court to withhold and distribute such amount.

Termination of the Receivership Proceedings and Discharge of the Receiver

32. Provided the orders requested by the Receiver in this motion are granted, the Receiver has determined that the remaining activities to be completed by the Receiver in accordance with the Receivership Order (collectively, the "**Remaining Activities**") are as follows:

- (a) Making the distributions ordered in the Distribution and Discharge Order;
- (b) Undertaking certain administrative matters related to the wind-up of these proceedings;
- (c) Preparing the final report of the Receiver pursuant to section 246(3) of the BIA;

(d) Filing the Completion Certificate (as defined below).

33. Upon completing the Remaining Activities, the Receiver will have completed its administration of the receivership estates in accordance with the terms of the Receivership Order. The Receiver accordingly seeks its discharge and termination of these proceedings upon the filing of the Completion Certificate with the Court (substantially in the form as attached to the draft order contained in this Motion Record, the “**Completion Certificate**”).

Additional Grounds

34. The grounds as more particularly set out in the Sixth Report;

35. Rules 1.04, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194; and

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

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

1. the Sixth Report; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

March 27, 2024

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Barristers and Solicitors
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- 12 -

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Lawyers for the Receiver and Trustee

TO: SERVICE LIST

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

NOTICE OF MOTION
(Distribution and Discharge)
Returnable April 5, 2024

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Lawyers for the Receiver and Trustee

TAB 5

Court File No. CV-21-00664778-00CL

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

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

and

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

AFFIDAVIT

I, Dale Snider, of the Town of Elmira, in the Province of Ontario, AFFIRM:

1. I am the Senior Corporate & Commercial Account Manager, Special Credit at Farm Credit Canada ("**FCC**"). FCC provided financing for the Purchaser in the court-approved sale process in this proceeding (described in more detail below), and, as such, have knowledge of the matters contained in this affidavit, except where I refer to matters based on information and belief, in which case I state the source of that information and believe it to be true.
2. I make this affidavit in respect of the Receiver's motion for an order that the Receiver, KSV Restructuring Inc. ("**KSV**"), is not liable or otherwise obligated to pay 12175622 Canada Ltd. ("**121**") or the City of Brantford on account of the Omit Tax Claims (as defined below).
3. FCC takes no position on the remaining issues raised in the motion.

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4. 121 entered into an Agreement of Purchase and Sale dated March 18, 2022 to purchase substantially all of the Property (the “**Purchased Property**”) in this Receivership (the “**Transaction**”).
5. The Transaction included the purchase of real property located at 155 Adams Boulevard, Brantford, Ontario (the “**Lands**”).
6. FCC provided financing for the Transaction.
7. On April 11, 2022, KSV brought a motion to approve the Transaction and obtained an approval and vesting order with respect to the Transaction (the “**Approval and Vesting Order**”), which conveyed the Purchased Property to 121 free and clear of all claims and encumbrances.
8. Based on the information available on the website maintained by KSV in these proceedings, I understand from Thomas Gertner of Gowling WLG, solicitors for FCC, and believe it to be true that the City of Brantford was served with the motion materials to approve the Transaction. I am further advised that there is no documentary record of any opposition to the KSV motion for the Approval and Vesting Order by the City of Brantford.
9. In advance of the closing of the Transaction, the City of Brantford issued a tax certificate in respect of the Lands dated March 21, 2022 (the “**2022 Tax Certificate**”). The 2022 Tax Certificate certified there were outstanding taxes against the Lands in the amount of \$156,501.53. A copy of the 2022 Tax Certificate is attached as **Exhibit “A”**.

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10. In reliance on financing provided by FCC, the Purchaser closed the Transaction on May 18, 2022.
11. On May 25, 2022, KSV paid the full amount of the 2022 Tax Certificate. The City of Brantford confirmed receipt of funds on May 30, 2022. A copy of the City of Brantford's confirmation of receipt of funds is attached as **Exhibit "B"**.
12. On June 1, 2023, FCC obtained an updated tax certificate in respect of the Lands (the "**2023 Tax Certificate**"), reflecting significant tax arrears that had not previously been disclosed (the "**Omit Tax Claims**"). A copy of the 2023 Tax Certificate is attached as **Exhibit "C"**.
13. Until receiving the 2023 Tax Certificate, FCC had no notice of any tax arrears other than those addressed in the 2022 Tax Certificate.
14. On June 9, 2023, FCC, in its capacity as senior secured lender to 121, wrote a letter to the City of Brantford setting out its position that the tax arrears reflected in the 2023 Tax Certificate related to taxes which had been vested out as a claim against the Lands pursuant to the Approval and Vesting Order, the 2022 Tax Certificate and FCC's reasonable expectations. A copy of the June 9, 2023 letter (excluding enclosures) is attached as **Exhibit "D"**.
15. FCC advanced funds for the Transaction on its specific reliance that the Property was being conveyed free and clear of any claims or encumbrances, and on the 2022 Tax Certificate. FCC would not have agreed to advance funds for the Transaction if it

was aware the Omit Tax Claims were a continued liability as against the Purchaser and the Lands.

16. FCC subsequently brought an application on January 18, 2024 to appoint MNP Ltd. as receiver and manager, without security, over all assets, undertakings and properties of 121 and a related entity, GPM Food Inc., (collectively, "GPM") acquired for, or used in relation to a business carried on by GPM, which includes the Lands. The Court granted the relief sought by Order of Justice Krawchenko dated January 18, 2024.

AFFIRMED by Dale Snider of the Town of Elmira, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:
Heather Fisher

Commissioner for Taking Affidavits
(or as may be)

HEATHER FISHER (LSO#75006L)

DocuSigned by:
Dale Snider

DALE SNIDER

TAB 6

Court File No. CV-21-00664778-00CL

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

BETWEEN:

SKYMARK FINANCE CORPORATION

Applicant

and

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION**

Respondents

**AFFIDAVIT OF PAT TELFER
AFFIRMED MAY 2, 2024**

I, Pat Telfer, of the City of Brantford, in the Province of Ontario, AFFIRM:

1. I am the Manager of Revenue/Tax Collector for The Corporation of the City of Brantford ("City"). The City informed KSV Restructuring Inc. that the property located at 155 Adams Blvd. in Brantford, Ontario was not properly assessed by the Municipal Property Assessment Corporation (MPAC) before the property was sold to 12175622 Canada Ltd. ("121") in 2022. After 155 Adams Blvd. was properly assessed by MPAC the City sent an Omit Tax bill for 2020, 2021 and 2022 to 121 because 121 was the property owner at the time that the Omit Tax bill was issued, and as such, I have knowledge of the matters contained in this

affidavit, except where I refer to matters based on information and belief, in which case I state the source of that information and believe it to be true.

2. I make this affidavit in response to the Receiver's motion for an order that the Receiver, KSV Restructuring Inc. ("KSV") is not liable or otherwise obligated to pay 121 or the City on account of the Omit Tax Claims described in KSV's motion of March 27, 2024.
3. The City takes no position on the remaining issues raised in that motion. The only issue to determine is liability for the Omit Taxes issued November 24, 2022 including accrued interest.
4. MPAC is responsible for assessing property values in Ontario for the purpose of calculating property taxes. Based on MPAC's assessment, municipalities throughout Ontario issue tax bills to property owners. MPAC is able to re-assess properties that have not been properly assessed. If a property has not been properly assessed, MPAC is able to assess omit taxes for a period of three (3) years prior to the re-assessment.
5. On October 1, 2021 KSV was appointed as the receiver and manager of all the assets, undertakings and properties of Mahal Venture Capital Inc. and Golden Miles Food Corporation owned or used in connection with the flour mill located on the property municipally known as 155 Admas Blvd. Brantford, Ontario. At that

time, and for several years prior, 155 Adams Blvd. was classified as Industrial Vacant Land (IX). On October 27 and 28, 2021 I exchanged e-mails with KSV to inform them that that there were unpaid property taxes with respect to 155 Adams Blvd. and that the property was not properly assessed. I also informed KSV that omitted tax notices would be issued after MPAC properly assessed this property. A copy of my e-mail correspondence with KSV is attached as **Exhibit "A"**.

6. On October 28, 2021 I made a request to MPAC to have 155 Admas Blvd. re-assessed. A copy of my re-assessment request is attached as **Exhibit "B"**.
7. On January 7, 2022 the City wrote to KSV providing KSV notice that the City intended to commence enforcement proceedings to recover unpaid property taxes. Legal counsel for KSV responded to the City on January 13, 2022 asserting that enforcement proceedings were stayed as a result of the Order of Justice McEwan dated October 1, 2021. A copy of the letter from legal counsel for KSV dated January 13, 2022 is attached as **Exhibit "C"**.
8. On January 18, 2022 KSV wrote to me and made inquiries regarding the assessment status of 155 Adams Blvd. I responded on the same day and informed KSV that the property had not been re-assessed. I subsequently made a further request to MPAC to have the property re-assessed on January 18,

2022. A copy of my e-mail correspondence with KSV and my request to MPAC are attached as **Exhibit “D”**.

9. On February 7, 2022 I received an e-mail from MPAC indicating that MPAC was not able to re-assess the property because each time the assigned assessor made attempts to re-assess 155 Admas Blvd. there was a freeze in place. I have been advised by MPAC, and do verily believe, that a freeze means that in person inspections were not happening due to COVID-19. A copy of the e-mail I received from MPAC on February 7, 2022 is attached as **Exhibit “E”**.

10. On February 22, 2022, the City sent a notice to Mahal Venture Capital Inc. that the City intended to enforce its security against the property located at 155 Adams Blvd. I am advised that legal counsel for KSV responded to legal counsel for the City on March 3, 2022 taking the position that unpaid property taxes owed to the City would be addressed in the receivership proceedings. The notice and e-mail correspondence are attached as **Exhibit “F”**.

11. Following receipt of the March 3, 2022 letter the City took no further steps to collect or enforce unpaid property taxes related to 155 Adams Blvd.

12. On April 11, 2022 the Honourable Madam Justice Gilmore made an Approval and Vesting Order with respect to 155 Adams Blvd. Madame Justice Gilmore approved the transaction contemplated by an agreement of purchase and sale

dated March 18, 2022, between KSV and 121. A copy of the Approval and Vesting Order is attached as **Exhibit “G”**.

13. After receiving the Approval and Vesting Order I followed up with MPAC regarding re-assessment of 155 Adams Blvd.
14. On May 19, 2022 legal counsel for KSV wrote to the City to confirm that the sale of 155 Adams Blvd. to 121 was completed on May 18, 2022. The letter asked that any future tax bills be sent to 121. A copy of the letter from KSV is attached as **Exhibit H**.
15. As of the date that the sale was completed, 155 Adams Blvd. was still classified as Industrial Vacant Land (IX). I had made several requests for MPAC to re-assess the property and I had informed KSV that the property was not properly assessed and that omit taxes would be levied after the re-assessment was complete.
16. On March 21, 2022 the City delivered two tax certificates in the amount of \$156,501.53 and \$3,710.13 regarding unpaid property taxes for 155 Adams Blvd. On May 25, 2022 KSV sent a letter enclosing a cheque in the amount of \$167,402.39 representing all unpaid property taxes plus interest up to May 31, 2022. The cheques were received by the City on May 30, 2022 and deposited the same day. At that point all assessed, but unpaid property taxes were paid.

The payment received did not include any amount for omit taxes that would be levied after the property was re-assessed. A copy of the March 21, 2022 tax certificates and the letter from KSV enclosing the cheques as well as a copy of the City's internal accounting ledger for 155 Adams Blvd. is attached as **Exhibit I**.

17. MPAC completed a re-assessment of 155 Adams Blvd. in October 2022. On October 28, 2022 MPAC sent the City an e-mail confirming the omit assessments for those years and on November 1, 2022 MPAC provided the City with an Omitted Assessment notice identifying all of the omitted properties that were assessed. After receiving these documents, the City prepared and delivered omitted tax assessments for 2020, 2021 and 2022. The omitted tax notices were delivered to 121 on November 24, 2022. A copy of the e-mail from MPAC, the Omitted Assessment notice and the Omit Tax bills for 2020, 2021 and 2022 are attached as **Exhibit J**.

18. 121 filed appeals disputing the re-assessments and the related Omit Tax bills in March 2023. All of the appeals were withdrawn before a hearing was scheduled. Notices of withdrawal for all appeals are attached as **Exhibit K**.

19. After I issued the Omit Tax notices for 2020, 2021 and 2022 I received a letter dated June 9, 2023 from legal counsel for Farm Credit Canada (FCC), the lender that advanced the funds necessary for 121 to purchase 155 Adams Blvd. FCC

asked the City to provide justification for a tax certificate that was issued on June 1, 2023 in the amount of \$1,723,076.34. The letter asserted that the City's claim to property taxes pre-dating the sale of 155 Adams Blvd. was vested out. The letter dated June 9 (without attachments) and the tax certificate dated June 1, 2023 are attached as **Exhibit L**.

20. I responded via e-mail on June 12, 2023 explaining the history of the tax arrears with respect to 155 Adams Blvd. I told legal counsel for FCC that KSV was informed prior to the sale of the property that the 155 Adams Blvd. was not fully assessed and that that additional taxes would eventually be added to the property. I also told legal counsel for FCC that the tax bills issued on March 21, 2022 only represented the outstanding taxes that had been levied at that time. I also provided the Omitted Tax listing the City received from MPAC and the related Omit Tax bills for 2020, 2021 and 2022 as support for the tax certificate issued on June 1, 2023. My e-mail dated June 12, 2023 excluding attachments is attached as **Exhibit M**.

21. On August 15, 2023 I received service of the Receiver's motion record, returnable on August 23, 2023 seeking among other things, (i) approval of certain distributions, and (ii) approval of the fees of the Receiver and its counsel. As part of that motion, the Receiver asked the court to approve a \$1,500,000 omit tax reserve related to the City's claim for omit taxes affecting 155 Adams Blvd. for 2020, 2021 and 2022. I am advised that the court approved the omit tax reserve

and that the receiver continues to hold the omit tax reserve and that omit tax reserve has not been disbursed.

22. I verily believe that the omit taxes for 2020, 2021 and 2022 were assessed in the normal course and that the City is entitled to receive payment for the omit taxes (plus accrued interest) that were assessed after the sale of the property to 121.

AFFIRMED by Pat Telfer of the City of)
Brantford, in the Province of Ontario, before)
me at the City of Brantford, in the Province)
of Ontario, on May 2, 2024 in)
accordance with O. Reg. 431/20,)
Administering Oath or Declaration)
Remotely.)

Geoff Daley

Commissioner for taking Affidavits

Geoffrey Daley

Pat Telfer

SKYMARK FINANCE CORPORATION
Applicant

-and-

MAHAL VENTURE CAPITAL INC., et al
Respondents

Court File No CV-21-00664778-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF PAT TELFER

The Corporation of the City of Brantford
58 Dalhousie Street
Brantford, Ontario N3T 2J2

Geoffrey Daley (70560J)

gdaley@brantford.ca

Tel: 519-759-4150 ext 5150

Lawyer for The Corporation of The City of
Brantford

TAB 7

This is Exhibit "A" to the Affidavit
of Pat Telfer sworn before me this
2nd day of May, 2024 at the
City of Brantford in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

Geoff Daley

Commissioner for taking Affidavits

Geoffrey Daley

From: [Patrick Telfer](#)
To: [Murtaza Tallat](#); [Geoff Daley](#)
Cc: [Tommara McMillan](#); [Mitch Vininsky](#); [Noah Goldstein](#)
Subject: RE: 155 Adams Boulevard - ppty tax arrears
Attachments: [image003.png](#)
[image004.png](#)
[155 Adams Blvd Property Tax Statement of Account Oct 28 2021.pdf](#)

Hello Murtaza,

Please find attached a statement of account for 155 Adams Blvd showing outstanding taxes as of today's date.

Upon review of this property, it has come to my attention that this property is still not properly assessed.

MPAC still has the property assessed as Industrial Vacant Land (IX) with a value of \$1,889,000. A request was submitted to MPAC in the Spring to have this rectified as the property has not been vacant land for a least a couple of years.

I have followed up with MPAC again today with a request to have this property valued and assessed properly and omitted assessment notices issued before they close off assessment changes for 2021. This will result in additional taxes being added to the property and omitted tax notices being issued. Currently we have the following owner and mailing address information on file:

MAHAL VENTURE CAPITAL INC
 6845 SECOND LINE W
 MISSISSAUGA ON L5W 1M8

Does this need to change before any future correspondence is sent out?

Please let me know if you have any questions.

Thanks,

Pat

Patrick Telfer
 Manager of Revenue/Tax Collector
 City of Brantford
 519-759-4222 ext. 5483

From: Murtaza Tallat [mailto:mtallat@ksvadvisory.com]
Sent: Wednesday, October 27, 2021 4:44 PM
To: Patrick Telfer; Geoff B. Daley
Cc: Tommara E. Mcmillan; Mitch Vininsky; Noah Goldstein
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Yes, that would be helpful as a start. We may have further requests once we have had a chance to review.



Murtaza Tallat

Manager

T 416.932.6031

M 647.640.4248

W www.ksvadvisory.com

From: Patrick Telfer <PTelfer@brantford.ca>
Sent: October 27, 2021 4:42 PM
To: Murtaza Tallat <mtallat@ksvadvisory.com>; Geoff B. Daley <GDaley@brantford.ca>
Cc: Tommara E. Mcmillan <TMcmillan@brantford.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Hello Murtaza,
Can you let me know specifically what you are looking for.
Will a statement of account showing the current level of tax arrears suffice?
Thanks,
Pat

Patrick Telfer
Manager of Revenue/Tax Collector
City of Brantford
519-759-4222 ext. 5483

From: Murtaza Tallat [<mailto:mtallat@ksvadvisory.com>]
Sent: Wednesday, October 27, 2021 12:05 PM
To: Geoff B. Daley; Patrick Telfer
Cc: Tommara E. Mcmillan; Mitch Vininsky; Noah Goldstein
Subject: RE: 155 Adams Boulevard - ppty tax arrears

CAUTION EXTERNAL EMAIL This email originated from outside of the City of Brantford email system. Do not click links or open attachments unless you recognize the sender and know the content is safe. If you are unsure, please contact the Service Desk at ext. 5555

Geoff, thank you for the introduction.

Pat, please see the attached copy of the receivership order dated October 1, 2021. A copy of the same, along with all other court materials in these proceedings, can be found on KSV's website, here: <https://www.ksvadvisory.com/insolvency-cases/case/mahal-venture-capital-inc>

I also request that you please include Mitch Vininsky and Noah Goldstein (both copied) of the Receiver's office on correspondence regarding this matter.

Thank you,



Murtaza Tallat
Manager

T 416.932.6031
M 647.640.4248
W www.ksvadvisory.com

From: Geoff B. Daley <GDaley@brantford.ca>
Sent: October 27, 2021 11:53 AM
To: Murtaza Tallat <mtallat@ksvadvisory.com>
Cc: Tommara E. Mcmillan <TMcmillan@brantford.ca>; Patrick Telfer <PTelfer@brantford.ca>
Subject: 155 Adams Boulevard - ppty tax arrears

Hello Mr. Tallat,

This e-mail is further to the recent exchange between the City, the City's outside counsel and Chris Burr regarding outstanding property taxes owing for the property bearing municipal address 155 Adams Boulevard, Brantford, Ontario.

By way of this e-mail I am introducing you to Mr. Pat Telfer, the City's Manager of revenue/tax collector. Mr. Telfer will be able to provide the information you requested regarding outstanding property taxes for this property.

If you could please provide Mr. Telfer with a copy of the receivership order confirming KSV's appointment as receiver in the Golden Miles proceedings we will be in a better position to provide the information you are seeking.

If you could please copy me on any correspondence regarding this matter please let me know.

Thanks

Geoffrey B. Daley
Legal Counsel and Head of Litigation
T: 519.759.4150, ext. 5150 | F: 519.751.4757

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Statement Of Account

Property Tax Office

58 Dalhousie Street

Brantford, ON N3T 2J2

Mailing address: P.O. Box 515, N3T 6L6

Phone: 519-759-4150 Fax: 519-770-1259

Statement Date	Account No.	Roll Number	Mortgage Policy No.
October 28, 2021	00167800	2906-030-007-07200-0000	

MAHAL VENTURE CAPITAL INC

6845 SECOND LINE W
MISSISSAUGA ON L5W 1M8

PENALTY & INTEREST CHARGES: On overdue taxes, a penalty of 1.25% will be added on the day of default of any instalment, plus 1.25% on the first day of each month thereafter until paid. Interest of 1.25% is charged on tax arrears and other charges, on the first of each month. Part payments will be credited first to outstanding interest and penalty charges, then the remainder to taxes and other charges added to taxes longest overdue. If you have submitted post-dated cheques, this statement is for your records. Payments after-hours may be deposited (cheques only) in the Drop-Box located at the doors at the top of the accessibility ramp at the corner of Queen St and Dalhousie St.

PROPERTY DESCRIPTION					
BRANTFORD CON 3 PT LOTS 38 AND 39 RP 2R6545 PARTS 1 AND 2 RP 2R4747 PART 1 RP 2R1332 PARTS 1 TO 3					
155 ADAMS BLVD					
	INTERIM	FINAL	SUPP/OMIT/ OTHER	CAP/CLAWBACK INCLUDED	TOTAL BILLED
2021 LEVY	\$29,091.92	\$22,651.02	\$0.00	\$0.00	\$51,742.94

2021 CURRENT YEAR	TAXES LEVIED	TAXES PAST DUE	PENALTY/ INTEREST	TOTAL OUTSTANDING
Interim Inst. 1. Feb 26, 21	\$14,546.92	\$14,546.92	\$1,454.72	\$16,001.64
Interim Inst. 2. Apr 28, 21	\$14,545.00	\$14,545.00	\$1,090.86	\$15,635.86
Final Inst. 1. Jun 30, 21	\$11,326.02	\$11,326.02	\$566.32	\$11,892.34
Final Inst. 2. Sep 08, 21	\$11,325.00	\$11,325.00	\$283.12	\$11,608.12
Supp/Omit/Other	\$0.00	\$0.00	\$0.00	\$0.00

PRIOR YEARS				
2020	\$58,183.84	\$58,183.84	\$9,618.59	\$67,802.43
2019	\$52,378.39	\$0.00	\$0.00	\$0.00
2018 & Prior	\$82,940.60	\$0.00	\$0.00	\$0.00

GRAND TOTAL OUTSTANDING	\$109,926.78	\$13,013.61	\$122,940.39
ON ACCOUNT CREDIT			\$0.00

This balance may be paid in person at City Hall, 58 Dalhousie St, or by mail at the mailing address above, or at most financial institutions. After-hours payments can be deposited in the drop-box a located at the top of the accessibility ramp at the corner of Queen St and Dalhousie St. Please make your cheque payable to the City of Brantford.

Please and return to our Office with your payment

REMITTANCE PORTION

PLEASE MAKE YOUR CHEQUE PAYABLE TO:

THE CITY OF BRANTFORD

ACCOUNT # 00167800	MORTGAGE POLICY NO. :
ROLL NUMBER: 2906-030-007-07200-0000	
ASSESSED OWNER(S):	MAHAL VENTURE CAPITAL INC
TOTAL AMOUNT OWING: \$122,940.39	
INCLUDES PENALTY CHARGES TO: Sunday, October 31, 2021	
AMOUNT PAID:	

P.O. Box 515, Brantford ON N3T 6L6
58 Dalhousie St
Phn: 519-759-4150 Fax: 519-770-1259

Please return remittance portion with payment. If a receipt is required, please return entire statement along with a self-addressed, stamped envelope. The top portion will be receipted and returned.

TAB 8

Court File No. CV-21-00664778-00CL

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

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION**

Respondents

**FACTUM OF THE RECEIVER
(Omit Tax Claims)**

Returnable June 4, 2024

May 22, 2024

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Chris Burr, LSO #55172H
Tel: 416-863-3261
Email: chris.burr@blakes.com

Daniel Loberto, LSO #79632Q
Tel: 416-863-2937
Email: daniel.loberto@blakes.com

Lawyers for the Receiver and Trustee

Court File No. CV-21-00664778-00CL

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

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION**

Respondents

PART I - OVERVIEW

1. This Factum is filed by KSV Restructuring Inc., (“**KSV**”) in its capacities as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Mahal Venture Capital Inc. (“**Mahal VC**”) and Golden Miles Food Corporation (“**Golden Miles**” and, together with Mahal VC, the “**Companies**”), and as licenced insolvency trustee of the Companies (in such capacity, the “**Trustee**”, and KSV collectively in its capacities as Receiver and Trustee, the “**Court Officer**”).

2. This Factum is filed in support of the Court Officer’s motion (the “**Motion**”) seeking an order (i) that the Receiver, KSV in its personal capacity, KSV in its capacity as Trustee, and Mahal VC are not, and shall not be, liable or otherwise obligated to pay 12175622 Canada Ltd. (the “**Purchaser**”) or the City of Brantford (the “**City**”) on account of the Omit Tax Claims (defined below) and (ii) authorizing the Receiver to distribute the Omit Tax Reserve (defined below) to Skymark Finance Corporation, acting by its receiver Alvarez & Marsal Canada Inc. (the “**Skymark Receiver**”), and KLN Holdings Inc. (“**KLN**”).

3. The question for the Court on this motion is who, as among the Court Officer, the Purchaser and the City, is properly liable for approximately \$1.09 million (plus interest) in property taxes that were retroactively assessed by the City against real property after the closing of a sale of that real property by the Receiver to the Purchaser.

4. If the Court Officer and/or the Mahal VC estate is not liable, it follows that the amounts reserved by the Receiver on account of the Omit Tax Claims should be distributed by the Receiver to the Skymark Receiver and KLN.

5. In the Court Officer's view, the Court Officer is not liable for the Omit Tax Claims. This position is informed by:

- (a) the plain language of the APA (defined below) between the Receiver and the Purchaser, pursuant to which the real property giving rise to the Omit Tax Claims was sold by the Receiver to the Purchaser, which clearly provides for the Omit Tax Claims to be "Assumed Liabilities" of the Purchaser;
- (b) the plain language of the Sale Approval Order (defined below) that approved the transaction contemplated by the APA, which clearly provides that any encumbrances securing the Omit Tax Claims were not vested out of the property currently owned by the Purchaser;
- (c) the agreement between the Receiver and the Purchaser to limit re-adjustments for any post-closing tax reassessments to 45 days;
- (d) the fact that the Purchaser was on notice of the possibility of the very reassessment that gave rise to the Omit Tax Claims occurring post-closing; and

(e) the Purchaser's behaviour following closing of the transaction, including in particular its decision to appeal the Omit Tax Claims (without notice to the Court Officer), and then withdraw that appeal.

6. The Receiver accordingly recommends that the Court grant the relief sought by the Court Officer.

PART II - FACTS

A. BACKGROUND ON THESE PROCEEDINGS

Receivership and Bankruptcy Proceedings

7. KSV was appointed Receiver of the Companies pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on October 1, 2021 (the "**Receivership Order**").¹ The resulting receivership proceedings are referred to herein as the "**Receivership Proceedings**".

8. On November 15, 2021, the Receiver filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended on behalf of the Companies pursuant to Paragraph 3(r) of the Receivership Order. KSV was appointed the Trustee of the Companies.²

Real Property Sale

9. On April 11, 2022, the Court granted an order in the Receivership Proceedings (the "**Sale Approval Order**") approving the sale of a non-operational flour mill (the "**Mill**") built by Golden Miles on real property owned by Mahal VC at 155 Adams Blvd., Brantford, Ontario (the "**Real**

¹ Fifth Report of the Receiver and Second Report of the Trustee, dated August 15, 2023 ("**Fifth Report**") at para 1.0(2).

² Fifth Report at para 1.0(3).

Property” and together with the Mill, the **“Property”**), to the Purchaser, pursuant to an agreement of purchase and sale dated March 18, 2022 (as amended by the Asset Purchase Agreement Amending Agreement dated April 7, 2022 (the **“Amending Agreement”**)³ the **“APA”**).⁴

10. The Purchaser is owned and controlled by Santokh Mahal, who is also the principal and owner of Mahal VC (the vendor of the Real Property, acting by the Receiver) and the party that attempted to develop the Property for several years.⁵

11. The sale transaction contemplated by the APA (the **“Transaction”**) closed on May 18, 2022. The aggregate net proceeds received were \$18.47 million (the **“Sale Proceeds”**).⁶

12. In connection with the closing of the Transaction, the Receiver’s counsel obtained tax certificates from the City (the **“Tax Certificates”**), which disclosed that a total of \$167,560 was due and owing in respect of property taxes, water arrears, interest and penalties on the Real Property as of the anticipated closing date of the Transaction (the **“Outstanding Closing Taxes”**).⁷

13. The Tax Certificates are explicit that, among other things, the taxes in the Tax Certificate do not include subsequent supplementary taxes that may be levied and added under the *Assessment Act* (Ontario) (the **“Assessment Act”**), and that supplementary tax bills for new buildings and additions/improvements to existing buildings may be issued.⁸

³ The Amending Agreement is attached to the Supplement to the Third Report to Court of KSV Restructuring Inc., dated April 8, 2022 (the **“Third Report”**), as Appendix “C”.

⁴ Fifth Report at para 1.0(5).

⁵ Third Report at para 4.0(1)(a).

⁶ Fifth Report at para 1.0(7).

⁷ Second Supplement to the Sixth Report to Court of KSV Restructuring Inc. and Second Supplement to the Third Report to Court of KSV Restructuring Inc., dated May 10, 2024 (the **“Second Supplement”**) at para 2.0(4)(a) and Appendix “B”.

⁸ Second Supplement at Appendix “B”.

14. Copies of the Tax Certificates were delivered to the Purchaser's counsel on April 28, 2022 and May 17, 2022.⁹

15. The Receiver paid the Outstanding Closing Taxes on the closing of the Transaction (adjusted to \$167,402 as of the closing date), and obtained confirmation from the City that such amounts had been paid in full.¹⁰

16. Also in connection with the closing of the Transaction, the Receiver provided the Purchaser with an undertaking to re-adjust all items on the statement of adjustments that was delivered on closing (which included municipal property tax), for a period of up to 45 days from the closing of the Transaction (the "**Receiver's Undertaking to Readjust**").¹¹ The Purchaser also provided an undertaking to re-adjust for up to 45 days.¹²

Omit Tax Claims

17. On February 24, 2023, over 9 months after the Transaction closed, counsel to the Purchaser notified the Court Officer that the City was seeking payment from the Purchaser of reassessed property tax on the Real Property, and provided the Court Officer with three "omit" tax bills for 2020, 2021 and 2022, totaling \$1,091,423 (such tax claims being the "**Omit Tax Claims**"). Each of the three omit tax bills are dated November 25, 2022 (approximately 6 months after the closing of the Transaction), but were not brought to the Court Officer's attention until February 24, 2023.¹³

⁹ Second Supplement at paras 2.0(4)(a) and 2.0(4)(c).

¹⁰ Second Supplement at para 2.0(4)(i) and Appendix "J".

¹¹ Second Supplement at para 2.0(4)(e) and Sixth Report to Court of KSV Restructuring Inc. and Third Report of KSV Restructuring Inc., dated March 26, 2024 (the "**Sixth Report**") at para 5.2(2)(c)(ii).

¹² Second Supplement at para 2.0(4)(g) and Appendix "G".

¹³ Fifth Report at para. 9.0(1).

18. The Court Officer understands that the Omit Tax Claims are based on a retroactive reassessment of the Real Property by the Municipal Property Assessment Corporation (“MPAC”), which had not been taxed at a rate that reflected the value of the construction of the Mill or the reassessment of the property designation triggered by the Mill.¹⁴

19. The Court Officer understands that the Purchaser appealed the Omit Tax Claim in March 2023, but withdrew the appeal before a hearing was scheduled.¹⁵ This appeal was brought without notice to the Court Officer, who learned about the appeal for the first time in the Telfer Affidavit, filed in response to the within motion.

20. In August 2023, the Receiver sought and obtained the Court’s authorization to reserve from the Sale Proceeds the amount of \$1,500,000, pending a final determination of the Omit Tax Claims (the “**Omit Tax Reserve**”).¹⁶

21. The Court Officer advised the Purchaser’s counsel on September 25, 2023 and October 18, 2023 that if the Purchaser believed that the Court Officer was liable for the Omit Tax Claims (which had been made by the City against the Purchaser), it should bring a motion in the Receivership Proceedings for an order directing the Receiver to pay the amounts claimed by the City.¹⁷ No such motion was ever brought by the Purchaser, and on March 27, 2024, the Court Officer brought the within motion, which was originally returnable on April 5, 2024.

¹⁴ Affidavit of Patrick Telfer, sworn May 2, 2024 (the “**Telfer Affidavit**”) at paras 4 and 5.

¹⁵ Telfer Affidavit at para 18.

¹⁶ Fifth Report at para 10.0(2)(c) and the Order of Mr. Justice Cavanagh, dated August 23, 2023, in the Receivership Proceedings.

¹⁷ Sixth Report at para 5.2(3).

Receivership of the Purchaser

22. On April 1, 2024, the Court Officer was advised by the City that an order appointing MNP Ltd. as receiver and manager of the Purchaser (in such capacity, the “**Purchaser Receiver**”) had been issued on January 18, 2024, and became effective on March 5, 2024.¹⁸ As the Purchaser Receiver only had a few days notice of the Court Officer’s motion with respect to the Omit Tax Claims, the motion was adjourned to June 4, 2024, on consent of the Court Officer, the Purchaser Receiver and the City.

PART III - ISSUES

23. This Factum addresses the following issues:

- (a) Is the Purchaser liable for the Omit Tax Claims?
- (b) Should this Court authorize the Receiver to distribute the Omit Tax Reserve to the creditors of Mahal VC having priority to such amounts?

24. For the reasons that follow, the Court Officer submits that each of the above questions should be answered by this Court in the affirmative.

PART IV - THE LAW AND DISCUSSION**A. LIABILITY FOR THE OMIT TAX CLAIMS**

25. Liability for the Omit Tax Claims was explicitly contemplated by the APA, the Receiver’s Undertaking to Readjust, the Tax Certificates and the Sale Approval Order, each of which are

¹⁸ Supplement to the Sixth Report of the Receiver and Supplement to the Third Report of the Trustee, dated April 3, 2024 (“**Supplement to the Sixth Report**”) at para 2.0(2).

consistent that in the event of a post-closing reassessment of municipal taxes, it would be the Purchaser, and not the Court Officer or the Mahal VC estate, that would be liable. The Purchaser's post-closing behaviour, including in particular its appeal of the Omit Tax Claims, is consistent with the Court Officer's position that it has no liability for the Omit Tax Claims.

1. The APA¹⁹

26. Liability for the Omit Tax Claims is explicitly provided for in the APA, and that liability clearly lies with the Purchaser. The Omit Tax Claims are "Assumed Liabilities" as defined in the APA, and are not excluded from the "Purchased Assets" by virtue of the definition of "Excluded Assets". The Purchaser accordingly agreed to take liability for the Omit Tax Claims by the clear language in the APA.

27. The APA provides at Section 2.2 that [emphasis added]:

2.2 At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities other than the Assumed Liabilities, except as required under Applicable Law.

28. The APA defines "Assumed Liabilities" to include: "all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date."

29. The Omit Tax Claims are clearly "relating to the Purchased Assets", given that they are tax liabilities assessed against the Real Property (a Purchased Asset) as a result of the construction of the Mill (a Purchased Asset), and they are clearly "arising on or after the Closing Date" of May

¹⁹ A complete copy of the APA can be found as Appendix "G" to the Sixth Report.

18, 2022, given that they were made in November 2022, over 6 months after closing. While the Omit Tax Claims are for tax liability for a pre-closing period, in the Court Officer's view there can be no dispute that they *arose* post-closing.

30. Neither are the Omit Tax Claims (nor any encumbrance that secures them) claims that were vested out of the Real Property. The APA provides at Section 2.1 that:

2.1 At the Closing Time, on and subject to the terms and conditions of this Agreement, the Sale Procedure and the Approval and Vesting Order, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the Debtors' and the Vendor's right, title and interest, if any, in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order.

31. "Purchased Assets" is defined as "collectively, those Assets of each of the Vendor or the Debtors as set out in Schedule 'D'". Schedule "D" of the APA provides that the "Purchased Assets" are made up of "all assets, undertakings and properties of the Debtors other than the Excluded Assets, including, without limitation, either Debtors' right, title and interest, if any, in" certain enumerated classes of assets.

32. "Excluded Assets" is defined in the Amending Agreement to mean "(i) all Excluded Tax Refunds, (ii) the Excluded Claims, and (iii) the 2020 Caterpillar 259D3 skidsteer loader bearing Serial #CAT0259DVCW906863". None of these excluded assets includes anything related to the Omit Tax Claims.

33. Finally, the APA defines "Permitted Encumbrances" to include [emphasis added]: "Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested".

34. The Omit Tax Claims, and any corresponding encumbrances securing them, were “not yet due or [were] not in arrears” as of the May 18, 2022 closing of the Transaction; indeed, the Omit Tax Claims were not even made until November 25, 2022, over 6 months after the closing date, and not communicated to the Court Officer until February 24, 2023, over 9 months after the closing date. The Omit Tax Claims (and any lower-case “e” encumbrances that secure them) are thus clearly captured by the “Permitted Encumbrances” as that term is used in the APA, and thus not vested out of the Real Property.

35. Accordingly, because the Omit Tax Claims are “Assumed Liabilities” that are not excluded by the definition of “Excluded Assets”, and because any encumbrances that secure the Omit Tax Claims are “Permitted Encumbrances”, the APA is clear that the Purchaser assumed liability for the Omit Tax Claims.

2. The Sale Approval Order²⁰

36. The terms of the Sale Approval Order are consistent with the terms of the APA, and are clear that any lien (statutory or otherwise) that secures the Omit Tax Claims is not vested off of the Real Property by operation of the Sale Approval Order.

37. Paragraph 4 of the Sale Approval Order provides [emphasis added]:

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Receiver’s Certificate**”), all of the Receiver’s and the Companies’ right, title and interest in and to the Purchased Assets described in the APA 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, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed

²⁰ A complete copy of the APA can be found as Appendix “H” to the Sixth Report.

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 McEwen dated October 1, 2021; (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; and (iii) those Claims listed on Schedule “B” 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 “C”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

38. Schedule “C” of the Sale Approval Order explicitly includes (emphasis added):

(a) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case **are not yet due or are not in arrears** or, if due and in arrears, the validity of which is being contested.

39. “Taxes” are defined in the APA to include “property taxes” and “other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties”.

40. Finally, Paragraph 6 of the Sale Approval Order provides:

6. **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.

41. As discussed in paragraph 34, above, it bears repeating that the Omit Tax Claims, and any corresponding “Encumbrances” securing them, were “not yet due or [were] not in arrears” as of the May 18, 2022 closing of the Transaction. Any lower-case “e” encumbrances that secure the Omit Tax Claims are accordingly clearly captured by the “permitted encumbrances” as that term

is used in the Sale Approval Order, and therefore were not vested out of the Real Property. For the same reason, the Omit Tax Claims cannot and do not attach to the Sale Proceeds pursuant to paragraph 6 of the Sale Approval Order.

42. The Sale Approval Order was required to be “in form and content acceptable to the Parties”, pursuant to the APA definition of “Approval and Vesting Order” (which is the APA term for the Sale Approval Order). Thus not only are the terms of the Sale Approval Order binding orders of the Court, which are well beyond any appeal period, but they were prospectively agreed to by the Purchaser.

43. By virtue of the plain language of the Sale Approval Order, which was agreed to by the Purchaser, the City’s claim for the Omit Tax Claims do not attach to the Sale Proceeds.

3. Receiver’s Undertaking to Readjust²¹

44. The APA does not explicitly require the Receiver to pay outstanding municipal property taxes on the Real Property, however it provides at Section 7.2(1) that the Receiver would deliver a statement of adjustments “reflecting customary adjustments for a transaction similar to the transaction contemplated by this agreement (a “**Statement of Adjustments**”)”.²²

²¹ A complete copy of the Receiver’s Undertaking to Readjust can be found as Appendix “F” to the Sixth Report.

²² Second Supplement at para 2.0(4)(c) and Appendix “D”.

45. The Receiver also gave the Purchaser an undertaking to pay realty tax arrears, water arrears, penalties and interest.²³ As described above, the Receiver paid the \$167,402 of outstanding property tax and utilities in arrears on closing.²⁴

46. Section 7.2(2) of the APA requires the Receiver to provide the Receiver's Undertaking to Readjust, which was an undertaking by the Receiver to "readjust all items on the Statement of Adjustments within 45 days from the Closing Date, upon written request by the Purchaser". Section 7.3(4) of the APA requires the Purchaser to deliver a corresponding undertaking to readjust in favour of the Receiver, on the same terms as the Receiver's Undertaking to Readjust, which the Purchaser in fact provided.

47. The undertakings to readjust were the mechanism by which the parties agreed to allocate the risk of any changes to the amounts in the Statement of Adjustments. This was a negotiated business term of the Transaction, and reflects the parties' agreement regarding how the possibility of a post-closing reassessment of property taxes would be addressed: if there was a property tax reassessment within 45 days of closing, the Receiver would be liable to pay any increased taxes, and to recover any reduced taxes. The risk was allocated, and agreed to by the parties: a post-closing reassessment could be beneficial or detrimental to each party, depending on whether it was an increase or a decrease in assessed taxes. That was the business deal.

48. The length of the undertakings to readjust was also a negotiated term of the Transaction. The parties agreed that for 45 days post-closing, the risk of a reassessment that increased pre-

²³ Second Supplement at para 2.0(4)(e) and Appendix "F".

²⁴ Second Supplement at para 2.0(4)(i) and Appendix "J".

closing taxes would be the Receiver's risk. The parties further agreed that any reassessment that increased pre-closing taxes occurring after 45 days post-closing would be the Purchaser's risk.

49. The undertakings to readjust were therefore mutually beneficial to the Receiver and the Purchaser, providing finality on the Transaction, and limiting the look-back period during which the Receiver may be required to use Sale Proceeds to pay additional taxes. In the context of a receivership, where the proceeds of a transaction will inevitably be distributed to creditors, this finality is critical. In the present case, were it not for the considerably complicated priority issues related to the real property charges and the motion by Mr. Mahal for declarations regarding his entitlement to Sale Proceeds of the personal property sold in the Transaction,²⁵ each of which delayed distributions, it is entirely possible that the Receiver could have distributed all of the Sale Proceeds before the Omit Tax Claims were even made and obtained its discharge.

4. Tax Certificates and Notice of Reassessment

50. The Purchaser was on notice that a reassessment of precisely the type that resulted in the Omit Tax Claims was possible.

51. The Tax Certificates are explicit, among other things, that [emphasis added].²⁶

- (a) The Tax Levy to date does not include subsequent supplementary taxes that may be levied and added under Section 33 or 34 of the Assessment Act, R.S.O. 1990, c.A.31, as amended, nor does it include adjustments that may be made under

²⁵ See the Fifth Report for an explanation of the complex Real Property priorities analysis and Mr. Mahal's security claim.

²⁶ Complete copies of the Tax Certificates can be found as Appendix "B" to the Second Supplement.

Section 357, 358, and 359 of the Municipal Act, and Section 39.1 and 40 of the Assessment Act; and

- (b) Supplementary tax bills for new buildings and additions/improvements to existing buildings, etc., have various due dates depending on when the billing is issued.

They are normally payable in two installments within 21 days notice.

52. The Receiver understands that the reassessment that gives rise to the Omit Tax Claims was done pursuant to Section 33 of the *Assessment Act* (such statutory section being specifically referred to in the Tax Certificates), which provides, in relevant part:

33 (1) The following rules apply if land liable to assessment has been in whole or in part omitted from the tax roll for the current year or for all or part of either or both of the last two preceding years, and no taxes have been levied for the assessment omitted:

1. The assessment corporation shall make any assessment necessary to correct the omission.
2. If the land is located in a municipality, the clerk of the municipality shall alter the tax roll upon receiving notice of the change, and the municipality shall levy and collect the taxes that would have been payable if the assessment had not been omitted.
3. If the land is located in non-municipal territory, the Minister shall alter the tax roll upon receiving notice of the change, and shall collect the taxes that would have been payable if the assessment had not been omitted.

53. The Telfer Affidavit includes correspondence between the City and the Receiver, wherein the City advised the Receiver in October 2021 that MPAC had been requested in “the Spring” to reassess the Real Property, and that the City had followed up with MPAC, reiterating the request to reassess.²⁷ The Receiver does not dispute that it was so advised, and the Receiver does not claim that this correspondence with the City was provided to the Purchaser.

²⁷ Telfer Affidavit Exhibit “A”.

54. However, in the Receiver's view, it was neither necessary nor prudent to provide the Purchaser with the correspondence from the City, because exactly the same information is explicitly set out in the Tax Certificates: as excerpted in paragraph 51, above, the Tax Certificates are clear that they do not include any possible future reassessment under s. 33 of the *Assessment Act* (which is the statutory provision under which the reassessment leading to the Omit Tax Claims was made), and specifically advised that supplementary taxes for new buildings or improvements were possible.

55. The advice to the Receiver from the City was that a reassessment was requested by the City in the spring of 2021 based on the assessment of the Real Property as "Industrial Vacant Land (IX)". The Receiver understands that the reassessment would have been motivated by the construction of the Mill that was started by Mr. Mahal in 2016²⁸ and partially completed in 2019 or 2020. The ultimate Omit Tax Claim was not made until November 2022 – approximately 17 months after the reassessment was requested by the City.

56. Accordingly, the information provided to the Receiver about the reassessment did not provide materially more detail or certainty than what was included in the Tax Certificates, such that the correspondence ought to have been disclosed to any bidder, or the Purchaser. Moreover, the Purchaser is owned and controlled by Mr. Mahal, the principal of Mahal VC (the former owner of the Real Property) who was instrumental in the construction of the Mill in the first place, and

²⁸ The CCDC 5B Construction Management Contract for Services and Construction between Vicano and Golden Miles, which is attached to the Fifth Report as Appendix "L" is dated May 18, 2016. This contract was for the construction of the Mill, and is being used by the Receiver as an approximate indicator for when the construction process commenced.

who had first-hand knowledge of the Real Property's assessment status and extensive dealings with the City.

57. The possibility of a reassessment was therefore disclosed to the Purchaser in the Tax Certificates, and the Purchaser agreed to a 45 day reassessment period post-closing. The Purchaser accordingly accepted the risk of a reassessment occurring more than 45 days post-closing.

58. Moreover, the APA is explicit that only very limited representations and warranties were given by the Receiver in connection with the Transaction as is commonly the case in an insolvency situation, and certainly no representations or warranties were given by the Receiver with respect to the assessment of the Real Property for tax purposes.

59. Section 5.3 of the APA contains extensive "as is, where is" provisions regarding the Purchased Assets and Assumed Liabilities, including in particular subsection 5.3(2), which provides [emphasis added]:

5.3 As is, Where is. Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that: ... (2) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets, the Business and the Assumed Liabilities as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement.

60. The Receiver relied on this representation from the Purchaser (who it bears repeating was non-arms length with Mahal VC, the owner of the Real Property in the hands of the Receiver) in connection with accepting the Purchaser's bid and closing the Transaction.

5. Purchaser's Post-Closing Appeal of Omit Tax Claims

61. The Court Officer understands, based on the Telfer Affidavit, that the Purchaser appealed the Omit Tax Claims on or about March 5, 2023 (well before the appointment of the Purchaser

Receiver), with the reason for appeal cited as “assessment too high”. The appeal record indicates that the appeal was brought under *Assessment Act* Sections 33 (cited above and referred to in the Tax Certificates) and 40 (which provides for appeals to the Assessment Review Board).²⁹

62. The Court Officer notes that subsection 40(9) of the *Assessment Act* provides that:

40(9) Where the appeal concerns the assessment of another person, (a) the notice of appeal shall state a name and address where notices can be given to the person; and (b) the appellant shall deliver or mail a copy of the notice of appeal to the person within the time limited by subsection (6), (7) or (8), as the case may be.

At no point was the Court Officer provided with any copies of the Purchaser’s notice of appeal.

63. The Court Officer further understands that the appeal was withdrawn by the Purchaser on or about July, 2023, prior to a hearing of the appeal being scheduled.³⁰

64. The Purchaser’s decision to appeal the Omit Tax Claims is entirely inconsistent with the Purchaser’s position that the Court Officer or the Mahal VC estate is liable for the Omit Tax Claims. The Purchaser cannot at the same time appeal the Omit Tax Claims, fail to comply with subsection 40(9) of the *Assessment Act*, withdraw that appeal before it is adjudicated, and take the position that the liability for the Omit Tax Claims lies with the Receiver.

6. Conclusion Regarding Liability for Omit Tax Claims

65. The Court Officer is not liable for the Omit Tax Claims. The Omit Tax Claims are clearly “Assumed Liabilities” under the APA, for which the Purchaser is liable. Both the APA and the Sale Approval Order are explicit that any encumbrances securing the Omit Tax Claims are “permitted encumbrances”, which are not vested out of the Real Property. The risk of the Omit

²⁹ Telfer Affidavit Exhibit “K”.

³⁰ Telfer Affidavit at para 18.

Tax Claims arising post-closing was clearly contemplated by the parties, and both parties agreed to a 45 day readjustment period as a means of allocating such risk. The Purchaser was on notice of the possibility of the very reassessment that gave rise to the Omit Tax Claims, and the Purchaser's decision to appeal the Omit Tax Claims (without notice to the Court Officer) is both clearly consistent with the Court Officer's position on this issue, and dispositive of the Purchaser's allegation that the Court Officer or the Mahal VC estate is liable.

B. Proposed Distributions

66. Should this Court conclude that the Court Officer and the Mahal VC estate are not liable for the Omit Tax Claims, then the Omit Tax Reserve should be distributed to the secured creditors of Mahal VC with an entitlement to such reserve. The Receiver has determined that the Skymark Receiver is entitled to 82.82% of the Omit Tax Reserve, and KLN is entitled to 17.18%, for the reasons set out in the Sixth Report.³¹

67. Orders authorizing a receiver to make an interim distribution to stakeholders are commonly granted in insolvency proceedings, and the Court reviews any stakeholder prejudice, validity and enforceability of the relevant security, interest savings, and liquidity of the debtor after making the distribution as considerations in determining whether to exercise its discretion to make such an order.³²

³¹ See Sixth Report at para 6.0(9) and footnote 7 thereof.

³² See *Re Abitibiwater Inc.*, 2009 QCCS 6461, at para. 75; the [Ancillary Relief Order of Justice Steele, dated July 19, 2022](#), in the Receivership Proceeding of 2244039 Ontario Inc. and 1526400 Ontario Inc; the [Approval and Vesting Order of Justice Cavanagh, dated December 20, 2022](#) in the Receivership Proceeding of Brant Instore Corporation; and [the Interim Distribution Order of Justice Penny, dated March 3, 2022](#) in the Receivership Proceeding of 33 Yorkville residences and 33 Yorkville Residences Limited Partnership.

68. The proposed interim distribution of the Omit Tax Reserve to the Skymark Receiver and KLN does not give rise to any prejudice, pursuant to the priority analysis conducted by the Receiver and set out in detail in the Fifth Report.

69. The factors contemplated in *AbitibiBowater, (Re)* are satisfied in this case. The Receiver has reviewed each of the 2017 Skymark Charge and the associated transfers, and has confirmed that each registered interest is valid, enforceable, and properly perfected, as applicable.³³

PART V - CONCLUSION

70. For the reasons set out above, the Receiver respectfully requests that this Court grant the relief sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of May, 2024.



Chris Burr
Lawyer for the Court Officer

³³ Fifth Report at paras 6.1(1)(b) and (d).

SCHEDULE “A”**LIST OF AUTHORITIES**

<u>Case</u>	
1.	<u>Re Abitibiwater Inc., 2009 QCCS 6461</u>
2.	<u>Receivership Proceeding of 2244039 Ontario Inc. (Ancillary Relief Order of Justice Steele, dated July 19, 2022)</u>
3.	<u>Receivership Proceeding of Brant Instore Corporation (Approval and Vesting Order of Justice Cavanagh, dated December 20, 2022)</u>
4.	<u>Receivership Proceeding of 33 Yorkville residences and 33 Yorkville Residences Limited Partnership (Interim Distribution Order of Justice Penny, dated March 3, 2022)</u>

SCHEDULE “B”**TEXT OF RELEVANT STATUTES AND REGULATIONS****Assessment Act, R.S.O. 1990, c.A.31****Change re land omitted from tax roll**

33 (1) The following rules apply if land liable to assessment has been in whole or in part omitted from the tax roll for the current year or for all or part of either or both of the last two preceding years, and no taxes have been levied for the assessment omitted:

1. The assessment corporation shall make any assessment necessary to correct the omission.
2. If the land is located in a municipality, the clerk of the municipality shall alter the tax roll upon receiving notice of the change, and the municipality shall levy and collect the taxes that would have been payable if the assessment had not been omitted.
3. If the land is located in non-municipal territory, the Minister shall alter the tax roll upon receiving notice of the change, and shall collect the taxes that would have been payable if the assessment had not been omitted.

(1.1) Repealed: 2020, c. 36, Sched. 3, s. 6 (1).

Definition

(2) For the purposes of this section,

“omitted” includes the invalidation or setting aside of an assessment by any court or assessment tribunal on any ground except that the land is not liable to taxation. R.S.O. 1990, c. A.31, s. 33 (2).

Change re incorrect exemption from tax

(3) The following rules apply if land liable to taxation has been entered on the tax roll for the current year or for all or part of either or both of the last two preceding years as exempt from taxation, and no taxes have been levied on that land:

1. The assessment corporation shall make any assessment necessary to correct the omission. However, no change shall be made if a court or tribunal has decided that the land is not liable to taxation.
2. If the land is in a municipality, the clerk of the municipality shall alter the tax roll upon receiving notice of the change, and the municipality shall levy and collect the taxes that would have been payable if the land had been entered in the tax roll as being liable to taxation.
3. If the land is in non-municipal territory, the Minister shall alter the tax roll upon receiving notice of the change, and shall collect the taxes that would have been payable if the land had been entered in the tax roll as being liable to taxation.

Prescribed exceptions

(3.1) The Minister may make regulations providing that subsection (1) or (3) does not apply with respect to specified land during the period and in the circumstances set out in the regulations.

Managed forests, conservation land

(4) Subsection (5) applies with respect to,

- (a) land in the managed forests property class;
- (b) land that is conservation land for the purposes of paragraph 25 of subsection 3 (1).
- (c) Repealed: 2005, c. 28, Sched. A, s. 3.

Reassessment re managed forests, conservation land

(5) The following rules apply if land described in clause (4) (a) or (b) ceases to be described by any of those clauses:

1. The assessment corporation shall make any change to the assessment and classification required as a result. However, any change to the assessment and classification shall not affect a taxation year that ends more than four years before the assessment and classification is made.
2. If the land is in a municipality, the clerk of the municipality shall alter the tax roll upon receiving notice of the change, and the municipality shall levy and collect the taxes payable for the years affected by the change.
3. If the land is in non-municipal territory, the Minister shall alter the tax roll upon receiving notice of the change, and shall collect the taxes payable for the years affected by the change.

Changes to next assessment roll

(6) If the assessment corporation makes an assessment or classification under this section, the appropriate changes shall be made on the assessment roll for the next year, even if the day as of which land is valued for the next year is the same as for the current year.

...

Appeal to Assessment Review Board

40 (1) Any person, including a municipality, a school board or, in the case of land in non-municipal territory, the Minister, may appeal in writing to the Assessment Review Board,

- (a) on the basis that,
 - (i) the current value of the person's land or another person's land is incorrect,
 - (ii) the person or another person was wrongly placed on or omitted from the assessment roll,
 - (iii) the person or another person was wrongly placed on or omitted from the roll in respect of school support,

- (iv) the classification of the person's land or another person's land is incorrect, or
 - (v) for land, portions of which are in different classes of real property, the determination of the share of the value of the land that is attributable to each class is incorrect; or
- (b) on such other basis as the Minister may prescribe.

Appeal requirements, fee

(2) A notice of appeal shall be delivered or mailed to the Assessment Review Board on or before the applicable deadline under this section, shall state a name and address where notices can be given to the appellant and shall be accompanied by any fee required by the Board.

Precondition of appeal

(3) If a property is in the residential, farm or managed forests property class, or in such other circumstances as the Minister may prescribe, no appeal may be brought to the Assessment Review Board under subsection (1) by a person who is entitled to make a request for reconsideration under section 39.1 in respect of the property, if the person has not made the request within the time required under that section.

Same

(3.1) For 2017 and subsequent taxation years, if a person has made a request for reconsideration in respect of a property under section 39.1 within the time required under section 39.1, whether or not the person is required to do so as a precondition of appeal under subsection (3), no appeal may be brought to the Assessment Review Board under subsection (1) unless either of the following circumstances exist:

1. The person has received a notice of reconsideration under subsection 39.1 (7) or (8).
2. The person has not received a notice of reconsideration under subsection 39.1 (7) or (8) and the deadline by which it should have been mailed under the applicable subsection has passed.

Extenuating circumstances

(4) If, in the Board's opinion, there are extenuating circumstances explaining why a request for reconsideration in respect of a property was not made within the time required under section 39.1 by a person who was required to do so as a precondition of appeal under subsection (3), the Board may, on an application by the person during the taxation year, extend the deadline for making a request under that section.

Last day for appealing, if request made under s. 39.1

(5) For 2017 and subsequent taxation years, if a person has made a request for reconsideration in respect of a property under section 39.1, whether or not the person is required to do so as a precondition of appeal under subsection (3), the last day for the person to appeal for a taxation year is as follows:

1. If the assessment corporation has mailed a notice of reconsideration required under subsection 39.1 (7) or (8), 90 days after the issuance date printed on the notice mailed by the assessment corporation.

2. If the assessment corporation has not mailed a notice of reconsideration within the time required under subsection 39.1 (7) or (8), 90 days after the notice should have been mailed by the corporation under those subsections.

Last day for appealing, 2015 and 2016 taxation years

(5.1) For the 2015 and 2016 taxation years, if a person has made a request for reconsideration in respect of a property under section 39.1, whether or not the person is required to do so as a precondition of appeal under subsection (3), the last day for the person to appeal for a taxation year is 90 days after the notice by the assessment corporation under subsection 39.1 (7.1) or (8) has been mailed.

Last day for appealing, if precondition under subs. (3) does not apply

(6) If a person has not made a request for reconsideration in respect of a property under section 39.1 and is not required to do so as a precondition of appeal under subsection (3), the last day for the person to appeal for a taxation year is March 31 of the taxation year.

Exception, if time for returning roll is extended

(7) Despite subsection (6), if the assessment corporation extends the time for returning the assessment roll for a taxation year after 2016, the last day for appealing in respect of a property for a person who has not made a request for reconsideration in respect of the property under section 39.1 and is not required to do so as a precondition of appeal under subsection (3) is 120 days after the return of the assessment roll.

Same, 2016 taxation year

(7.1) Despite subsection (6), if the assessment corporation extends the time for returning the assessment roll for the 2016 taxation year, the last day for appealing in respect of a property for a person who has not made a request for reconsideration in respect of the property under section 39.1 and is not required to do so as a precondition of appeal under subsection (3) is 90 days after the return of the assessment roll or March 31 of the taxation year, whichever is later.

Omitted or supplementary assessment

(8) If a notice of assessment has been mailed under subsection 35 (1) for a property, the last day for appealing for a taxation year after 2016 for a person who has not made a request for reconsideration in respect of the property under section 39.1 and is not required to do so as a precondition of appeal under subsection (3) is 120 days after the issuance date printed on the notice.

Same, 2015 and 2016 taxation years

(8.1) If a notice of assessment has been mailed under subsection 35 (1) for a property, the last day for appealing for the 2015 or 2016 taxation year for a person who has not made a request for reconsideration in respect of the property under section 39.1 and is not required to do so as a precondition of appeal under subsection (3) is 90 days after the notice is mailed or March 31 of the taxation year, whichever is later.

Where appeal concerns another person

(9) Where the appeal concerns the assessment of another person,

(a) the notice of appeal shall state a name and address where notices can be given to the person; and

(b) the appellant shall deliver or mail a copy of the notice of appeal to the person within the time limited by subsection (6), (7) or (8), as the case may be.

Copy to assessment corporation

(10) When the Assessment Review Board receives a notice of appeal, it shall forthwith transmit a copy to the assessment corporation.

Parties

(11) The following persons are parties to an appeal:

1. The assessment corporation.
2. All persons appealing and all persons whose assessment is the subject of the appeal.
3. The municipality in which the land is located or, if the land is located in non-municipal territory, the Minister.

(12) Repealed: 2008, c. 19, Sched. A, s. 8 (2).

Disclosure

(13) The Minister may make regulations governing the disclosure of information by parties to an appeal.

Adding party

(14) If, before or during the hearing, it appears that another person should be a party to the appeal, the Board shall add the person as a party; if the hearing has already begun, the Board shall adjourn it if necessary and give the person notice of the hearing.

Closing statement

(15) At any hearing, the person or persons whose assessment is the subject of the appeal shall be given the opportunity to make a closing statement after all other parties have made their submissions.

Time for determination of school support

(16) Liability in respect of public or separate school support shall be determined in accordance with the circumstances existing at the time the appeal was brought.

Burden of proof

(17) For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation.

Same, non-co-operation

(18) Despite subsection (17), the burden of proof as to the correctness of the current value of the land rests with the appellant where he or she fails or refuses,

- (a) to give the assessment corporation reasonable opportunity to inspect the property under section 10; or
- (b) to comply with a request for information and documentation under section 11.

Board to make determination

(19) After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

Alteration of assessment roll, municipality

(20) If the land is located in a municipality, the Board shall forward its decision to the clerk of the municipality and the clerk shall forthwith,

- (a) alter the assessment roll in accordance with the decisions of the Board from which no further appeal is taken;
- (b) indicate on the roll that the alteration has been made; and
- (c) complete the roll by totalling the amounts of the assessments in the roll and inserting the total.

Same, non-municipal territory

(21) If the land is located in non-municipal territory, the Board shall forward its decision to the Minister and the Minister shall alter the assessment roll in accordance with the decisions of the Board from which no further appeal is taken, indicate on the roll that the alteration has been made and complete the roll by totalling the amounts of the assessments in the roll and inserting the total.

Power to determine law and fact

(22) The Assessment Review Board, as to all matters within its jurisdiction under this section, has authority to hear and determine all questions of law or of fact and a decision of the Board under this section is final and binding unless it is appealed under section 43.1.

Rights of way

(23) With respect to land referred to in subsection 3 (4) or (5), the only matter that may form the basis of an appeal to the Assessment Review Board under this section is the correctness of the number of acres or other measure showing the extent of the land.

Deemed appeals, 2006, etc.

- (24) If an appeal relates to the 2006 taxation year, the appellant shall be deemed to have brought the same appeal,
- (a) in relation to assessments under sections 33 and 34 for the 2006 taxation year;
 - (b) in relation to the assessment, including assessments under sections 33 and 34, for the 2007 taxation year if the 2006 appeal is not finally disposed of before the last day for appealing with respect to the 2007 taxation year; and

(c) in relation to the assessment, including assessments under sections 33 and 34, for the 2008 taxation year if the 2006 appeal is not finally disposed of before March 31, 2008 or, if an assessment has been made under section 33 or 34, before the 90th day after the notice of assessment was mailed.

Deemed appeals, 2007, etc.

(25) If an appeal relates to the 2007 taxation year and subsection (24) does not apply, the appellant shall be deemed to have brought the same appeal,

(a) in relation to assessments under sections 33 and 34 for the 2007 taxation year; and

(b) in relation to the assessment, including assessments under sections 33 and 34, for the 2008 taxation year if the 2007 appeal is not finally disposed of before March 31, 2008 or, if an assessment has been made under section 33 or 34, before the 90th day after the notice of assessment was mailed.

Deemed appeals, 2009 and subsequent years

(26) For 2009 and subsequent taxation years, an appellant shall be deemed to have brought the same appeal in respect of a property,

(a) in relation to the assessments under sections 32, 33 and 34 for the year; and

(b) in relation to the assessment, including assessments under sections 32, 33 and 34, for a subsequent taxation year to which the same general reassessment applies, if the appeal is not finally disposed of before March 31 of the subsequent taxation year or, if an assessment has been made under section 32, 33 or 34, before the 90th day after the notice of assessment was mailed.

Deemed appeals, notice requirement

(27) If the appeal concerns the assessment of another person, the appellant is required to comply with subsection (9) only at the time of bringing the original appeal, not each time the appeal is deemed to be brought again.

Change of ownership

(28) For the purposes of subsections (24), (25) and (26), if an appeal is brought in respect of a property, the appellant is the owner of the property and there is a change of ownership before the appeal for the year is finally disposed of, the reference to the appellant in the subsection shall be deemed to be a reference to the owner of the property at the relevant time.

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM OF THE RECEIVER & TRUSTEE
(Omit Tax Claims)

Returnable June 4, 2024

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Lawyers for the Receiver and Trustee

TAB 9

Appendix “G”

**KSV RESTRUCTURING INC., in its capacities as Court-appointed receiver and manager,
and trustee in bankruptcy of MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION, and not in its personal or corporate capacity**

- and -

12175622 CANADA LTD.

ASSET PURCHASE AGREEMENT

DATED AS OF March 18, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of March 18, 2022 is made by and between:

KSV RESTRUCTURING INC. (“KSV”), in its capacities as Court-appointed receiver and manager and trustee in bankruptcy of MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD CORPORATION, and not in its personal or corporate capacity

(collectively, the “**Vendor**”)

- and -

12175622 Canada Ltd.

(the “**Purchaser**”)

RECITALS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 1, 2021 (as may be amended from time to time, the “**Appointment Order**”), KSV was appointed as receiver and manager (the “**Receiver**”) of all assets, undertakings and properties of Golden Miles Food Corporation (“**Golden Miles**”) and Mahal Venture Capital Inc. (“**Mahal VC**”, together with Golden Miles, the “**Debtors**”) owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd, Brantford, Ontario (the “**Mill**”), including all proceeds thereof, pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and the *Courts of Justice Act* (Ontario) in proceedings bearing Court File No. CV-17-11710-00CL (the “**Receivership Proceedings**”).
- B. On November 15, 2021, the Receiver filed assignments in bankruptcy on behalf of the Debtors under the BIA (collectively, the “**Bankruptcy Proceedings**”), and was appointed as trustee in bankruptcy of the Debtors (in such capacity, the “**Trustee**”).
- C. The Debtors are “related persons”, as that term is defined in the BIA. Mahal VC owns the land and improvements comprising the Mill, which is substantially constructed but not yet operational. Golden Miles has purchased and is storing or has installed certain milling equipment at the Mill. For the purposes of this Agreement, Mahal VC’s ownership and maintenance of the Mill, and Golden Miles anticipated flour milling business intended to take place at the Mill are referred to collectively as “the **Business**”.
- D. On November 22, 2021, the Court approved a sale process (the “**Sale Procedure**”), pursuant to which the Receiver is authorized to market and sell all of the Property (as defined in the Appointment Order), which comprises the Debtors’ real and personal property located at the Mill and used or intended to be used in connection with the Business.
- E. The Vendor desires to sell, transfer and assign to the Purchaser, and the Purchaser desires to acquire and assume from the Vendor, all of the right, title and interest of the Vendor and the Debtors, if any, in and to the Purchased

Assets, on the terms and subject to the conditions contained in this Agreement.

- F. The transaction contemplated by this Agreement is subject to the approval of the Court and will be consummated only pursuant to the Approval and Vesting Order to be entered by the Court.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, in addition to the terms defined in the preamble and recitals, the following terms have the following meanings:

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, order, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity and by or before a Governmental Authority.

“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. A Person shall be deemed to **“control”** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **“controlled”** shall have a similar meaning.

“Agreement” means this Asset Purchase Agreement, including the preamble and the Recitals, and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, (i) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (ii) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (i) and (ii), **“Law”**), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Approval and Vesting Order” means an order of the Court issued in the Receivership Proceedings and the Bankruptcy Proceedings approving the transactions contemplated by this Agreement and vesting in the Purchaser all of the Vendor’s and the Debtors’ right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances (explicitly including the Deleted Encumbrances as a schedule to the order, but not including the Permitted Encumbrances), in form and content acceptable to the Parties, each acting reasonably.

“Assigned Contracts” means, collectively, the Critical Contracts, the Personal Property Leases and the other Contracts listed on Schedule “A”.

“Assignment and Assumption Agreement” means an assignment and assumption agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Vendor’s and the Debtors’ rights, benefits and interests in, to and under the Assigned Contracts and the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Assigned Contracts, and the Permitted Encumbrances.

“Assignment Order” means an order of the Court in form and substance satisfactory to the Parties, each acting reasonably, assigning to the Purchaser the Vendor’s and the Debtors’ right, benefit and interest in and to any of the Critical Contracts for which any necessary consent to assign has not been obtained, in form and content acceptable to the Parties, acting reasonably.

“Assumed Liabilities” means the following Liabilities of each of the Debtors:

- (a) all Liabilities under the Assigned Contracts and Permits and Licences (in each case to the extent such Assigned Contract or Permit and Licence is effectively assigned to the Purchaser);
- (b) all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date;
- (c) all Liabilities on account of the trade accounts, payables and other current accounts payable, in each case incurred or accrued by any of the Debtors on or after the Closing Date in the ordinary course of business and Related to the Business; and
- (d) all Environmental Claims and all Environmental Liabilities.

“Books and Records” means the books, records, files, papers, books of account and other financial data of the Debtors which are solely Related to the Business or related to the Purchased Assets, including drawings, engineering information, manuals and Data, sales and advertising materials, sales and purchase correspondence, trade association files, research and development records, lists of present and former customers and suppliers, marketing lists and marketing consent records, personnel, employment and other records, and all records, Data and information stored electronically, digitally or on computer-related or any other media.

“Business Day” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.

“Cash Purchase Price” has the meaning set out in Section 3.1(1).

“Cash Reserve” has the meaning set out in Section 3.3.

“Casualty” has the meaning set out in Section 6.3.

“Closing” means the completion of the purchase and sale of the Vendor’s and the Debtors’ right, title and interest in and to the Purchased Assets and the assignment and

assumption of the Assumed Liabilities by the Purchaser in accordance with the provisions of this Agreement.

“Closing Date” means the date on which Closing occurs, which date shall be the Target Closing Date or such other date as may be agreed to in writing by the Parties.

“Closing Time” means the time of day on the Closing Date when Closing occurs.

“Conditions Certificate” has the meaning set out in Section 8.3.

“Contracts” means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) to which either of the Vendor or the Debtors are a party or by which any of the Vendor or the Debtors or any of the Purchased Assets are bound or under which the Vendor or the Debtors have rights, including any Personal Property Leases.

“Critical Contracts” means those Contracts that are, in the opinion of the Purchaser, acting reasonably, necessary and critical to the operation of the Business and the Purchased Assets as a going concern after the Closing Date as listed and specified as “Critical Contracts” on Schedule “A”.

“Cure Costs” means (i) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Debtors’ monetary defaults existing as at the Closing Date under the applicable Critical Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to the Critical Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Debtors to the Purchaser (which amount shall be set out on the form of contractual consent agreed to by the Purchaser and the counterparty to such Assigned Contract).

“Damages” means any loss, cost, Liability, claim, interest, fine, penalty, assessment, Taxes, damages available at Law or in equity (including incidental, consequential, special, aggravated, exemplary or punitive damages unless paid to a third party), expense (including consultant’s and expert’s fees and expenses and reasonable costs, fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation, defence or settlement) or diminution in value.

“Data” means any information or data collected or received by, processed by, or output from software (including reports, analytics, and alerts), and any other information or data Related to the Business, including information and data contained in any databases.

“Deposit” has the meaning set forth in Section 3.2(1).

“Deleted Encumbrances” means the Encumbrances listed in Schedule “E” hereof.

“Encumbrances” means all claims, Liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, floating charges,

mortgages, pledges, assignments, conditional sales, warrants, adverse claims, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

“Environmental Claim” means any Action, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom whether incurred or arising before or after Closing by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of any enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources Damages, property Damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (i) the presence, Environmental Release of, or exposure to, any Hazardous Materials; or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any Applicable Law or binding agreement with any Governmental Authority: (i) relating to pollution (or the investigation or cleanup thereof), the management or protection of natural resources, endangered or threatened species, human health or safety, or the protection or quality of the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (ii) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

“Environmental Liabilities” means all past, present and future obligations and Liabilities of whatsoever nature or kind arising from or relating to, directly or indirectly to any Environmental Claim applicable to or otherwise involving the Purchased Assets or any past, present or future non-compliance with, violation of or Liability under any Environmental Law or any Environmental Permit applicable to or otherwise involving the Purchased Assets, whenever occurring or arising.

“Environmental Permit” means any Permit and Licence, letter, clearance, consent, waiver, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“Environmental Release” includes any actual or potential release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Excluded Assets” means (i) all Excluded Tax Refunds, and (ii) the Excluded Claims.

“Excluded Claims” means each Debtor’s right, title and interest, if any, in any Legal Proceedings to which either Debtor is a party.

“Excluded Tax Refund” means any and all of either Debtor’s right, title and interest to receive any refund of, and/or credit in respect of, Taxes paid by a Debtor (including

Taxes paid by a Debtor by the Receiver or the Trustee) in respect of a period beginning on or after October 1, 2021.

“Final Order” means, at the relevant time or date, an order of the Court that has not been vacated, stayed, amended, reversed or modified, as to which no appeal or application for leave to appeal therefrom has been filed, or if any appeal(s) or application(s) for leave to appeal therefrom have been filed, any (and all) such appeal(s) or application(s) have been dismissed, quashed, determined, withdrawn or disposed of.

“General Conveyance” means a general conveyance and assumption of Liabilities, in form and substance satisfactory to the Parties, acting reasonably, evidencing the conveyance to the Purchaser of the Vendor’s and the Debtors’ right, title and interest in and to the Purchased Assets and the assumption by the Purchaser of the Assumed Liabilities.

“Governmental Authority” means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise), and includes for the avoidance of doubt the City of Brantford;
- (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, securities commission or professional association.

“GST/HST” means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada).

“Hardware” has the meaning set forth in Section 6.7.

“Hazardous Materials” means: (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or animal life or harm or impair the health of any individual and includes any contaminant, waste or substance or material defined, prohibited, regulated or reportable pursuant to any Applicable Law relating to the environment, pollution or human health and safety, in each case, whether naturally occurring or manmade; and (ii) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Intellectual Property” means all intellectual property and industrial property, throughout the world, whether or not registerable, patentable or otherwise formally protectable, and whether or not registered, patented, otherwise formally protected or the subject of a pending application for registration, patent or any other formal protection, including all (i) trade-marks, corporate names and business names, (ii) inventions, (iii) works and subject matter in which copyright, neighbouring rights or moral rights subsist, (iv) industrial designs, patents, (v) know-how, trade secrets, proprietary information, confidential information and information of a sensitive nature that have value to the Business or relate to business opportunities for the Business, in whatever form communicated, maintained or stored, (vi) telephone numbers and facsimile numbers, (vii) registered domain names, and (viii) social media usernames and other internet identities and all account information relating thereto.

“Interim Period” means the period from the date that this Agreement is entered into by the Parties to the Closing Time.

“ITA” means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supplement), and the regulations thereto.

“Law” has the meaning set out in the definition of **“Applicable Law”**.

“Legal Proceeding” means any litigation, Action, application, demand, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

“Liability” means, with respect to any Person, any liability, debt, dues, guarantee, surety, indemnity obligation, or other obligation of such Person of any kind, character or description, whether legal, beneficial or equitable, known or unknown, present or future, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due or accruing due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Material Casualty” means a Casualty in respect of all or substantially all of the Purchased Assets.

“Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Outside Date” means April 29, 2022 or such later date as the Parties may mutually agree.

“Owned Real Property” means the real property listed and specified as “Owned Real Property” on Schedule “B”.

“Party” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **“Parties”** means more than one of them.

“Permits and Licences” means any and all licences, permits, approvals, authorizations, certificates, directives, orders, variances, registrations, rights, privileges, concessions, granted, conferred or otherwise created by any Governmental Authority and held by or on behalf of any of the Debtors or other evidence of authority Related to the Business issued to, granted to, conferred upon, or otherwise created for, any of the Debtors which relate to the ownership, maintenance, operation of the Business or the Purchased Assets, including without limitation the permits and licences set out in Schedule “C”.

“Permitted Encumbrances” means, collectively:

- (a) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (b) only with respect to the Owned Real Property, construction, mechanics’, carriers’, workers’, repairers’, storers’ or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not material; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Debtors or the Vendor; and (v) the indebtedness secured by them is not in arrears;
- (c) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting the use of real property;
- (d) registered restrictive covenants, leases and notices of lease, easements, covenants, rights of way and other restrictions, including without limitation: (i) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, and (ii) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Owned Real Property;
- (e) registered agreements with municipalities or public utilities;
- (f) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Owned Real Property;
- (g) any encroachments by any structure located on the Owned Real Property onto any adjoining lands and any encroachment by any structure located on adjoining lands onto the Owned Real Property;
- (h) in respect of the Owned Real Property, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent;
- (i) in respect of the Owned Real Property, any Work Orders; and

- (j) the notice of lease registered as instrument number A473982 against title to the Owned Real Property under PIN 32281-0177 in favour of The TDL Group Corp. (the “**TDL Notice**”), provided that the Vendor shall use commercially reasonable efforts to obtain the consent of The TDL Group Corp. to the discharge of the TDL Notice on or prior to the Closing Date (whether pursuant to the Approval and Vesting Order or otherwise);

provided that, notwithstanding anything in the foregoing to the contrary, Permitted Encumbrances shall not include any of the instruments or registrations listed in Schedule “E” hereof, nor any registrations made against either Debtor under the *Personal Property Security Act* (Ontario) to the extent such registrations attach to the Purchased Assets.

“**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

“**Personal Information**” means information about an identifiable individual as defined in Privacy Law.

“**Personal Property**” means any and all vehicles, machinery, equipment, parts, chattels, inventory of spare parts, parts and supplies, furniture and any other tangible personal and movable property in which any of the Vendor or the Debtors have a beneficial right, title or interest (whether owned or leased), in all cases to the extent qualifying as Property, wherever situate (including those in possession of suppliers, customers and other third parties).

“**Personal Property Leases**” means a personal or movable property lease, chattel lease, equipment lease, financing lease, conditional or instalment sales contract and other similar agreement relating to Personal Property to which any of the Vendor or the Debtors are a party or under which they have rights to use Personal Property as listed and specified as “Personal Property Leases” on Schedule “A”.

“**Privacy Law**” means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Information Protection Act* (Ontario) and any Applicable Law of any other Province or territory of Canada.

“**Property**” has the meaning given to it in the Appointment Order.

“**Purchase Price**” has the meaning set out in Section 3.1.

“**Purchased Assets**” means, collectively, those assets of each of the Vendor or the Debtors as set out in Schedule “D”.

“**Purchased Tax Refunds**” means any and all of either Debtor’s right, title and interest to receive any refund of, and/or credit in respect of, Taxes paid by a Debtor (including Taxes paid by a Debtor by the Receiver or the Trustee) in respect of a period ending on or before September 30, 2021, to the extent transferrable by the Vendor.

“**Purchaser**” has the meaning set out in the preamble hereto and includes any successor or permitted assignee thereof in accordance with Section 10.17.

“Receivables” means, in respect of a Person all accounts receivable, bills receivable, trade accounts, holdbacks, retention, book debts and insurance claims due or accruing due to such Person, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits.

“Refund” has the meaning set out in Section 3.2(2).

“Related to the Business” means primarily (i) used in, (ii) arising from or (iii) otherwise related to the Business or any part thereof.

“Replacement Permit and Licence” means a new permit, licence, authorization, approval or other similar item providing substantially equivalent rights to the Purchaser as a Debtor is entitled to as of the Closing Date pursuant to the applicable Permit and Licence.

“Representative” when used with respect to a Person means each director, officer, employee, consultant, subcontractor, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

“Target Closing Date” means the first Business Day following the date on which the Approval and Vesting Order becomes a Final Order.

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes (including land transfer taxes and registration fees), withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and **“Tax”** means any one of such Taxes.

“Tax Returns” means all returns, reports, declarations, elections, notices, filings, information returns, statements and forms in respect of Taxes that are filed or required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

“Title Direction” means a written direction from the Purchaser calling for and directing title to the Owned Real Property to be transferred to the Purchaser or one or more designees.

“Transaction Personal Information” means any Personal Information (i) in the possession, custody or control of the Vendor at the Closing Time, including Personal Information about suppliers, customers, directors, officers or shareholders that is

disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by the Vendor or its Representatives, or (ii) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from the Vendor or its Representatives, in either case in connection with the transactions contemplated by this Agreement.

“Transfer Taxes” means all applicable Taxes, including any applicable land transfer taxes and/or GST/HST, payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees payable in connection with the instruments of transfer provided for in this Agreement.

“Work Orders” or **“Work Order”** means any work order, deficiency notice, order to comply, inspector’s order, notice of non-compliance or similar written directive, including, without limitation, any outstanding, open, pending or active building permits and/or permit applications or the like, in each case issued by a Governmental Authority having jurisdiction with respect to the Owned Real Property or any part thereof pursuant to Applicable Law.

1.2 Actions on Non-Business Days. If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations. Except as otherwise expressly provided in this Agreement: (i) all dollar amounts referred to in this Agreement are stated in the lawful currency of Canada; and (ii) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account of the Vendor specified by the Vendor, by cash, by certified cheque or by any other method that provides immediately available funds as agreed to between the Parties.

1.4 Calculation of Time. In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Eastern time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Eastern time on the next succeeding Business Day.

1.5 Tender. Any tender of documents or money hereunder may be made upon the Parties or their respective counsel.

1.6 Additional Rules of Interpretation.

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.

(4) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.7 Schedules. The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

SCHEDULES

<u>Schedule “A”</u>	Assigned Contracts
<u>Schedule “B”</u>	Owned Real Property
<u>Schedule “C”</u>	Permits & Licences
<u>Schedule “D”</u>	Purchased Assets
<u>Schedule “E”</u>	Deleted Encumbrances

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Purchased Assets. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Sale Procedure and the Approval and Vesting Order, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the Debtors’ and the Vendor’s right, title and interest, if any, in and to the

Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order.

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law.

2.3 Assignment of Contracts.

(1) *Obtaining Consents.* Prior to Closing, at the written request of the Purchaser, the Vendor, with the assistance of the Purchaser, shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchaser, but only with respect to Assigned Contracts listed in Schedule "A". The Vendor shall have no obligation to seek consent to assign any Contract that is not explicitly listed in Schedule "A".

(2) *Assignment Order.* To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (i) the Vendor's and the Debtors' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order, (ii) the Vendor will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date in form and substance acceptable to the Purchaser, acting reasonably, (iii) the Purchaser, at its own expense, will promptly provide to the Vendor all such information within its possession or under its control as the Vendor may reasonably request to obtain the Assignment Order, and (iv) if an Assignment Order is obtained in respect of such Assigned Contract in form and substance acceptable to the Purchaser, acting reasonably, the Purchaser shall accept the assignment of such Assigned Contract on such terms.

(3) *Cure Costs.* Unless the Parties otherwise agree, to the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall (i) where such Assigned Contract is assigned pursuant to an Assignment Order, pay all such Cure Costs in accordance with the Assignment Order, and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty. The Cure Costs as paid by the Purchaser shall be in addition to the Cash Purchase Price for the Purchased Assets.

(4) *Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement (including Section 2.3(5) below), the Approval and Vesting Order and the Assignment Order (if applicable), all of the Debtors' rights, benefits and interests in, to and under the Assigned Contracts shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(5) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law, or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another

Person, unless such consent has been obtained or the assignment is subject to an Assignment Order.

(6) *No Adjustment.* For greater certainty, in respect of any Assigned Contract other than the Critical Contracts, if the consent of any Person is required to assign such Contract but such consent is not obtained prior to Closing and such Contract is not assigned pursuant to an Assignment Order, such Contract shall not form part of the Purchased Assets and (i) neither Party shall be considered to be in breach of this Agreement, (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing, (iii) the Purchase Price shall not be subject to any adjustment, and (iv) the Closing shall not be delayed.

2.4 Transfer and Assignment of Permits and Licences.

(1) *Obtaining Consents.* Prior to Closing, to the extent that a Permit and Licence is assignable or otherwise transferable by the Vendor to the Purchaser, the Vendor, with the assistance of the Purchaser, shall use commercially reasonable efforts to obtain all necessary consents or approvals to assign or otherwise transfer such Permits and Licences, but only with respect to Permits and Licences listed in Schedule "C". The Vendor shall have no obligation to seek consent to assign any Permit and Licence that is not explicitly listed in Schedule "C". The Purchaser (i) shall pay all costs required to be paid to third parties and/or Governmental Authorities in connection with obtaining the assignment or transfer of any Permit and Licence to the Purchaser, or reissuance thereof (which costs shall be in addition to the Purchase Price), and (ii) shall reimburse the Vendor to the extent of any third party costs and/or any costs payable to Governmental Authorities that are incurred by the Vendor in connection with obtaining the assignment or transfer of any Permit and Licence to the Purchaser or obtaining any Replacement Permit and Licence (which costs shall be in addition to the Purchase Price), provided, however, that the Vendor provides evidence of such third party costs and/or Governmental Authority costs satisfactory to the Purchaser, acting reasonably, and such third party costs and/or Governmental Authority costs shall exclude all salaries, fees and costs of any and all consultants, employees, counsel or other Representatives of the Vendor related to such assignment and transfer.

(2) *Transfer and Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, all of the Debtors' rights, benefits and interests in, to and under the Permits and Licences, to the extent assignable, shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(3) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or otherwise transfer any Permit and Licence to the extent such Permit and Licence is not assignable or transferable under Applicable Law or the terms of the applicable Permit and Licence provide that it is not assignable without the consent of another Person, unless such consent has been obtained.

(4) *Post-Closing Assignment.* Notwithstanding anything in this Agreement to the contrary, if the consent or approval of any Person is required to assign or otherwise transfer a Permit and Licence that is listed in Schedule "C", but such consent or approval is not obtained prior to Closing, (i) the Vendor and the Purchaser shall use their commercially reasonable efforts to obtain the necessary consents or approvals to the assignment or transfer of such Permit and Licence to the Purchaser or the Purchaser shall use its commercially reasonable efforts to obtain (with commercially reasonable assistance from the Vendor) a Replacement Permit and Licence thereof, in each case, as soon as practicable following Closing, (ii) neither

Party shall be considered to be in breach of this Agreement, (iii) the failure to assign or otherwise transfer such Permit and Licence or obtain any Replacement Permit and Licence, shall not be a condition to Closing, (iv) the Purchase Price shall not be subject to adjustment, and (v) the Closing shall not be delayed.

(5) *Obtaining Replacement Permits and Licenses.* To the extent that a Permit and Licence is not assignable or otherwise transferrable by the Vendor to the Purchaser, the Purchaser, with the assistance of the Vendor, shall use commercially reasonable efforts to obtain a Replacement Permit and Licence in connection with the purchase and sale of the Purchased Assets. The Purchaser shall pay all costs required in connection with obtaining any Replacement Permit and Licence (which shall be in addition to the Purchase Price).

ARTICLE 3 PURCHASE PRICE & TAXES

3.1 Purchase Price. The consideration payable by the Purchaser to the Vendor for the Vendor's and the Debtors' right, title and interest, if any, in and to the Purchased Assets (the "**Purchase Price**") shall be the aggregate of:

- (1) [REDACTED] (the "**Cash Purchase Price**");
- (2) the Cure Costs; and
- (3) the agreed value of the Assumed Liabilities.

3.2 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied as follows:

(1) a deposit in the amount of [REDACTED] (the "**Deposit**") which shall be paid by wire transfer by the Purchaser to the Vendor immediately upon the Vendor's execution of this Agreement and shall be applied against the Cash Purchase Price on Closing. The Purchaser agrees that it waives any accrued interest that may be earned on the Deposit;

(2) the balance of the Cash Purchase Price, after crediting the Deposit in Section 3.2(1), shall be paid by the Purchaser to the Vendor at Closing, by wire transfer, subject to a refund by the Vendor to the Purchaser in an amount equal to the amount, if any, that the Court declares in a Final Order, as the resolution of a motion brought by Santokh Mahal pursuant to a Notice of Motion dated November 21, 2021, is indebtedness owing by Golden Miles to Santokh Mahal that is secured by a security interest in any of Golden Miles' personal property ranking in priority to all other encumbrances on such personal property (other than super-priority charges created by Court order in the Receivership Proceedings) (the "**Refund**");

(3) the Cure Costs, shall be paid or otherwise satisfied by the Purchaser on behalf of the Debtors or the Vendor at Closing in accordance with Section 7.3(3); and

(4) an amount equal to the agreed value of the Assumed Liabilities, shall be satisfied at Closing by the assumption by the Purchaser of the Assumed Liabilities by the execution and delivery of the Assignment and Assumption Agreement.

3.3 Cash Reserve. Pending a Final Order determining the quantum of the Refund, if any, the Vendor shall retain in trust from the proceeds of sale of the Purchased Assets, a cash

reserve in the amount of \$2,500,000, which shall stand as security for the Refund and any costs or interests which may be awarded to Santokh Mahal (collectively, the “**Cash Reserve**”).

3.4 Allocation of Purchase Price. The Vendor and the Purchaser agree to allocate from the Purchase Price: (a) [REDACTED] to the personal property of Golden Miles, and (b) [REDACTED] to the Owned Real Property. The Vendor and the Purchaser further agree to allocate the balance of Purchase Price in a manner to be agreed to by the Parties after Closing, each acting reasonably, and to report the sale and purchase of the Purchased Assets for all federal, provincial and local Tax purposes in a manner consistent with such allocation, which shall include, for greater certainty, an allocation by category of Purchased Assets and among the Debtors. If such allocation is disputed by any Governmental Authority with respect to Taxes, the Party receiving notice of such dispute will promptly notify the other Party and the Parties will use their commercially reasonable efforts to sustain the final allocation. The Parties will share information and cooperate to the extent reasonably necessary to permit the transaction contemplated by this Agreement to be properly, timely and consistently reported. For purposes of calculating any Taxes payable by the Purchaser to the Vendor under Section 3.5, if any, the Vendor and Purchaser shall mutually agree no later than thirty days after the Closing Date regarding the allocation, including an allocation to the relevant categories of Purchased Assets and among the Debtors. If an agreement is not reached by the time the Vendor is required by Applicable Law to remit the applicable Taxes, the Vendor shall have the right, acting reasonably and in good faith, to issue a preliminary allocation based on its own calculations and the Purchaser shall pay such amount to the Vendor for remittance of such Taxes on the basis of such preliminary allocation. If the Parties later agree to a different allocation resulting in any additional or lesser Taxes, the Vendor shall have the right to charge the additional Taxes at that time or shall promptly refund to the Purchaser the excess amount, as the case may be.

3.5 Taxes. In addition to the Purchase Price, the Purchaser shall be liable for and shall, at Closing, pay all applicable Transfer Taxes. The Vendor shall collect GST/HST from the Purchaser in connection with the transactions contemplated by this Agreement, except, that the Vendor shall not collect GST/HST on the Owned Real Property if, on the Closing Date, the Purchaser delivers to the Vendor: (i) a certificate of the Purchaser setting out the registration number of the Purchaser for GST/HST purposes; and (ii) an undertaking by the Purchaser to pay all applicable GST/HST in connection with the acquisition of the Owned Real Property and an indemnity by the Purchaser whereby the Purchaser agrees to indemnify and hold the Vendor harmless from and against any and all Damages that may be suffered or incurred, directly or indirectly, by the Vendor or may become payable by the Vendor arising from or in respect of any failure by the Purchaser to register for the purposes of the GST/HST imposed under the *Excise Tax Act (Canada)* or to perform its obligations under such Act in connection with its acquisition of the Owned Real Property.

3.6 GST/HST Gross Up. All payments required to be made by the Purchaser under this Agreement shall be made by the Purchaser free and clear of, and without deduction for, any Taxes. If the Purchaser is required by Applicable Law to deduct or withhold any amount from the Purchase Price payable hereunder, then the Purchase Price shall be increased by an additional amount such that the amount received by the Vendor after such deduction or withholding (including deduction or withholding from such additional amount) is equal to the amount that the Vendor would have received absent any such deduction or withholding. In the event that any payment or forfeiture under this Agreement is deemed by the *Excise Tax Act (Canada)* to include GST/HST or is deemed by any applicable provincial or territorial legislation

to include a similar value added or multi-staged tax, the amount of such payment or forfeiture shall be increased accordingly.

3.7 Tax Elections.

(1) *Section 22 Tax Election.* If available and requested by the Vendor, the Purchaser and the Vendor shall elect jointly in the prescribed form under section 22 of the *ITA* and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 3.4. This election, or these elections, shall be made within the time prescribed for such elections.

(2) *Subsection 20(24) Tax Election.* The Purchaser, and the Vendor shall, if applicable, jointly execute and file an election under subsection 20(24) of the *ITA* in the manner required by subsection 20(25) of the *ITA* and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the *ITA* and under any other applicable provincial or territorial statute, as to such amount paid by the applicable Debtors to the Purchaser for assuming future obligations. In this regard, the Purchaser and Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the *ITA* and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.

(3) *Section 56.4 Tax Election.* At the request of the Vendor and to the extent permitted by the *ITA*, the Parties shall make, and the Vendor shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendor may reasonably request) and within the prescribed time limits pursuant to subsection 56.4(7) of the *ITA* proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

ARTICLE 4 PROCEDURES

4.1 Approval and Vesting Order. The Parties acknowledge and agree that:

(1) *Court Approval.* This Agreement is subject the issuance of the Approval and Vesting Order.

(2) *Motion for Approval and Vesting Order.* Upon the Vendor's execution of this Agreement, and the Vendor's receipt of the Deposit, the Vendor shall file with the Court, as soon as reasonably practicable thereafter, a motion seeking the Court's issuance of the Approval and Vesting Order. The Purchaser shall cooperate with the Vendor in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Vendor all such information within its possession or under its control as the Vendor may reasonably request to obtain the Approval and Vesting Order.

4.2 Title Direction. The Purchaser shall deliver, on or before March 30, 2022 (being the day prior to the day that the Vendor anticipates filing with the Court the motion seeking the Court's issuance of the Approval and Vesting Order), the Title Direction which direction shall

call for and direct title to the Owned Real Property to be transferred to the Purchaser or one or more designees, and the Vendor shall transfer title on Closing in accordance with the Title Direction.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Purchaser. As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.1, the Purchaser represents and warrants to the Vendor as follows:

(1) *Incorporation and Corporate Power.* The Purchaser is a corporation incorporated, organized and subsisting under the Laws of the jurisdiction of its incorporation. The Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Purchaser.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no notice or declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or all other agreements and instruments to be executed by the Purchaser or the performance by the Purchaser of its obligations hereunder or thereunder.

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending against or threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.

(5) *ICA.* The Purchaser is not a “non-Canadian” within the meaning of the *ICA*, or, if the Purchaser is a “non-Canadian”, the Purchaser is a “WTO investor” within the meaning of the *ICA*.

(6) *Excise Tax Act.* The Purchaser is, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada), and shall provide its registration number to the Vendor at or prior to Closing.

(7) *Commissions.* The Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser.

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or has arranged sufficient financing for it, on Closing (which financing is not subject to any conditions other than the conditions to Closing set out herein), to pay the Cash Purchase Price, the Cure Costs and the Transfer Taxes payable on Closing and any and all other amounts payable by the Purchaser, if any, pursuant to this Agreement.

5.2 Representations and Warranties of the Vendor. As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.2, the Vendor represents and warrants to the Purchaser as follows:

(1) *Enforceability of Obligations.* Subject to the Approval and Vesting Order having been granted and being a Final Order, this Agreement constitutes a valid and binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms.

(2) *ITA.* Each of the Debtors is not a non-resident of Canada for purposes of the *ITA*.

(3) *Excise Tax Act.* The Debtors are registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada) and their GST/HST numbers are:

Golden Miles Food Corporation:	817317464
Mahal Venture Capital Inc.:	83941593

(4) *Commissions.* The Purchaser will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Vendor.

5.3 As is, Where is. Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

(1) except for the representations and warranties of the Vendor set forth in Section 5.2, it is entering into this Agreement, acquiring the Purchased Assets and assuming the Assumed Liabilities on an "as is, where is" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location (and in respect of the Owned Real Property, subject to any Work Orders that may exist) as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of the Purchaser;

(2) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets, the Business and the Assumed Liabilities as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(3) except as expressly stated in Section 5.2, neither the Debtors nor the Vendor, nor their Representatives, have made or are making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendor's and the Debtors' right, title or interest in or to the Purchased Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Purchased Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;

(4) without limiting the generality of the foregoing, no representation, warranty or covenant is given by the Vendor that any of the Purchased Assets are or can be made operational within a specified time frame or will achieve any particular result, level of service, use, production capacity or actual production if made operational;

(5) without limiting the generality of the foregoing, except as expressly stated in Section 5.2, the Vendor has not made any representation or warranty as to any regulatory approvals, licenses, permits, consents or authorizations, including the Permits and Licences, that may be needed to complete the transactions contemplated by this Agreement or to operate or carry on the Business or any portion thereof, and the Purchaser is relying entirely on its own investigation, due diligence and inquiries in connection with such matters;

(6) the Vendor will convey all of the Books and Records of the Debtors that have been provided to it by principals of the Debtors or obtained by it through its investigations, however the Vendor makes no representation or warranty as to the completeness, accuracy or currency of any Books and Records;

(7) all written and oral information obtained from the Vendor or its Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "data rooms", management presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets, the Business, and the Assumed Liabilities has been obtained for the convenience of the Purchaser only, and neither the Vendor or its Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(8) any information regarding or describing the Purchased Assets, the Business or the Assumed Liabilities in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the Vendor or its Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions;

(9) except as otherwise expressly provided in this Agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against the Vendor, the Debtors or any of their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those

representations and warranties of the Vendor expressly set forth in Section 5.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights;

(10) none of the representations and warranties of the Vendor contained in this Agreement shall survive Closing and, subject to Section 9.3(2), the Purchaser's sole recourse for any breach of representation or warranty of the Vendor in Section 5.2 shall be for the Purchaser not to complete the transactions as contemplated by this Agreement and the Purchaser shall have no recourse or claim of any kind against the Vendor, or the proceeds of the transactions contemplated by this Agreement following Closing; and

(11) Sections 5.3, 3.2 and 3.3 shall not merge on Closing and are deemed incorporated by reference in all closing documents and deliveries.

ARTICLE 6 COVENANTS

6.1 Access During Interim Period. During the Interim Period, the Vendor shall, subject to any confidentiality, privacy, regulatory or safety restrictions, give, or cause to be given, to the Purchaser and its Representatives reasonable access during normal business hours to the Purchased Assets (where situated), including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Purchased Assets as the Purchaser deems reasonably necessary or desirable to further familiarize itself with the Business and the Purchased Assets and plan for the operation of the Business following Closing, provided however that (a) the number of attendances at the Mill by the Purchaser or its representatives shall not exceed 5 attendances, and (b) any test runs or operation of any equipment or machinery that forms the Purchased Assets shall require the prior written consent of the Vendor, which consent may not be unreasonably withheld, and if granted such test runs shall only be conducted pursuant to such safety, supervisory or other conditions as the Vendor may specify. Without limiting the generality of the foregoing, the Purchaser shall be permitted reasonable access during normal business hours to all Books and Records relating to information scheduled or required to be disclosed under this Agreement. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and peril, during normal business hours, and the Vendor shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser. For the avoidance of doubt, the Parties hereby agree and acknowledge that for health and safety reasons, this Section 6.1 is a fundamental part of this Agreement, and that any access to the Purchased Assets by the Purchaser or its agents or representatives that is not consented to in advance by the Vendor shall constitute a material, uncurable breach of this Agreement, entitling the Vendor to terminate this Agreement pursuant to Section 9.1(4).

6.2 Transaction Personal Information. Each Party shall comply with Privacy Law in the course of collecting, using and disclosing Transaction Personal Information. The Purchaser shall cause its Representatives to observe the terms of this Section 6.2 and to protect and safeguard Transaction Personal Information in their possession in accordance with Privacy

Law. The Purchaser shall collect Transaction Personal Information prior to Closing only for purposes related to the transactions contemplated by this Agreement. The Purchaser shall not, without the consent of the individuals to whom such Personal Information relates or as permitted or required by Applicable Law, use or disclose Transaction Personal Information (i) for purposes other than those for which such Transaction Personal Information was collected by any of the Debtors prior to the Closing and (ii) for a purpose which does not relate directly to the carrying on of the Business or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented.

6.3 Risk of Loss. The Purchased Assets shall be at the risk of the Debtors until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or damaged (each a "**Casualty**"), the Purchaser shall still complete the purchase of the Purchased Assets on an "as is, where is" basis without any adjustment to the Cash Purchase Price payable hereunder and take an assignment from the Vendor of all insurance proceeds payable to the Debtors or Vendor in respect of the Casualty, provided that, in the event of a Material Casualty, the Purchaser shall have the option, in its discretion, to terminate this Agreement. For greater certainty, in no event shall the aggregate total of the insurance proceeds assigned to the Purchaser in accordance with this Section 6.3 and the fair market value of Purchased Assets exceed the Purchase Price.

6.4 Indemnity. The Purchaser hereby indemnifies the Debtors, the Vendor and their respective Representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) any Transfer Taxes (including penalties and interest) which may be assessed against either of the Debtors or Vendor with respect to the transactions under this Agreement including, without limiting the foregoing, any Taxes which may be assessed in the event that any election made pursuant to Section 3.7 is challenged by the relevant Tax authority as being inapplicable to the transactions under this Agreement, or as a result of the Purchaser's failure to file such elections within the prescribed time;
- (2) the Purchaser's access in accordance with Section 6.1;
- (3) the collection, use or disclosure of Transaction Personal Information by the Purchaser and its Representatives; and
- (4) the Purchaser's failure to pay when due and perform and discharge the Assumed Liabilities in accordance with their terms.

6.5 Environmental Liabilities. The Purchaser acknowledges and agrees that upon Closing, the Purchaser shall become responsible for the payment, performance and discharge of all Environmental Liabilities related to the Purchased Assets including, as applicable, all obligations of any kind whatsoever under Environmental Laws relating to the Purchased Assets.

6.6 Books and Records. The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such Books

and Records (to the extent reasonably feasible), available to the Vendor, and its Representatives and successors, and shall permit any of the foregoing persons to take copies of such Books and Records as they may require.

6.7 Certain Information Technology Assets. With respect to any information technology assets primarily Related to the Business to be acquired by the Purchaser hereunder (such as desktops, laptops, mobile phones, servers and related hardware) (collectively, “**Hardware**”), the Purchaser will co-operate with the Vendor, at the Purchaser’s cost and expense, in causing data contained or stored in such Hardware not relating primarily to the Business, the Purchased Assets or the Assumed Liabilities to be removed from such Hardware in a manner reasonably satisfactory to the Vendor prior to the Closing Date or within a reasonable period of time thereafter, provided that such removal shall be carried out in a manner that does not damage or otherwise interfere with any data contained or stored in such Hardware primarily Related to the Business or the Purchased Assets. Any third party provider selected by the Purchaser and Vendor to provide such services shall be agreed upon by the Purchaser and the Vendor, acting reasonably.

6.8 Regulatory Approvals. The Purchaser, with the assistance of the Vendor shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions, as applicable, required under any Law applicable to such Party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. The Vendor shall cooperate reasonably with the Purchaser and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders, approvals and clearance certificates. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

6.9 Cooperation and Consultation with Governmental Authorities. All meetings, submissions, filings, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendor or the Purchaser with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such filings, meetings, submissions and proposals. Each Party shall give notice to the other Party with respect to any meeting, submission, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact (except where such Governmental Authority expressly requests that such Party not attend or participate in such meeting, discussion, appearance or contact). Notwithstanding any requirement under this Section 6.9, a Party shall not be required to provide the other Party with any information required to be provided under this Section 6.9 where the information is confidential and competitively sensitive, in which case the supplying Party shall provide a redacted version to the requesting Party and shall provide the information on a non-redacted basis to the receiving Party’s external counsel, and the receiving Party agrees that it shall neither request nor receive such non-redacted information from its external counsel.

6.10 Waiver of Claim for Costs. Effective upon Closing, the Trustee shall release any and all claims for costs of the motion by Santokh Mahal for a declaration of his interest in, to and under the agreement to purchase a condominium unit in the Aquabella Condominium described as Suite GPHI, 118 Merchant's Wharf, Toronto (the "**Condo Motion**"). The Trustee shall forebear from taking any steps to obtain a costs order against Santokh Mahal in respect of the Condo Motion for so long as this Agreement remains in force and not terminated in accordance with Article 9. For the avoidance of doubt, the Trustee's release of its claim for costs in the Condo Motion shall not be effective if this Agreement does not Close, for any reason.

ARTICLE 7 CLOSING ARRANGEMENTS

7.1 Closing. The Closing will take place virtually, whereby required executed closing deliverables are circulated by electronic mail in pdf and released at such time and pursuant to such protocols and confirmations as the Parties may agree.

7.2 Vendor's Closing Deliveries. At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (1) a statement of adjustments reflecting customary adjustments for a transaction similar to the transaction contemplated by this Agreement (a "**Statement of Adjustments**");
- (2) an undertaking by the Vendor to readjust all items on the Statement of Adjustments within 45 days from the Closing Date, upon written request by the Purchaser;
- (3) the Purchased Assets, with delivery to occur *in situ* wherever such Purchased Assets are located at the Closing Time;
- (4) a copy of the Approval and Vesting Order, which shall be a Final Order;
- (5) a copy of any Assignment Order, if applicable, in respect of any Critical Contracts for which consents to assignment were required which have not been obtained, which Assignment Order shall be a Final Order;
- (6) the General Conveyance, duly executed by the Vendor ;
- (7) all consents to the assignment of the Assigned Contracts and Permits and Licences, to the extent obtained by the Vendor prior to Closing;
- (8) the Assignment and Assumption Agreement, duly executed by the Vendor;
- (9) a bring-down certificate executed by the Vendor dated as of the Closing Date, in form and substance satisfactory to the Purchaser, acting reasonably, certifying that (i) all of the representations and warranties of the Vendor hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or

performed by the Vendor or prior to Closing have been complied with or performed by the Vendor in all material respects; and

- (10) such other agreements, documents and instruments as may be required and that the Purchaser has reasonably requested on or before the Closing Date to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably, provided that none of the Vendor's closing deliveries shall contain covenants, representations or warranties which are in addition to or more onerous upon the Vendor than those expressly set out in this Agreement.

7.3 Purchaser's Closing Deliveries. At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor (or as otherwise indicated below), the following:

- (1) the payment referred to in Section 3.2(2);
- (2) the payment of all Transfer Taxes to the applicable Governmental Authority required to be paid on Closing;
- (3) to the extent payable on Closing, evidence that Cure Costs (if any) in respect of each Assigned Contract have been paid in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, and (ii) the consent of the applicable counterparty or as otherwise agreed upon by the Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order;
- (4) an undertaking by the Purchaser to readjust all items on the Statement of Adjustments within 45 days from the Closing Date, upon written request by the Vendor;
- (5) the General Conveyance, duly executed by the Purchaser;
- (6) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (7) a bring-down certificate executed by the Purchaser or a senior officer of the Purchaser, if applicable, dated as of the Closing Date, in form and substance satisfactory to the Vendor, acting reasonably, certifying that (i) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;
- (8) the Title Direction (which shall have been delivered on or prior to March 30, 2022, pursuant to Section 4.2); and
- (9) such other agreements, documents and instruments as may be required and that the Vendor has reasonably requested on or before the Closing Date to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably, provided that none of the

Purchaser's closing deliveries shall contain covenants, representations or warranties which are in addition to or more onerous upon the Purchaser than those expressly set out in this Agreement.

ARTICLE 8 CONDITIONS OF CLOSING

8.1 Purchaser's Conditions. The Purchaser shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Outside Date, each of the conditions listed below in this Section 8.1 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Purchaser if made in writing:

- (1) *Court Approval.* The Approval and Vesting Order and, if applicable, the Assignment Order, shall each have been issued and entered by the Court and be a Final Order.
- (2) *Vendor's Deliveries.* The Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 7.2.
- (3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Final Order or Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.
- (4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 5.2 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.
- (5) *No Breach of Covenants.* The Vendor shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing.

8.2 Vendor's Conditions. The Vendor shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 8.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendor and may be waived by the Vendor in whole or in part, without prejudice to their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Vendor if made in writing.

- (1) *Court Approval.* The Approval and Vesting Order and, if applicable, the Assignment Order shall each have been issued and entered by the Court and be a Final Order.

- (2) *Purchaser's Deliverables.* The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents and payments contemplated in Section 7.3.
- (3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Final Order or Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.
- (4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 5.1 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.
- (5) *No Breach of Covenants.* The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser, on or before the Closing.

8.3 Vendor's Certificate. When the conditions to Closing set out in Section 8.1, have been satisfied and/or waived by the Purchaser, the Purchaser will deliver to the Vendor written confirmation (i) that such conditions of Closing, as applicable, have been satisfied and/or waived; and (ii) of the amounts of Transfer Taxes required to be paid at Closing (if any is payable) and the Cure Costs payable by the Purchaser on Closing (the "**Conditions Certificate**"). Upon (a) receipt of payment in full of the Cash Purchase Price, Transfer Taxes required to be paid at Closing (if any is payable) and of the Cure Costs payable by the Purchaser on Closing, (b) receipt of the Conditions Certificate and (c) being satisfied that the conditions of Closing set out in Section 8.2 have been satisfied and/or waived by the Vendor the Vendor shall (i) issue forthwith its Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Vendor's Certificate with the Court (and shall provide a true copy of such filed certificate to the Purchaser). In the case of clauses (i) and (ii), above, the Vendor will be relying exclusively on the basis of the Conditions Certificate and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

ARTICLE 9 TERMINATION

9.1 Grounds for Termination. This Agreement may be terminated prior to the Closing Time:

- (1) by the mutual written agreement of the Vendor and the Purchaser;
- (2) by written notice from the Purchaser to the Vendor in accordance with Section 6.3;
- (3) by written notice from the Purchaser to the Vendor if there has been a material breach by the Vendor of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, such breach is not curable and has rendered the satisfaction of any condition in Section 8.1 impossible by the Outside Date, provided that at the time of providing

such notice of termination, the Purchaser is not in breach of any of its obligations under this Agreement;

- (4) by written notice from the Vendor to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor, such breach is not curable and, in the case of a breach other than a breach of Section 6.1 by the Purchaser, such breach has rendered the satisfaction of any condition in Section 8.2 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendor is not in breach of any of its obligations under this Agreement; and
- (5) by the Purchaser, on the one hand, or by the Vendor, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(5) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

9.2 Effect of Termination. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 6.2 (*Transaction Personal Information*), 6.4 (Indemnity), 9.2 (*Effect of Termination*), 9.3 (*Treatment of Deposit*), 10.2 (*Expenses*), 10.3 (*Public Announcements*), 10.4 (*Notices*), 10.7 (*Entire Agreement*), 10.9 (*Amendment*), 10.11 (*Severability*), 10.13 (*Governing Law*), 10.14 (*Dispute Resolution*), 10.15 (*Attornment*), 10.16 (*Successors and Assigns*), 10.17 (*Assignment*), 10.18 (*Vendor's Capacity*) and 10.19 (*Third Party Beneficiaries*), which shall survive such termination.

9.3 Treatment of Deposit.

(1) *Retention of Deposit.* In the event that this Agreement is terminated (i) by the Vendor pursuant to Section 9.1(4), or (ii) by the Vendor or the Purchaser pursuant to Section 9.1(5) and the reason that Closing did not occur by the Outside Date was the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, the Deposit shall be forfeited by the Purchaser and retained by the Vendor as a genuine estimate of liquidated damages, and not as a penalty to compensate the Vendor for the expenses incurred and opportunities foregone as a result of the failure to Close.

(2) *Return of Deposit.* In the event that this Agreement is terminated pursuant to any Section of this Agreement other than (i) Section 9.1(4) or (ii) 9.1(5) and the reason that Closing did not occur by the Outside Date was the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, the Deposit shall be promptly returned to the Purchaser by the Vendor and the return of the Deposit shall be the Purchaser's sole and exclusive remedy for any termination of this Agreement.

ARTICLE 10 GENERAL

10.1 Survival. All representations, warranties, covenants and agreements of the Vendor or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall merge and shall not survive the Closing except

where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, the following sections shall survive Closing: 2.2 (*Assumed Liabilities*), 2.4(4) (*Post-Closing Assignment*), 3.3 (*Cash Reserve*), 3.4 (*Allocation of Purchase Price*), 3.5 (*Taxes*), 3.6 (*GST/HST Gross Up*), 3.7 (*Tax Elections*), 5.2(4) (*Commissions*), 5.3 (*As is, Where is*), 6.2 (*Transaction Personal Information*); 6.4 (*Indemnity*), 6.5 (*Environmental Liabilities*), 6.6 (*Books and Record*), 8.3 (*Vendor's Certificate*), 9.3 (*Treatment of Deposit*), 10.1 (*Survival*), 10.2 (*Expenses*), 10.3 (*Public Announcements*), 10.4 (*Notices*), 10.5 (*Time of Essence*), 10.6 (*Further Assurances*), 10.7 (*Post-Closing Wind-Up of Proceedings*), 10.8 (*Entire Agreement*), 10.9 (*Amendment*), 10.10 (*Waiver*), 10.11 (*Severability*), 10.12 (*Remedies*), 10.13 (*Governing Law*), 10.14 (*Dispute Resolution*), 10.15 (*Attornment*), 10.16 (*Successors and Assigns*), 10.17 (*Assignment*), 10.18 (*Vendor's Capacity*) and 10.19 (*Third Party Beneficiaries*).

10.2 Expenses. Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers). Notwithstanding the forgoing, the cost of retaining a notary and a land surveyor, if necessary, in connection with the preparation of the legal descriptions of the Owned Real Property shall be borne by the Purchaser.

10.3 Public Announcements. The Vendor shall be entitled to disclose this Agreement (on an unredacted basis) and all information provided by the Purchaser in connection herewith to the Court and parties of interest in the Receivership Proceedings, or Bankruptcy Proceedings and a copy of this Agreement may be posted on KSV's website maintained in connection with the Receivership Proceedings and Bankruptcy Proceedings. Notwithstanding any other provision of this Agreement, unless such information is otherwise publicly disclosed or, upon the advice of counsel, required by Applicable Law or by any Governmental Authority to be disclosed (including in any Tax Returns), the Purchaser shall not disclose the quantum of the Purchase Price, Cash Purchase Price, Deposit, Assumed Liabilities or allocation of Purchase Price without the prior written consent of the Vendor.

10.4 Notices.

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service, or (iii) sent by e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

(2) if to the Vendor to:

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

Attention: Mitch Vininsky
Email: mvininsky@ksvadvisory.com

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
 199 Bay Street, Suite 4000
 Toronto, ON, Canada M5L 1A9

Attention: Chris Burr
 Email: chris.burr@blakes.com

(3) if to the Purchaser, to:

12175622 Canada Ltd.
 800 Swinbourne Drive,
 Mississauga, Ontario
 L5V 1J6

Attention: Santokh Mahal
 Email: smahal@rogers.com

with a copy (which shall not constitute notice) to:

Dickinson Wright LLP
 199 Bay Street, Suite 2200
 Toronto, Ontario
 M5L 1G4

Attention: David Preger
 Email: Dpreger@dickinsonwright.com

Attention: Lisa Corne
 Email: Lcorne@dickinsonwright.com

Attention: David Seifer
 Email: Dseifer@dickinsonwright.com

(4) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. Eastern time on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(5) *Change of Address.* Any Party may from time to time change its address under this Section 10.4 by notice to the other Party given in the manner provided by this Section 10.4.

10.5 Time of Essence. Time shall be of the essence of this Agreement in all respects.

10.6 Further Assurances. The Vendor and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may reasonably

require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

10.7 Post-Closing Wind-Up of Receivership and Bankruptcy Proceedings. Notwithstanding any other provision of this Agreement, but subject to the Vendor's obligations in relation to the Cash Reserve and Refund as provided for under Section 3.3, nothing in this Agreement shall operate to restrict in any way the rights of the Vendor to distribute any of the Debtors' assets or otherwise wind up the Receivership Proceedings or Bankruptcy Proceedings as they may determine in their sole discretion after the Closing, even if doing so may impair the Vendor's ability to provide or perform any further cooperation, assistance or further assurances as may otherwise be provided under this Agreement.

10.8 Entire Agreement. Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchaser in favour of the Vendor, which remain in full force and effect, except as amended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written (including any letter of intent or expression of interest submitted by the Purchaser). There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

10.9 Amendment. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

10.10 Waiver. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

10.11 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

10.12 Remedies Cumulative. The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

10.13 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein.

10.14 Dispute Resolution. If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of

this Agreement for the purposes of Article 9, such dispute shall be determined by the Court within the Receivership Proceedings, Bankruptcy Proceedings or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of the Vendor or the Purchaser to enforce this Agreement in any other proper jurisdiction, the Purchaser and the Vendor irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

10.15 Attornment. Each Party agrees (i) that any Legal Proceeding relating to this Agreement must be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (ii) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Province of Ontario on any jurisdictional basis, including *forum non conveniens*; and (iii) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 10.15. Each Party agrees that service of process on such Party as provided in Section 10.4 shall be deemed effective service of process on such Party.

10.16 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

10.17 Assignment. Prior to the issuance of the Approval and Vesting Order, the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that (i) the Purchaser shall remain liable to perform all of its obligations hereunder, and (ii) the Purchaser and its assignee execute and deliver to the Vendor an assignment and assumption agreement, in form and substance satisfactory to the Vendor, evidencing such assignment. Other than in accordance with the preceding sentence, the Purchaser may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

10.18 Vendor's Capacity. The Purchaser acknowledges and agrees that KSV, acting in its capacity as the Receiver in the Receivership Proceedings, and as Trustee in the Bankruptcy Proceedings will have no Liability in connection with this Agreement whatsoever in its personal or corporate capacity, and shall have Liability in connection with this Agreement in its capacity as Receiver or Trustee only to the extent explicitly provided for herein, and subject in all cases to the applicable limitations of liability set out herein.

10.19 Third Party Beneficiaries. Except as set forth in Section 6.4, this Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.20 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

[SIGNATURE PAGE TO FOLLOW]

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

KSV RESTRUCTURING INC., in its capacities as Court-appointed receiver and manager, and trustee in bankruptcy of MAHAL VENTURE CAPITAL INC and GOLDEN MILES FOOD CORPORATION, and not in its personal or corporate capacity

By: noah goldstein
Name: Noah Goldstein
Title: Managing Director

12175622 CANADA LTD.

Name:

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

KSV RESTRUCTURING INC., in its capacities as Court-appointed receiver and manager, and trustee in bankruptcy of MAHAL VENTURE CAPITAL INC and GOLDEN MILES FOOD CORPORATION, and not in its personal or corporate capacity

By: _____
Name:
Title:

12175622 CANADA LTD.

By: DocuSigned by:
SANTOSH MAHAL

E5EF0AAAD66A4C8...
Name: Santokh Mahal

Title: Director

(I have authority to bind the corporation)

SCHEDULE "A"

Assigned Contracts

Assigned Contracts

All contracts and agreements of the Debtors, including without limitation:

Nil.

Critical Contracts

The following Assigned Contracts are Critical Contracts:

Nil.

Personal Property Leases

The following Assigned Contracts are Personal Property Leases:

Nil.

SCHEDULE "B"

Owned Real Property

The buildings and land known municipally as 155 Adams Blvd, Brantford, Ontario, legally referred to as:

PIN 32281-0177 (LT): PT LT 38 CON 3 GEOGRAPHIC TWP OF BRANTFORD, BEING PT 2 ON 2R4137; BRANTFORD CITY; T/W EASEMENT OVER PART LOTS 37 & 38, CON 3 GEOGRAPHIC TWP OF BRANTFORD, PT 24,25,26,30,31,32,36,37,38,42,43,44, 2R6421 AS IN BC66565 AND PT RELEASE IN BC96373

PIN 32281-0309 (LT): FIRSTLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, PLAN 2R6545; SUBJECT TO EASEMENT OVER PART 2, PLAN 2R6545 AS IN BC304245; SECONDLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, 3, PLAN 2R1332 AND PART 1, PLAN 2R4747; CITY OF BRANTFORD

SCHEDULE "C"

Permits & Licences

All Permits and Licences of the Debtors, including without limitation:

- Building Permit No. 16 005638

SCHEDULE "D"**Purchased Assets**

All assets, undertakings and properties of the Debtors other than the Excluded Assets, including, without limitation, either Debtors' right, title and interest, if any, in the following assets:

- i. The Assigned Contracts;
- ii. All tangible Personal Property located at the Mill, including, without limitation, all property, equipment, parts, furniture, fixtures, machinery, three flour tankers with VIN numbers 2TLHB5042JB000342, 2TLHB4945JB000350, and 3H4JS4424J309886, 2008 Genie Z-135 (Serial Number Z13508-860), Toyota Forklift Model 8FGCU25 (Serial Number 11582), Toyota Forklift Model 42-6FGCU15 (Serial number 68631), Toyota Forklift Model 8FBE18U (Serial Number 19694);
- iii. All Owned Real Property;
- iv. All Permits and Licences, including without limitation all building permits issued to either of the Debtors in respect of the Owned Real Property, to the extent such building permits are transferrable and subject to Section 2.4.
- v. All Data;
- vi. All Receivables including, without limitation all Purchased Tax Refunds and all deposits paid to the City of Brantford, but not including the Excluded Tax Refunds or the Excluded Claims;
- vii. All Books and Records;
- viii. All Intellectual Property;
- ix. All goodwill of the Debtors;
- x. All proceeds of any or all of the foregoing.

SCHEDULE "E"**Deleted Encumbrances**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
BC276347	2015/06/22	CHARGE	\$4,000,000	MAHAL VENTURE CAPITAL INC.	MERK INVESTMENTS LTD.
BC311800	2017/02/28	TRANSFER OF CHARGE		MERK INVESTMENTS LTD.	SKYMARK FINANCE CORPORATION
BC316950	2017/05/29	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC322163	2017/08/09	TRANSFER OF CHARGE		KLN HOLDINGS INC.	SKYMARK FINANCE CORPORATION
BC322166	2017/08/09	CHARGE	\$9,600,000	MAHAL VENTURE CAPITAL INC.	SKYMARK FINANCE CORPORATION
BC322167	2017/08/09	NO ASSGN RENT GEN		MAHAL VENTURE CAPITAL INC.	SKYMARK FINANCE CORPORATION
BC322175	2017/08/09	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION
BC322181	2017/08/09	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC327419	2017/10/27	NO SEC INTEREST	\$928,500	SKYMARK FINANCE CORPORATION	
BC329736	2017/12/01	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC330339	2017/12/12	NO SEC INTEREST	\$3,300,000	SKYMARK FINANCE CORPORATION	
BC335201	2018/03/19	NO SEC INTEREST	\$633,950	SKYMARK FINANCE CORPORATION	
BC335884	2018/04/03	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC337603	2018/05/07	TRANSFER OF		SKYMARK FINANCE	KLN HOLDINGS INC.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
		CHARGE		CORPORATION	
BC344769	2018/09/07	CHARGE	\$6,400,000	MAHAL VENTURE CAPITAL INC.	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC344775	2018/09/07	NO ASSGN RENT GEN		MAHAL VENTURE CAPITAL INC	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345096	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345098	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345099	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345100	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC352563	2019/01/23	NO SEC INTEREST	\$650,891	SKYMARK FINANCE CORPORATION	
BC353871	2019/02/19	NO SEC INTEREST	\$2	SKYMARK FINANCE CORPORATION	
BC354820	2019/03/07	CONSTRUCTION LIEN	\$4,640,578	VICANO CONSTRUCTION LIMITED	
BC356416	2019/04/10	CONSTRUCTION LIEN	\$439,421	VICANO CONSTRUCTION LIMITED	
BC358285	2019/05/16	CERTIFICATE		VICANO CONSTRUCTION LIMITED	
BC360674	2019/06/27	TRANSFER OF CHARGE		SKYMARK FINANCE	THOMSON, ANDREW 2620509 ONTARIO INC. 2580165

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
				CORPORATION	ONTARIO INC. JANODEE INVESTMENTS LTD. RENAUD, RAYMOND RENAUD, CAMERON 1061307 ONTARIO INC. KLN HOLDINGS INC.
BC361676	2019/07/15	NO SEC INTEREST	\$2,680,000	SKYMARK FINANCE CORPORATION	
BC362237	2019/07/25	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	SEAGRAVE BUILDING SYSTEMS LTD.
BC386710	2020/09/21	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	MERK INVESTMENTS LTD.
BC393218	2020/12/22	TRANSFER OF CHARGE		RENAUD, RAYMOND	1061307 ONTARIO INC.
BC399266	2021/03/26	CHARGE	\$35,000,000	MAHAL VENTURE CAPITAL INC.	GOLDEN MILES FOOD CORPORATION
BC399986	2021/04/06	NOTICE OF LEASE	\$1	MAHAL VENTURE CAPITAL INC.	GOLDEN MILES FOOD CORPORATION

TAB 10

Appendix “H”



Court File No. CV-21-00664778-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Electronically issued : 12-Apr-2022
Délivré par voie électronique
Toronto

THE HONOURABLE MADAM)
)
JUSTICE GILMORE)
)
MONDAY, THE 11TH
DAY OF APRIL, 2022

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**") in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**"), without security, of the assets, undertakings and properties of Mahal Venture Capital Inc. ("**Mahal VC**") and Golden Miles Food Corporation ("**Golden Miles**" and, together with Mahal VC, the "**Companies**") owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario for an order, (i) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and 12175622 Canada Inc. (the "**Purchaser**") dated March 18, 2022 and appended to the Third

Report of the Receiver dated April 4, 2022 (the "**Third Report**"), as amended by the asset purchase agreement amending agreement, dated April 8, 2022 (the "**APA**"), (ii) authorizing the Receiver to enter into any other ancillary documents and agreements required to complete the Transaction, (iii) vesting in the Purchaser the Companies' right, title and interest in and to the assets described in the APA (the "**Purchased Assets**") free and clear of all liens, charges, security interests and encumbrances, other than Permitted Encumbrances (defined in the APA), was heard this day by judicial videoconference.

ON READING the Third Report, the supplement to the third report of the Receiver dated April 8, 2022 (the "**Supplement**"), and on hearing the submissions of counsel for the Receiver, and such other parties listed on the Participant Information Form, no one else appearing although properly served as appears from the Affidavit of Service of Caitlin McIntyre sworn April 5, 2022 and the Affidavit of Service of Nancy Thompson sworn April 8, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion dated April 1, 2022 (the "**NOM**"), the Third Report and the Supplement, be and hereby is abridged, such that service of the NOM, the Third Report and the Supplement is hereby validated, and that further service thereof is hereby dispensed with.

SALE AGREEMENT APPROVAL

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the APA.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA 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.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Receiver's and the Companies' right, title and interest in and to the Purchased Assets described in the APA 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, 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 McEwen dated October 1, 2021; (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; and (iii) those Claims listed on Schedule "B" 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 "C") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Brant (No. 2) 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 subject real property identified in Schedule “D” hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “B” hereto.

6. **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.

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, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the past and current employees of the Companies, including personal information. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Companies

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

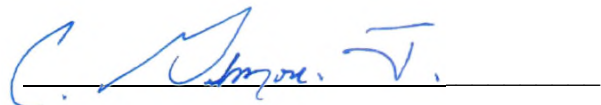
- (a) the pendency of these proceedings;

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

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 Companies and shall not be void or voidable by creditors of the Companies, 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.

MISCELLANEOUS

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.



Schedule A – Form of Receiver’s Certificate

Court File No. CV-21-00664778-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the "**Court**") dated October 1, 2021, KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**"), without security, of the assets, undertakings and properties of Mahal Venture Capital Inc. ("**Mahal VC**") and Golden Miles Food Corporation ("**Golden Miles**" and, together with Mahal VC, the "**Companies**") owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario

B. Pursuant to an Order of the Court dated April 11, 2022 the Court approved the agreement of purchase and sale made as of March 18, 2022 (as amended, the "**APA**") between the Receiver and 12175622 Canada Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Companies’ 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 Article 8 of the APA have been satisfied or waived by the Receiver and the Purchaser; and (iii) 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 APA.

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 APA;
2. The conditions to Closing as set out in Article 8 of the APA 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 _____ [TIME] on _____ [DATE].

**KSV RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of Mahal Venture Capital
Inc. and Golden Miles Food Corporation, and
not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Claims to be deleted and expunged from title to Real Property

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
BC276347	2015/06/22	CHARGE	\$4,000,000	MAHAL VENTURE CAPITAL INC.	MERK INVESTMENTS LTD.
BC311800	2017/02/28	TRANSFER OF CHARGE		MERK INVESTMENTS LTD.	SKYMARK FINANCE CORPORATION
BC316950	2017/05/29	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC322163	2017/08/09	TRANSFER OF CHARGE		KLN HOLDINGS INC.	SKYMARK FINANCE CORPORATION
BC322166	2017/08/09	CHARGE	\$9,600,000	MAHAL VENTURE CAPITAL INC.	SKYMARK FINANCE CORPORATION
BC322167	2017/08/09	NO ASSGN RENT GEN		MAHAL VENTURE CAPITAL INC.	SKYMARK FINANCE CORPORATION
BC322175	2017/08/09	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION
BC322181	2017/08/09	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC327419	2017/10/27	NO SEC INTEREST	\$928,500	SKYMARK FINANCE CORPORATION	
BC329736	2017/12/01	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC330339	2017/12/12	NO SEC INTEREST	\$3,300,000	SKYMARK FINANCE CORPORATION	
BC335201	2018/03/19	NO SEC INTEREST	\$633,950	SKYMARK FINANCE CORPORATION	
BC335884	2018/04/03	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.
BC337603	2018/05/07	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
BC344769	2018/09/07	CHARGE	\$6,400,000	MAHAL VENTURE CAPITAL INC.	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC344775	2018/09/07	NO ASSGN RENT GEN		MAHAL VENTURE CAPITAL INC	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345096	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345098	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345099	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC345100	2018/09/13	POSTPONEMENT		SKYMARK FINANCE CORPORATION	SKYMARK FINANCE CORPORATION KLN HOLDINGS INC.
BC352563	2019/01/23	NO SEC INTEREST	\$650,891	SKYMARK FINANCE CORPORATION	
BC353871	2019/02/19	NO SEC INTEREST	\$2	SKYMARK FINANCE CORPORATION	
BC354820	2019/03/07	CONSTRUCTION LIEN	\$4,640,578	VICANO CONSTRUCTION LIMITED	
BC356416	2019/04/10	CONSTRUCTION LIEN	\$439,421	VICANO CONSTRUCTION LIMITED	
BC358285	2019/05/16	CERTIFICATE		VICANO CONSTRUCTION LIMITED	
BC360674	2019/06/27	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	THOMSON, ANDREW 2620509 ONTARIO INC. 2580165 ONTARIO INC. JANODEE INVESTMENTS LTD.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
					RENAUD, RAYMOND RENAUD, CAMERON 1061307 ONTARIO INC. KLN HOLDINGS INC.
BC361676	2019/07/15	NO SEC INTEREST	\$2,680,000	SKYMARK FINANCE CORPORATION	
BC362237	2019/07/25	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	SEAGRAVE BUILDING SYSTEMS LTD.
BC386710	2020/09/21	TRANSFER OF CHARGE		SKYMARK FINANCE CORPORATION	MERK INVESTMENTS LTD.
BC393218	2020/12/22	TRANSFER OF CHARGE		RENAUD, RAYMOND	1061307 ONTARIO INC.
BC399266	2021/03/26	CHARGE	\$35,000,000	MAHAL VENTURE CAPITAL INC.	GOLDEN MILES FOOD CORPORATION
BC399986	2021/04/06	NOTICE OF LEASE	\$1	MAHAL VENTURE CAPITAL INC.	GOLDEN MILES FOOD CORPORATION

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

- (a) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (b) only with respect to the Owned Real Property, construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not material; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Debtors or the Vendor; and (v) the indebtedness secured by them is not in arrears;
- (c) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting the use of real property;
- (d) registered restrictive covenants, leases and notices of lease, easements, covenants, rights of way and other restrictions, including without limitation: (i) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, and (ii) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Owned Real Property;
- (e) registered agreements with municipalities or public utilities;
- (f) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Owned Real Property;
- (g) any encroachments by any structure located on the Owned Real Property onto any adjoining lands and any encroachment by any structure located on adjoining lands onto the Owned Real Property;
- (h) in respect of the Owned Real Property, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent;
- (i) in respect of the Owned Real Property, any Work Orders; and

~

- (j) the notice of lease registered as instrument number A473982 against title to the Owned Real Property under PIN 32281-0177 in favour of The TDL Group Corp. (the “**TDL Notice**”), provided that the Vendor shall use commercially reasonable efforts to obtain the consent of The TDL Group Corp. to the discharge of the TDL Notice on or prior to the Closing Date (whether pursuant to the Approval and Vesting Order or otherwise);

provided that, notwithstanding anything in the foregoing to the contrary, Permitted Encumbrances shall not include any of the instruments or registrations listed in Schedule “B” hereof, nor any registrations made against either Debtor under the *Personal Property Security Act* (Ontario) to the extent such registrations attach to the Purchased Assets.

Schedule D – Real Property

PIN 32281-0177 (LT): PT LT 38 CON 3 GEOGRAPHIC TWP OF BRANTFORD, BEING PT 2 ON 2R4137; BRANTFORD CITY; T/W EASEMENT OVER PART LOTS 37 & 38, CON 3 GEOGRAPHIC TWP OF BRANTFORD, PT 24,25,26,30,31,32,36,37,38,42,43,44, 2R6421 AS IN BC66565 AND PT RELEASE IN BC96373

PIN 32281-0309 (LT): FIRSTLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, PLAN 2R6545; SUBJECT TO EASEMENT OVER PART 2, PLAN 2R6545 AS IN BC304245; SECONDLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, 3, PLAN 2R1332 AND PART 1, PLAN 2R4747; CITY OF BRANTFORD

Court File No.: CV-21-00664778-00CL

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

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

Proceeding Commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver

TAB 11

Appendix “A”



**Fifth Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Mahal Venture Capital Inc. and
Golden Miles Food Corporation**

August 15, 2023

And

**Second Report to Court of
KSV Restructuring Inc.
as Licensed Insolvency Trustee of
Mahal Venture Capital Inc. and
Golden Miles Food Corporation**

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COURT FILE NO. CV-21-00664778-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

RESPONDENTS

FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

AND

SECOND REPORT TO COURT OF
KSV RESTRUCTURING INC.
AS LICENSED INSOLVENCY TRUSTEE OF
MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

AUGUST 15, 2023

1.0 Introduction

1. This report (this "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager ("Receiver") of the assets, undertakings and properties of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles", and together with Mahal VC, the "Companies") owned or used in connection with the flour mill (the "Flour Mill") located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the "Real Property" and together with the Flour Mill, the "Property"), and in its capacity as licensed insolvency trustee of the Companies.
2. KSV was appointed Receiver of the Companies pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on October 1, 2021 (the "Receivership Order"). The resulting receivership proceedings are referred to herein as the "Receivership Proceedings".
3. On November 15, 2021, the Receiver filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended (the "BIA") on behalf of the Companies pursuant to Paragraph 3(r) of the Receivership Order. KSV was appointed the licensed insolvency trustee (the "Trustee") of the Companies by the Office of the Superintendent of Bankruptcy (Canada).

4. The principal purpose of the Receivership Proceedings was to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies' creditors.
5. On April 11, 2022, the Court granted an order in the Receivership Proceedings (the "Sale Approval Order") approving the sale of substantially all of the Property to 12175622 Canada Inc. (the "Purchaser") pursuant to an agreement of purchase and sale dated March 18, 2022, as amended (the "APA").
6. The Purchaser is owned and controlled by Santokh Mahal ("Santokh"), the owner and sole officer and director of Golden Miles, and the father of Jesse Mahal ("Jesse", and together with Santokh, the "Mahals"), the owner and sole officer and director of Mahal VC.
7. The sale transaction contemplated by the APA (the "Transaction") closed on May 18, 2022. The aggregate net proceeds received were \$18.47 million (the "Sale Proceeds"). Of the Sale Proceeds, \$16 million was allocated to the real property owned by Mahal VC (the "Real Property Proceeds"), and \$2.47 million was allocated to the personal property (the "Personal Property") owned by Golden Miles (the "Golden Miles Proceeds").
8. On November 21, 2021, Santokh filed a motion, seeking, among other things, a declaration that the security in his favour over all of the personal property of Golden Miles, other than inventory, is valid and enforceable, and ranks in priority to any other security interest registered under the *Personal Property Security Act* (the "Mahal Security Motion").
9. In connection with the Mahal Security Motion, the Receiver filed its Fourth Report to Court dated November 1, 2022 (the "Fourth Report") and the Receiver's supplement to the Fourth Report dated December 8, 2022 (the "Fourth Report Supplement").
10. As detailed below in Section 5, the Court issued a decision dated May 10, 2023 and the Mahal Security Motion has been resolved. In the Fourth Report and the Fourth Report Supplement, the Receiver noted that it was in the process of finalizing its recommendation regarding a distribution of the Real Property Proceeds and other recoveries associated with Mahal VC (the "Mahal VC Proceeds" and, together with the Golden Miles Proceeds, the "Proceeds"). The Receiver has now completed its review of the secured claims against the Real Property and, accordingly, is filing this Report seeking, *inter alia*, an interim distribution order.
11. Copies of the Fourth Report and the Fourth Report Supplement (both without appendices) are included as Appendix "A" and "B", respectively.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Receivership Proceedings;
 - b) summarize the Receiver's position regarding the security interests in the Golden Miles Proceeds by certain creditors of Golden Miles;

- c) summarize the opinions and conclusions of Blake, Cassels & Graydon LLP (“Blakes”), the Receiver’s counsel, regarding the security interests granted by Mahal VC in the Real Property;
- d) provide the Receiver’s interim statement of receipts and disbursements for the period ending July 31, 2023 (the “R&D”), including the Receiver’s proposed methodology to allocate receipts and disbursements between Golden Miles and Mahal VC;
- e) provide the Receiver’s rationale for making an interim distribution to certain of the Companies’ secured creditors; and
- f) request that the Court issue an Order:
 - i. authorizing and directing the Receiver to make distributions to certain of the Companies’ secured creditors from the Proceeds, as set out herein;
 - ii. approving the fees of the Receiver and Blakes from March 1, 2022 to July 31, 2023; and
 - iii. approving the Fourth Report, the Fourth Report Supplement, this Report and the Receiver’s activities described therein.

1.2 Currency

1. All amounts in this Report are expressed in Canadian Dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon certain of the Companies’ unaudited financial statements, limited books and records obtained from the Mahals, and discussions with the Mahals and a former advisor to the Companies.
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2.0 Executive Summary

1. Substantially all of the Companies’ assets have been sold, resulting in gross proceeds of approximately \$18.9 million (excluding sales taxes and Receiver’s borrowings). As discussed in this Report, there have historically been several competing interests to the proceeds, both those associated with the Personal Property and the Real Property.
2. The Receiver and Blakes have reviewed support for the security interests claimed and have discussed the results of their review with counsel representing the secured creditors. A draft of this Report, containing the Receiver’s priority analysis, was circulated to affected stakeholders in draft in March, 2023 for consultation purposes, and no comments were received.

3. The Receiver's findings and recommendations are summarized below:
- a) The Receiver is currently holding the aggregate approximately \$16.7 million in the Receiver's estate account after accrued costs, of which approximately \$15 million is allocated to Mahal VC and \$1.7 million is allocated to Golden Miles.

Mahal VC

- b) The Receiver proposes to hold back the following amounts from the remaining Mahal VC Proceeds, for the reasons set out in this Report:
- i. \$1,500,000 (defined below as the "Omit Tax Reserve") pending the resolution of certain property tax bills that the Purchaser sent to the Receiver on February 24, 2023, which the Purchaser is claiming is an obligation of the Receiver.
 - ii. \$600,000 (defined below as the "Mahal VC Cost Reserve") as a reserve for the professional costs to resolve the Omit Tax Reserve claim, the Orr Holdback (as defined below) and to complete the administration of the Receivership Proceedings.

After accounting for the foregoing reserves, the Receiver is holding approximately \$12.9 million of Mahal VC Proceeds for interim distribution.

- c) The Receiver is proposing that a further amount of \$3,650,000 (defined below as the "Orr Holdback") be held back from the proposed interim distribution to Skymark Finance Corporation ("Skymark"), the Companies' principal secured creditor, pending resolution of a trust claim made by certain third parties against Skymark and related entities.
- d) The Receiver has concluded that Vicano Construction ("Vicano"), the Companies' former general contractor, has a priority claim for 10% of its total claim, or \$1,659,413 (being the unpaid holdback in respect of which the *Construction Act* (Ontario) provides a priority), which has been reviewed by Altus Group Limited ("Altus"), a construction cost consultant, as discussed below.
- e) A summary of the proposed interim distributions from the Mahal VC Proceeds are presented in the following table:

(\$unaudited)	
Mahal VC Proceeds	14,954,136
Reserves:	
Omit Tax Reserve	(1,500,000)
Mahal VC Cost Reserve	(600,000)
Net Mahal VC Proceeds available	<u>12,854,136</u>

<u>Proposed Interim Distributions</u>	<u>Creditors</u>		
	Vicano (Note 1)	Skymark (Note 2)	KLN (Note 3)
Allocated Net Mahal VC Proceeds	1,659,413	8,747,556	2,447,166
Orr Holdback	-	(3,650,000)	-
Net proposed interim distribution	<u>1,659,413</u>	<u>5,099,556</u>	<u>2,447,166</u>

Notes

1. Represents 10% of Vicano's accepted claim, which the Receiver views as having first priority over the Mahal VC Proceeds.
2. The allocated amount represents 78.14% of the Mahal VC Proceeds after deducting the reserves and the proposed distribution to Vicano.
3. The allocated amount represents 21.86% of the Mahal VC Proceeds after deducting the reserves and the proposed distribution to Vicano.

- f) Pursuant to the above table, the Receiver recommends that the following interim distribution be approved from the Mahal VC Proceeds:
- i. Vicano - \$1,659,413
 - ii. Skymark - \$5,097,556
 - iii. KLN - \$2,447,166
- g) There are insufficient proceeds from Mahal VC's property to make distributions to any other creditors at this time.

Golden Miles

- h) Pursuant to the McEwen Endorsement (as defined below), on May 10, 2023, the Court declared that Santokh has a priority claim over the Golden Miles Proceeds in the amount of \$281,600, plus 5% interest. Justice McEwen granted costs to the Receiver in the amount of \$75,000 and costs to Skymark in the amount of \$20,000. The Receiver proposes to set-off this aggregate \$95,000 costs award against Santokh's distribution.
- i) The Receiver has determined that Skymark has a secured claim over 10% of the Golden Miles Proceeds, based on the Receiver's assessment that Skymark financed 10% of the aggregate personal property that was sold in the Transaction.

- j) The balance of the Golden Miles Proceeds is subject to the Receiver's Charge securing the costs of the Golden Miles receivership proceedings, but otherwise unencumbered and subject to distribution by the Trustee in the Golden Miles bankruptcy proceedings.
- k) A summary of the proposed final distributions in the Receivership Proceedings from the Golden Miles Proceeds is presented in the following table:

<u>(\$unaudited)</u>			
Golden Miles Proceeds Available			<u>1,735,804</u>
<u>Proposed Final Distributions</u>	<u>Creditors</u>		
	Santokh (Note 1)	Skymark (Note 2)	Total
Allocated Golden Miles Proceeds	314,755	247,000	561,755
Cost Award (Note 3)	(95,000)	20,000	(75,000)
Net proposed final distribution	<u>219,755</u>	<u>267,000</u>	<u>486,755</u>
Net remaining proceeds (Note 4)			<u><u>1,249,049</u></u>

Notes

1. The allocated amount represents Santokh's priority claim of \$281,600, plus interest to Aug 23, 2023.
2. The allocated amount represents 10% of the net proceeds from the sale of the Golden Miles Personal Property (\$2.47 million x 10% = \$247,000).
3. Represents a set-off of the \$95,000 cost award against Santokh for the Mahal Security Motion, of which \$20,000 is payable to Skymark and \$75,000 is allocated to the Receiver for its costs and the costs of its counsel.
4. Represents the residual Golden Miles Proceeds that are subject to the Receiver's charge, but otherwise unencumbered.

- l) Pursuant to the above table, the Receiver recommends that the following final distribution be approved from the Golden Miles Proceeds:
- i. Santokh - \$219,755
 - ii. Skymark - \$ 267,000

Bankruptcy Funding and Litigation Claims

- m) The Companies' bankruptcies have been funded pursuant to third party guarantees issued by the Receiver. Santokh has requested that the Trustee take a position regarding certain litigation to which Golden Miles is a party, including litigation involving Vicano. Santokh advised the Trustee that if the litigation will not be pursued, he intends to seek an assignment of it.

3.0 Background

1. Mahal VC was incorporated in 2014 under the *Canada Business Corporations Act* and is a single purpose corporation that owned the Real Property.
2. Golden Miles was incorporated in 2010 as Golden Miles Bread & Bagel Corporation under the *Business Corporations Act* (Ontario) and changed its name to Golden Miles Food Corporation in 2017.
3. Prior to the Transaction, Mahal VC owned the Real Property, which totaled over 20 acres, and the Mahals have advised the Receiver that Golden Miles owned the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operated from the Real Property and described itself in its unaudited financial statements as at June 30, 2020 as being “engaged in the sale of cookies, crackers, and dried plant material”.
4. As described above, pursuant to the Transaction which closed on May 18, 2022, the Property was sold to the Purchaser for aggregate net proceeds of \$18.47 million.
5. Detailed information regarding the Companies, their stakeholders, the Transaction and these proceedings is included in the prior reports of the Receiver. These reports and other materials filed with the Court in this proceeding can be accessed from the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc.>

3.1 Secured Creditors

1. As of the date of the Receivership Order, the Companies were indebted to Skymark in the amount of approximately \$29.2 million¹. The Skymark debt relates to various loans to Mahal VC in connection with mortgages granted by Mahal VC on the Real Property (the “Mahal Loans”) and to Golden Miles in connection with financing for specific equipment (the “GM Loans”, and together with the Mahal Loans, the “Loans”). The Receiver understands that the primary purpose of the Loans was to construct the Flour Mill on the Real Property and to acquire certain of the equipment to be used in it.
2. On March 6, 2023, Alvarez & Marsal Canada Inc. was appointed as receiver (the “Skymark Receiver”) over Skymark (and Merk, defined below) pursuant to an order of Mr. Justice Penny, sought by Skymark’s secured creditor Bridging Finance Inc. (acting by its court-appointed receiver, PricewaterhouseCoopers Inc.). The Receiver has been in discussions with the Skymark Receiver and its counsel since its appointment.
3. In addition to Skymark, certain other creditors have claimed an interest in either the Personal Property or the Real Property during these proceedings.

¹ This Skymark facility consists of approximately \$19.7 million owing by Mahal VC and approximately \$9.5 million owing by Golden Miles.

3.1.1 Personal Property Security

1. At the outset of these proceedings, there were various registrations made against the Personal Property. As of the date of this Report, only Skymark and Santokh have valid registered interests against the Personal Property, which pursuant to the Sale Approval Order, now attach to the Golden Miles Proceeds; the other secured claims as against the Personal Property were resolved² or disallowed.

3.1.2 Real Property Security

1. Four mortgages, with numerous corresponding transfers of security interests, and one construction lien, were registered against the Real Property before closing of the Transaction. Pursuant to the Sale Approval Order, the registrations now attach to the Mahal VC Proceeds. These charges, the Receiver's view on their relative priority and the debt claims of the applicable secured creditors thereunder are discussed in Section 6 and Section 7, below.
2. In addition to the registered encumbrances against the Real Property, 1989474 Ontario Inc. ("198 Co.") has asserted a trust interest in the Real Property Proceeds, as discussed further in Section 8, below.

3.1.3 Interim Lender

1. Prior to closing the Transaction, the Receivership Proceedings were primarily funded through borrowings from RCM Capital Management, the Companies' interim lender (the "Interim Lender"). The borrowing facility was approved by the Court pursuant to an Order dated November 22, 2021.
2. During these proceedings, the Interim Lender provided advances in the principal amount of approximately \$1.4 million (the "Receiver's Borrowings"), which amounts were secured by super-priority Receiver's Certificates.
3. On or around May 20, 2022, following closing of the Transaction, the Receiver used a portion of the Proceeds to repay the Receiver's Borrowings in full, including accrued interest and lender fees of approximately \$122,000. Accordingly, there are no amounts currently owing to the Interim Lender.

4.0 Receipts and Disbursements

1. Attached as Appendix "C" is the R&D, which reflects that there is approximately \$16.7 million in the Receiver's estate account after accrued costs, of which approximately \$15 million is allocated to Mahal VC and \$1.7 million is allocated to Golden Miles.
2. The funds available for distribution to creditors represent the proceeds of the Transaction and miscellaneous other recoveries, less the interim financing, operating expenses and professional fees, in each case allocated as between Golden Miles and Mahal VC. The Receiver's methodology for allocating certain material receipts and disbursements between the Companies is as follows:

² In certain cases, equipment was returned to lessors with valid registrations.

- a) Proceeds from Transaction: allocated in accordance with terms of the APA;
- b) Interest paid on interim funding: allocated on the same basis as the proceeds from the Transaction;
- c) Professional fees of the Receiver and its counsel: allocated equally between the Companies prior to closing the Transaction, and thereafter allocated 80% to Golden Miles and 20% to Mahal VC due to the significant time incurred to review and respond to the Mahal Security Motion (defined below) which deals exclusively with Golden Miles; and
- d) Operating costs, insurance and property taxes: allocated on the same basis as the proceeds from the Transaction.

5.0 Golden Miles and Personal Property Security Distribution

1. As stated above, the Receiver is currently holding approximately \$1.7 million of net proceeds from the Transaction that have been allocated as proceeds of the Golden Miles Personal Property. There are two secured creditors with claims against these Golden Miles Proceeds: Skymark and Santokh. A copy of the personal property security review opinion delivered by Blakes was attached to the Fourth Report as Appendix "A".

The Mahal Security Motion

2. On November 21, 2021, Santokh brought the Mahal Security Motion seeking, among other things, "a declaration that the security in favour of Santokh Mahal over all of the personal property of Golden Miles, other than inventory, is valid and enforceable, and ranks in priority to any other security interest registered under the Personal Property Security Act..., with the exception of specific equipment, which specific equipment is subject to prior-ranking security in favour of the Bank of Nova Scotia and Caterpillar Financial Services Limited".
3. After several adjournments discussed in the Fourth Report, the Mahal Security Motion was scheduled to be heard on January 16, 2023; however, due to scheduling issues, had to be further adjourned to March 13, 2023.
4. The Mahal Security Motion was heard on March 13, 2023. On May 10, 2023, Mr. Justice McEwen released his reasons, attached hereto as Appendix "D" (the "McEwen Endorsement"), which held that Santokh's secured claim against the Golden Miles Proceeds was limited to \$281,600, plus interest at a rate of 5% per year until paid.
5. The McEwen Endorsement further held that the Receiver is entitled to \$75,000 in costs, and Skymark is entitled to \$20,000 in costs. A subsequent endorsement of Mr. Justice McEwen, attached hereto as Appendix "E", confirmed that the McEwen Endorsement did not provide for any costs in favour of Santokh.
6. The Affidavit of Santokh sworn December 17, 2021, filed in connection with the Mahal Security Motion, provides a breakdown and cheque or bank record support for the \$281,600 in respect of which Santokh has a secured claim. The advances were made on various dates from December 18, 2020 to August 5, 2021. Accordingly, the amount owing to Santokh as of August 23, 2023, including the accrued interest at a rate of 5%, will be approximately \$314,755:

7. The Receiver is accordingly seeking an order authorizing a distribution to Santokh in the amount of \$219,755, being the \$281,600 secured claim as validated by the McEwen Endorsement, plus \$33,155 of accrued interest in accordance with the McEwen Endorsement, less the Receiver's \$75,000 cost award, and less Skymark's \$20,000 cost award. The Receiver is further seeking authorization to distribute this held-back \$20,000 Skymark costs award to Skymark.
8. Santokh's counsel has advised the Receiver that he objects to the Receiver setting off the \$20,000 Skymark cost award. The Receiver views the set-off as a matter of administrative efficiency, and will proceed in respect of the \$20,000 as the Court directs.

Skymark Security

9. As discussed in the Fourth Report, Skymark has a first-ranking priority claim to the proceeds of the Golden Miles Personal Property that Skymark financed (the "Skymark Priority"); however, quantum of the Skymark Priority is contested by the Mahals. In consultation with counsel to Skymark and Santokh, and having considered the aggregate amount of Golden Miles Personal Property compared to the Golden Miles Personal Property financed by Skymark or pledged to Skymark by Golden Miles in connection with certain advances, the Receiver has determined that Skymark's priority claim should be valued at 10% of the aggregate amount of Golden Miles Personal Property.
10. In order to determine this value, the Receiver engaged Corporate Assets Inc. ("Corporate Assets"), a liquidator and appraiser. Corporate Assets is familiar with the Golden Miles property on account of having participated in the sale process conducted by the Receiver, during which it inspected the equipment at the Flour Mill.
11. Corporate Assets was subsequently provided with copies of the equipment invoices either financed by Skymark or specifically pledged to Skymark by Golden Miles in connection with Skymark advances. Corporate Assets reviewed the equipment listed on these invoices and compared their approximate market value to the Golden Miles Proceeds, as determined by the Transaction (\$2.47 million).
12. Based on this analysis, Corporate Assets advised the Receiver that it believes that the Golden Miles property pledged to Skymark had a market value of approximately 10% of the Personal Property, the proceeds of which are now the subject of this distribution recommendation. The Receiver is of the view that a 10% allocation of value is reasonable, and is accordingly recommending that Skymark receive a distribution of 10% of the Golden Miles Proceeds.

Remaining Golden Miles Proceeds

13. After accounting for the proposed distributions to Santokh and Skymark, the Receiver will continue to hold approximately \$1.25 million of Golden Miles Proceeds (the "Residual Golden Miles Proceeds"). These Residual Golden Miles Proceeds are subject to the Receiver's Charge granted by the Order of Mr. Justice McEwen dated October 1, 2021, securing the fees and disbursements of the Receiver and its counsel, but are otherwise unencumbered.

14. Any portion of the Residual Golden Miles Proceeds that are not necessary to fund the administration of the Golden Miles receivership shall be distributed by the Trustee, net of the Trustee's costs, on account of the proven claims of Golden Miles' unsecured creditors. The Trustee will be commencing a claims process to determine the amounts of these unsecured claims in due course.

5.1 Interim Distribution

1. Based on the above, the Receiver is seeking an order authorizing it to make a final distribution of the Golden Miles Proceeds in the amounts of:

Creditor	Amount of Final Distribution
Skymark	\$247,000, being 10% of the net Golden Miles Proceeds
Santokh	\$219,755, being Santokh's priority claim of \$281,600, plus interest, less the aggregate \$95,000 cost award that is being offset
Skymark	\$20,000, being the cost award in the Mahal Security Motion

6.0 Real Property Secured Creditors of Mahal VC

1. Eleven parties had registrations against the Real Property immediately prior to closing the Transaction. Pursuant to the Sale Approval Order, the registrations now attach to the Mahal VC Proceeds. Copies of the parcel registers for parcels of land comprising the Flour Mill, dated September 10, 2021 (prior to the Receiver's appointment) and March 18, 2022 (prior to the closing of the Transaction) are attached hereto as Appendix "F".
2. Blakes has reviewed the security granted by Mahal VC to the various parties and issued an omnibus security opinion which is summarized below (the "Opinion"). The scope of the Opinion is limited to the validity of the security of Skymark and KLN (defined below), given that these are the only mortgagees to whom distributions are contemplated. A copy of the Opinion will be provided to the creditors with registered real property security interests, or the Court upon request.

6.1 Summary of Charges

1. There were four charges registered against the Real Property, three of which were subject to transfers and/or postponements since their registration, and one construction lien. These four charges and the construction lien, listed by order of original registration date (though not by order of priority), together with the subsequent transfers and postponements, are as follows:
 - a) \$4,000,000 charge in favour of Merk Investments Ltd. ("Merk") registered on June 22, 2015 as Instrument Number BC276347 (the "Merk Charge");
 - i. Transfer \$4,000,000 of charge from Merk to Skymark, registered on February 28, 2017 as Instrument Number BC311800;
 - ii. Transfer \$300,000 of charge from Skymark to KLN Holdings Inc. ("KLN"), registered on May 29, 2017 as Instrument Number BC316950;

- iii. Transfer \$300,000 of charge from KLN back to Skymark, registered on August 9, 2017 as Instrument Number BC322163;
 - iv. Postponement of charge to the 2017 Skymark Charge (defined below), registered on August 9, 2017 as Instrument Number BC322175;
 - v. Postponement of charge to the 2018 Skymark Charge (defined below), registered on September 13, 2018 as Instrument Number BC345096;
 - vi. Transfer of \$4,000,000 of charge from Skymark back to Merk, registered on September 21, 2020 as Instrument Number BC386710.
- b) \$9,600,000 charge in favour of Skymark registered on August 9, 2017 as Instrument Number BC322166 (the “2017 Skymark Charge”);³
- i. Transfer of \$500,000 of charge from Skymark to KLN, registered on August 9, 2017 as Instrument Number BC322181;
 - ii. Transfer of \$200,000 of charge from Skymark to KLN, registered on December 1, 2017 as Instrument Number BC329736;
 - iii. Transfer of \$500,000 of charge from Skymark to KLN, registered on April 3, 2018 as Instrument Number BC335884; and
 - iv. Transfer of \$900,000 of charge from Skymark to KLN, registered on May 7, 2018 as Instrument Number BC337603.
- c) \$6,400,000 charge in favour of Skymark (82.27%) and KLN (17.73%) registered on September 7, 2018 as Instrument Number BC344769 (the “2018 Skymark Charge”);⁴
- i. Transfer of \$2,650,000 of charge from Skymark to: (a) Andrew Thompson (“Thompson”); (b) 2620509 Ontario Inc. (“262 Co.”); (c) 2580165 Ontario Inc. (“258 Co.”); (d) Janodee Investments Ltd. (“Janodee”); (e) Raymond Renaud (“R. Renaud”); (f) Cameron Renaud (“C. Renaud”); (g) 1061307 Ontario Inc. (“106 Co.”); and (h) KLN, registered on June 27, 2019 as Instrument Number BC630674;⁵
 - ii. Transfer of \$300,000 of charge from Skymark to Seagrave Building Systems Ltd. (“Seagrave”) registered on July 25, 2019 as Instrument Number BC362237;⁶ and
 - iii. Transfer of \$225,000 of charge from Raymond Renaud to 1061307 Ontario Inc., registered on December 22, 2020 as Instrument Number BC393218.⁷

³ The 2017 Skymark Charge includes a general assignment of rents registered on the same date as BC322167.

⁴ The 2018 Skymark Charge includes a general assignment of rents registered on the same date as BC344775.

⁵ Based on registered percentages, transfer should have been for \$2,650,240, not \$2,650,000.

⁶ Based on registered percentages, transfer should have been for \$300,160, not \$300,000.

⁷ Based on registered percentages, transfer should have been for \$225,280, not \$225,000.

- d) \$4,640,578 and \$439,4201 construction liens in favour of Vicano perfected by a certificate of action, registered on May 16, 2019 as Instrument Number BC358285 (the “Vicano Lien”);⁸ and
- e) \$35,000,000 charge in favour of Golden Miles registered on March 26, 2021 as Instrument Number BC399266 (the “Golden Miles Charge”).

A chart summary of the foregoing is provided as Appendix “G”.

2. The charges secure advances and other claims which have been reviewed by the Receiver. In particular, prior to its appointment as Receiver, KSV undertook a detailed review of the books and records of the Companies and Skymark to prepare a report commissioned by the Companies and Skymark related to minutes of settlement among Skymark, Mahal VC and Golden Miles dated July 26, 2021. The report dated August 26, 2021 was provided to Skymark and the Companies on a confidential basis (the “KSV Report”).
3. The KSV Report was delivered to Skymark and the Mahals confidentially. The Mahals’ counsel has subsequently requested that it be filed with the Court. Skymark has not consented to this disclosure of the KSV Report, and it is accordingly not attached to this Report.

6.2 Claims and Entitlements of Mortgage Holders

Merk

1. The Merk Charge was registered in the principal amount of \$4,000,000 on June 22, 2015 and was granted pursuant to a commitment letter dated June 8, 2015 between Skylark Holdings Limited (“Skylark”), as broker, and Santokh (the “Merk Commitment Letter”). Based on affidavit evidence filed by Skymark, the Merk Commitment Letter was issued by Skylark “on behalf of Skymark” and issued to Santokh because “Skylark did not yet know the name of the corporate borrower”.⁹ A copy of the Merk Commitment Letter is attached hereto as Appendix “H”.
2. The advances secured by the Merk Charge were made on the following dates, in the following amounts:¹⁰

Advance	Date	Amount
First Advance	June 22, 2015	\$1,000,000.00
Second Advance	May 16, 2017	\$1,593,224.95
Third Advance	May 29, 2017	\$300,000.00
Fourth Advance	June 8, 2017	\$500,000.00
	Total	\$3,393,224.95

⁸ Claims for Lien were registered by Vicano on March 7, 2019 (\$4,640,577.52, Instrument Number BC354820) and April 10, 2019 (\$439,420.95, Instrument Number BC356416), which were perfected by the May 16, 2019 certificate of action.

⁹ See paragraph 14 of the Affidavit of Paul Millar, sworn June 24, 2021, filed in these proceedings in support of Skymark’s application to appoint KSV as Receiver (the “June 24 Millar Affidavit”).

¹⁰ The dates and advance amounts were independently confirmed by KSV. They are also set out in Paragraph 15 of the Affidavit of Paul Millar, sworn June 24, 2021, filed in support of Skymark’s application to appoint KSV as Receiver.

3. Based on the books and records of Mahal VC and Skymark, the indebtedness under the Second Advance, Third Advance and Fourth Advance were assigned to Skymark, and secured by the 2017 Skymark Charge in May and June 2017.
4. A number of transfers have been registered in respect of the Merk Charge, which taken together do not change Merk's interest. On February 28, 2017, the whole Merk Charge was transferred to Skymark. \$300,000 of Skymark's interest in the Merk Charge was transferred to KLN on May 29, 2017, which interest was transferred back to Skymark by KLN on August 9, 2017. Subsequently, after the registrations of the postponements (discussed in the following paragraphs), Skymark transferred the whole \$4,000,000 interest back to Merk on September 21, 2020.
5. On August 9, 2017, the Merk Charge was subordinated to the 2017 Skymark Charge pursuant to a postponement registered on the same date, as Instrument Number BC322175 (the "First Postponement").
6. On September 13, 2018, the Merk Charge was subordinated to the 2018 Skymark Charge pursuant to a postponement registered on the same date, as Instrument Number BC345096 (the "Second Postponement").
7. As part of KSV's analysis of the Mahal VC indebtedness in 2021, KSV reviewed a forbearance agreement dated March 12, 2020 attached as Exhibit "Q" to the June 24 Millar Affidavit, which the Receiver understands was superseded by a forbearance agreement dated March 12, 2020 attached as Exhibit "D" to the affidavit of Paul Millar, sworn July 13, 2021 (the "Forbearance Agreement"). A copy of the Forbearance Agreement is attached hereto as Appendix "I".
8. The Forbearance Agreement, duly executed by Mahal VC and Skymark, includes acknowledgements of indebtedness, inclusive of principal, interest, fees and bonuses owing by Mahal VC to Skymark as of March 1, 2020. There are significant disputes between Skymark and Mahal VC regarding advances, repayments and charges that were made or incurred prior to March 1, 2020; however, because the Forbearance Agreement provides a discrete, point-in-time agreement by both Skymark and Mahal VC of the aggregate debt as of March 1, 2020, the Receiver accepts the mutually agreed debt amount as binding on the parties.
9. Accounting for the transfers of debt to Skymark, the quantum of indebtedness as agreed between Mahal VC and Skymark as of March 1, 2020, and interest and fees chargeable under the Merk Commitment Letter after March 1, 2020, the total indebtedness secured by the Merk Charge, as of August 23, 2023, will be \$1,758,327.65.¹¹

Skymark

10. As summarized above, Skymark registered two mortgages against the Real Property: the 2017 Skymark Charge; and the 2018 Skymark Charge. The Receiver's analysis of those charges and the advances made thereunder are set out in this subsection.

¹¹ This amount will accrue interest in accordance with the terms of the Merk Commitment Letter.

2017 Skymark Charge

11. The 2017 Skymark Charge was registered in the principal amount of \$9,600,000 on August 9, 2017, and was granted pursuant to a commitment letter dated November 30, 2016 between Skylark, as broker, and Mahal VC (the “2017 Skymark Commitment Letter”). A copy of the 2017 Skymark Commitment Letter is attached hereto as Appendix “J”.
12. The advances secured by the 2017 Skymark Charge were made on the following dates, in the following amounts:

Advance	Date	Amount
Transferred Second, Third and Fourth Advance from Merk Charge	November 30, 2016	\$2,394,171.52
Transferred accrued interest from transferred advances	November 30, 2016	\$51,128.12
First Advance	August 8, 2017	\$200,000
Second Advance	September 8, 2017	\$1,017,808.81
Third Advance	October 10, 2017	\$1,530,776.75
Fourth Advance	October 25, 2017	\$1,477,886.52
Fifth Advance	December 1, 2017	\$200,000.00
Sixth Advance	December 15, 2017	\$983,413.81
Seventh Advance	March 21, 2018	\$440,688.40
Eighth Advance	March 21, 2018	\$59,311.60
Ninth Advance	July 3, 2018	\$1,008,897.44
Total		\$9,364,082.97

13. Pursuant to transfers dated August 9, 2017, December 1, 2017, April 3, 2018 and May 7, 2018, each registered on title to the Real Property (collectively, the “2017 Skymark Charge Transfers”), Skymark transferred 21.86% of its interest in the 2017 Skymark Charge to KLN. The Receiver has been provided with copies of the 2017 Skymark Charge Transfers and is satisfied that they are effective.
14. Accounting for the quantum of indebtedness as agreed between Mahal VC and Skymark as of March 1, 2020, and interest and fees chargeable under the 2017 Skymark Commitment Letter after March 1, 2020, the total indebtedness secured by the 2017 Skymark Charge, as of August 23, 2023, will be \$21,214,491.86.¹²
15. Pursuant to the 2017 Skymark Charge Transfers resulting in Skymark retaining a 78.14% interest in the 2017 Skymark Charge, Skymark’s entitlement to proceeds under the 2017 Skymark Charge, as of August 23, 2023, will be \$16,577,003.94.

¹² This amount will accrue interest in accordance with the terms of the 2017 Skymark Commitment Letter.

2018 Skymark Charge

16. The 2018 Skymark Charge was registered in the principal amount of \$6,400,000 on September 7, 2018 and was granted pursuant to a commitment letter dated September 4, 2018 between Skylark, as broker, and Mahal VC (the "2018 Skymark Commitment Letter"). A copy of the 2018 Skymark Commitment Letter is attached hereto as Appendix "K".
17. The advances secured by the 2018 Skymark Charge were made on the following dates, in the following amounts:

Advance	Date	Amount
First Advance	May 1, 2018	\$250,000.00
Second Advance	September 7, 2018	\$1,015,168.93
Third Advance	September 7, 2018	\$119,831.07
Fourth Advance	July 22, 2019	\$451,405.95
	Total	\$1,836,405.95

18. Pursuant to transfers dated June 27, 2019, each registered on title to the Real Property, Skymark transferred 41.41% of its interest in the 2018 Skymark Charge to the following parties, in the following amounts:

Transferee	Percentage of Interest	Reference
Thompson	4.69%	"Thompson Transfer"
262 Co.	2.34%	"262 Transfer"
258 Co.	4.69%	"258 Transfer"
Janodee	3.91%	"Janodee Transfer"
R. Renaud	3.52%	"R. Renaud Transfer"
C. Renaud	2.34%	"C. Renaud Transfer"
160 Co.	8.20%	"160 Transfer"
KLN	11.72%	"KLN Transfer"

19. Pursuant to a transfer dated July 25, 2019 registered on title to the Real Property (the "Seagrave Transfer"), Skymark transferred 4.69% of its interest in the 2018 Skymark Charge to Seagrave.
20. The Receiver has been provided with copies of the Thompson Transfer, 262 Transfer, 258 Transfer, R. Renaud Transfer, C. Renaud Transfer, 160 Transfer and KLN Transfer, and is satisfied that they are effective.
21. Accounting for the quantum of indebtedness as agreed between Mahal VC and Skymark as of March 1, 2020, and interest and fees chargeable under the 2018 Skymark Commitment Letter after March 1, 2020, the total indebtedness secured by the 2018 Skymark Charge, as of August 23, 2023, will be \$3,780,232.26.¹³

¹³ This amount will accrue interest in accordance with the terms of the 2018 Skymark Commitment Letter.

22. Pursuant to the transfers of interests referred to above, resulting in Skymark retaining a 53.85% interest in the 2018 Skymark Charge, Skymark's entitlement to proceeds under the 2018 Skymark Charge, as of August 23, 2023, will be \$2,035,713.05.

KLN Holdings Inc.

23. As a result of the 2017 Skymark Charge Transfers, KLN holds a 21.86% interest in the 2017 Skymark Charge. Based on the \$21,214,491.86 secured by the 2017 Skymark Charge as of August 23, 2023, KLN's entitlement to proceeds under the 2017 Skymark Charge will be \$4,637,487.92.
24. As a result of the KLN Transfer, KLN holds an 11.71% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, KLN's entitlement to proceeds under the 2018 Skymark Charge will be \$442,644.84.
25. No distributions to KLN or any of the below parties with an interest in the 2018 Skymark Charge are contemplated at this time.
26. KLN's counsel has provided the Receiver with a payout statement for the advances that KLN made to Skymark in connection with taking transfers of interest in the 2017 Skymark Charge and 2018 Skymark Charge. KLN's payout amounts differ from the entitlements determined by the Receiver, above, as the amounts advanced by KLN to Skymark do not correspond to the amounts advanced by Skymark to Mahal VC. Accordingly, KLN's claims against Mahal VC under the 2017 Skymark Charge and 2018 Skymark Charge are not the same as KLN's claims against Skymark itself; the Receiver is only able to deal with KLN's entitlement under the two charges and is not privy to any claims that KLN may have against Skymark.

Andrew Thompson

27. As a result of the Thompson Transfer, Thompson holds a 4.69% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, Thompson's entitlement to proceeds under the 2018 Skymark Charge will be \$177,133.47.

2620509 Ontario Inc.

28. As a result of the 262 Transfer, 262 Co. holds a 2.34% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, 262 Co's entitlement to proceeds under the 2018 Skymark Charge will be \$88,377.89.

2580165 Ontario Inc.

29. As a result of the 258 Transfer, 258 Co. holds a 4.69% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, 258 Co's entitlement to proceeds under the 2018 Skymark Charge will be \$177,133.47.

Janodee Investments Ltd.

30. Blakes has not received the documentation related to the Janodee Transfer. Blakes sent letters by courier to Janodee's registered address on June 30, 2022 and August 24, 2022 requesting that Janodee provide supporting documentation for its claims, but no response was received. On August 1, 2023, Blakes contacted counsel of record for Janodee in unrelated proceedings and asked that counsel to put the Receiver in touch with Janodee. As a result of this correspondence, a representative of Janodee has been identified, and Janodee will be served with the Receiver's motion record seeking the within interim distribution.
31. Based only on the Janodee Charge registered on title to the Real Property, Janodee holds a 3.91% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, Janodee's entitlement to proceeds under the 2018 Skymark Charge will be \$147,674.17.

Raymond Renaud

32. Based on the registered transfers and the documentation available to the Receiver, R. Renaud's 3.52% interest in the 2018 Skymark Charge was transferred to 1061307 Ontario Inc. on December 22, 2020. Accordingly, Raymond Renaud has no interest in the proceeds of the Real Property.

Cameron Renaud

33. As a result of the C. Renaud Transfer, C. Renaud holds a 2.43% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, C. Renaud's entitlement to proceeds under the 2018 Skymark Charge will be \$91,777.04.

1061307 Ontario Inc.

34. On December 22, 2020, a transfer was registered on title to the Real Property providing for a transfer of R. Renaud's 3.25% interest in the 2018 Skymark Charge to 160 Co.
35. As a result of the C. Renaud Transfer and 160 Co's receipt of R. Renaud's interest, 160 Co. holds an 11.71% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, 160 Co.'s entitlement to proceeds under the 2018 Skymark Charge will be \$442,644.84.

Seagrave

36. Blakes has not received documentation related to the Seagrave Transfer. Blakes understands that Michael Slattery, one of Skymark's principals, represents Seagrave, and has requested documentation in respect of the Seagrave Transfer from him.
37. Based only on the Seagrave Transfer registered on title to the Real Property, Seagrave holds a 4.69% interest in the 2018 Skymark Charge. Based on the \$3,780,232.26 secured by the 2018 Skymark Charge as of August 23, 2023, Seagrave's entitlement to proceeds under the 2018 Skymark Charge will be \$177,133.47.

Golden Miles

38. The Receiver has reviewed the audited and unaudited financial statements of Golden Miles referred to in the Fourth Report. For the reasons discussed in the Fourth Report, these financial statements are unreliable and appear to be incomplete. That said, these financial statements do not reflect a balance owing to Golden Miles by Mahal VC in an amount anywhere close to the \$35 million principal associated with the Golden Miles Charge.
39. Mahal VC may be indebted to Golden Miles for approximately \$1.75 million; however, the Receiver has not undertaken a detailed review of this claim because the Mahal VC Proceeds are insufficient for there to be a distribution to Golden Miles.

6.3 Priorities of Mortgages

1. The Receiver has concluded that as between the four mortgages that were registered on title to the Real Property, taking into account the First Postponement, the Second Postponement and the order of registration of the charges, the priority of the charges is as follows:
 - First: 2017 Skymark Charge
 - Second: 2018 Skymark Charge
 - Third: Merk Charge
 - Fourth: Golden Miles Charge
2. This priority analysis is subject to the priority of the Vicano Lien, discussed in the next section, and the further discussion on priorities in Section 6.0, below.

6.4 Vicano's Lien Claim

1. As summarized above, Vicano registered a claim for lien in the aggregate amount of \$5,079,998.
2. Vicano was the original general contractor of the Flour Mill pursuant to a construction management contract in the form of CCDC 5B Construction Management Contract for Services and Construction dated May 18, 2016 between Vicano and Golden Miles Bread & Bagel Corporation (a predecessor company of Golden Miles¹⁴) (the "Construction Contract"). A copy of the Construction Contract is provided as Appendix "L".
3. Vicano invoiced Golden Miles the aggregate of \$17,306,372 on account of work done under the Construction Contract, and has acknowledged that it has been paid \$12,226,375, leaving the outstanding balance of \$5,079,998 that is reflected in its lien claim. On May 1, 2023, this claim was revised down to \$5,065,480.

¹⁴ Golden Miles Bread & Bagel Corporation changed its name to Golden Miles Food Corporation on December 12, 2017.

4. Part IV of the *Construction Act* requires that any payor under a contract or subcontract under which a lien may arise must retain a holdback of 10% of the price of services or materials actually supplied under the contract or subcontract until all liens that may be claimed have expired, been satisfied, discharged or otherwise provided for. In the case of the Vicano Lien, based on the claimed amounts, the holdback would be \$1,730,637.
5. Vicano commenced an action against Golden Miles, Mahal VC, Skymark and KLN on May 16, 2019 pursuant to a statement of claim of the same date (the "Vicano Statement of Claim"). A copy of the Vicano Statement of Claim is attached hereto as Appendix "M".
6. Defendants Golden Miles and Mahal VC each filed statements of defence and counterclaims to the Vicano Statement of Claim, and defendants Skymark and KLN filed statements of defence, all of which are attached hereto as Appendix "N" (collectively, the "Defences to Vicano Claims").
7. The Defences to Vicano Claims generally deny the claims made in the Vicano Statement of Claim, including on the basis that the Vicano Liens were not properly preserved or perfected.
8. Shortly after service of the Vicano Statement of Claim, Golden Miles brought a claim against Vicano, Lanhack Consultants Inc. ("Lanhack"), Peter Vicano (also known as Peter Joseph Vicano and Peter J. Vicano) and David Hacking (the "Golden Miles Statement of Claim"), seeking damages in excess of \$80,000,000 for breach of the Construction Contract and negligence. A copy of the Golden Miles Claim is attached hereto as Appendix "O". The Corporation of the City of Brantford ("Brantford") was subsequently brought into Golden Miles action as a defendant pursuant to a third-party claim by Golden Miles on May 6, 2021 (the "Third Party Claim"), attached hereto as Appendix "P".
9. Vicano, Mr. Vicano, Lanhack, Mr. Hacking and Brantford have defended the Golden Miles Claim and cross-claimed. Copies of the defences are attached hereto as Appendix "Q".
10. The actions commenced by the Vicano Statement of Claim and the Golden Miles Statement of Claim have been procedurally consolidated.

6.4.1 Extension of Deadline to Set Down Matter for Trial

1. Vicano's deadline under the *Construction Act* to set its lien action down for trial was February 28, 2022 pursuant to an order of Justice Gibson dated June 17, 2021. By letter dated February 18, 2022, the Receiver consented to a lifting of the stay of proceedings in the Mahal VC receivership to permit Vicano to set the matter down for trial, which the Receiver was authorized to do pursuant to the terms of the Receivership Order.
2. Vicano's trial record was passed on February 24, 2022, thereby preserving Vicano's rights.

3. The Trustee did not have the discretion to consent to a corresponding lifting of the stay of proceedings in the Mahal VC bankruptcy proceedings. On March 1, 2022, Mr. Justice McEwen made an order, with the consent of the Trustee, lifting the stay of proceedings in respect of the Mahal VC bankruptcy to permit Vicano to pass its trial record in respect of its construction lien action, and approving, *nunc pro tunc*, the passing of the trial record on February 24, 2022.

6.4.2 Receiver's Views on Quantum of Vicano Lien Claim

1. The Receiver has been provided by Vicano's counsel with invoices submitted to Mahal VC over the course of the construction project and has reviewed the pleadings in the associated actions. The Receiver is not, however, qualified to draw conclusions regarding the validity or appropriateness of the invoiced amounts or the numerous issues raised in the ongoing litigation, which are detailed in the pleadings filed in response to the Vicano Statement of Claim.
2. In consultation with Skymark and KLN, the beneficiaries under the 2017 Skymark Charge, the Receiver retained Altus to review the claims made by Vicano and the invoices it submitted.¹⁵ Altus was asked by the Receiver to: (a) review the invoices provided by Vicano to confirm that the amount of Vicano's claim matches the amounts actually invoiced, and (b) assess the reasonableness of the Vicano charges in light of the work that was done and prevailing construction prices at the relevant times.
3. Altus has issued the Receiver two reports in respect of the work it was commissioned to do:
 - a. A Project Report, dated June 29, 2023, which provides (i) a detailed review of the progress invoices submitted by contractors/trades, (ii) a desktop verification of the value of the work in place by Vicano (hard costs only), and (iii) an outline of Altus' findings (the "Project Report"). A copy of the Project Report is attached hereto as Appendix "R".
 - b. A "Class D Estimate", dated July 21, 2023, which analyses the reasonableness of the total amounts claimed by Vicano for its hard construction costs at the Flour Mill, de-escalated to prevailing prices in Q1 2018, which was the mid-point of construction (the "Class D Report"). A copy of the Class D Report is attached hereto as Appendix "S".

The Project Report

4. As set out in detail in the Project Report, Altus has determined that an overall deduction from Vicano's claim in the amount of \$620,405 is appropriate, as a result of duplicate or incorrect invoices, overbilled amounts, invoices related to deficiency rectification and invoices in connection with construction of a Golden Miles project that is not the Flour Mill, being a residential home located at 44 Brier Park Road (the "Proposed Deduction").

¹⁵ Skymark consented to the retainer of Altus. KLN declined to consent to the retainer of Altus and does not agree that Altus should be engaged. KLN has cited the delays and costs in these proceedings as the basis for its objection. As the Receiver does not have the expertise to independently assess and verify the quantum of Vicano's claims, it has proceeded to engage Altus despite KLN's objections, in order to finally determine Vicano's claims and make distributions accordingly.

5. The Receiver accepts Altus' recommended deductions and relies on the assumptions, qualifications and conclusions in the Project Report.
6. In addition to the recommended deductions, Altus identified that \$2,515,389 of trade invoices have not been provided by Vicano (the "Missing Invoices"). Altus assumes that the charges related to these missing invoices are legitimate, but because they have not been reviewed, Altus cannot determine if there is any duplication, incorrect amounts or costs not related to the Flour Mill. The Receiver has made several requests of Vicano for the missing invoices, but they have not been provided.
7. The aggregate deduction of \$620,405 recommended by Altus represents approximately 3.6% of the total amount invoiced of \$17,306,372. As the Missing Invoices have not been provided and cannot be assessed, the Receiver is proposing to discount the Missing Invoice total of \$2,515,389 by 3.6%, or \$90,554 (the "Missing Invoice Discount"), to account for any duplication, errors or inapplicable charges that may be reflected in those Missing Invoices.

The Class D Report

8. Subject to the assumptions and qualifications set out in the Class D Report, Altus concluded that the costs of the construction of the Flour Mill are reasonable, given that the estimated hard costs de-escalated to approximately the mid-point period of construction are higher than Vicano's actual construction costs.
9. On the basis of the Class D Report, the Receiver accepts that the costs charged by Vicano are reasonable, and that there is no basis to discount them.

Conclusions on Quantum of Vicano Claim

10. Based on the recommended deductions, the Receiver has determined that Vicano's aggregate invoiced amount of \$17,306,372 should be reduced by the Proposed Deduction of \$620,405 and the Missing Invoice Discount of \$90,554, bringing the Vicano total accepted invoice amount to \$16,595,413. The 10% unpaid holdback amount is \$1,659,413. For the reasons set out further below in this Report, the Receiver has concluded that Vicano has a priority claim to this \$1,659,413.
11. The following section of this Report discusses the priority of Vicano's claims.

6.4.3 Lien Priority Analysis

1. The Receiver has concluded that the Vicano Lien (subject to confirmation of its valid quantum, if any) is subordinate to the Merk Charge, and has priority to the 2017 Skymark Charge, 2018 Skymark Charge and the Golden Miles Charge to the extent of any unpaid holdback. This conclusion is subject to the further discussion on priorities in Section 7.0.
2. The Receiver's rationale regarding the priority of the Vicano Lien is set out below.

6.4.4 Vicano Lien Priority to Merk Charge

1. As summarized above, the Merk Charge was registered in the amount of \$4,000,000 on June 22, 2015, and an advance in the amount of \$1,000,000 was made to Mahal VC's counsel, Neil L. Boyko. On the same day, the Real Property was transferred from 156 Adams Boulevard Holdings Ltd. to Mahal VC, for a registered transfer price of \$1,700,000 (Instrument Number BC276346).
2. The initial \$1,000,000 advance appears to have been made to finance the acquisition of the Real Property, not to finance the construction of the Mill.
3. The balance of the advances secured by the Merk Charge, made on May 16 and 29, 2017 and June 8, 2017, in the aggregate amount of \$2,394,171, appear to have been made to finance the construction of the Flour Mill. As these amounts were transferred to the 2017 Skymark Charge, they are discussed in the following section of this Report for the purposes of the lien priority analysis.
4. Section 78(3) of the *Construction Act* provides:

Prior mortgages, prior advances – Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

 - (a) the actual value of the premises at the time when the first lien arose; and
 - (b) the total amounts that prior to that time were,
 - (i) advanced in the case of a mortgage, and
 - (ii) advanced or secured in the case of a conveyance or other agreement.
5. Section 78(2) of the *Construction Act* is an explicit qualification on the priority of prior mortgages relating to mortgages given to secure the construction of improvements on real property, and provides:

Building Mortgage - Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvements have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.
6. The Merk Charge was registered on June 22, 2015, and the \$1,000,000 funded under the charge was advanced on the same day. Both the registration of the charge and the relevant advance thereunder were therefore made well before the date that the Vicano Lien arose (the Construction Contract was not entered into until almost 13 months later - May 18, 2016), thereby engaging Section 78(3) of the *Construction Act*.
7. As the relevant advance under the Merk Charge was made to acquire the Real Property, and not to finance an improvement, it is not a "building mortgage" within the meaning of Section 78(2) of the *Construction Act*.

8. Based on the foregoing, the Receiver has concluded that the Merk Charge has priority over the Vicano Lien, to the extent of the \$1,000,000 advanced to acquire the Real Property (which, as a result of the transfer of the other advances to Skymark, is the only relevant debt secured by the Merk Charge). The Receiver's factum will elaborate on the legal analysis that leads to this conclusion.¹⁶

6.4.5 Vicano Lien Priority to 2017 Skymark Charge and 2018 Skymark Charge

1. Based on the documents that the Receiver has reviewed, all of the advances made under the 2017 Skymark Charge and the 2018 Skymark Charge were made to finance the construction of the Flour Mill, or to fund legal or brokerage fees on account of those advances, with one exception discussed below. Many of the advances were paid directly to Vicano or were calculated based on Vicano invoices provided to Skymark.
2. Section 78(2) of the *Construction Act*, cited above, bears repeating:

Building Mortgage - Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvements have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.

3. Based on the application of Section 78(2) to the prevailing facts, the Receiver has concluded that the Vicano Lien has priority over the 2017 Skymark Charge and the 2018 Skymark Charge to the extent of unpaid holdback.

6.4.6 The Colliers Payment

1. The one exception to the Receiver's conclusion that the 2017 Skymark Charge and 2018 Skymark Charge constitute "building mortgages" is a \$250,000 payment made directly by Skymark to Colliers Macaulay Nicolls Inc. ("Colliers") on May 1, 2018, which payment was advanced under the facility secured by the 2018 Skymark Charge (the "Colliers Payment").
2. There is a dispute between Skymark and Mahal VC regarding the purpose and intent of this Colliers Payment. It does not appear to be disputed that the payment was made in connection with the acquisition by Mahal VC of a property abutting the land on which the Flour Mill is located. The Receiver understands that this property is designated as PIN 32281-0177(LT), in respect of which title was transferred by Brant Trade & Industrial Park Inc. to Mahal VC on July 12, 2018 for a registered transfer price of \$45,000.

¹⁶ The governing cases to be referred to will be *Royal Bank of Canada v. Lawton Developments Inc.* 1996 CanLII 10246, *Ontario Wealth Management Corporation v. Sica Masonry and General Contracting Ltd.* 2014 ONCA 500, and the trial decisions in both cases.

3. In the Receiver's view, the Colliers Payment is not material to the Vicano Lien priority analysis. Either: (a) the Colliers Payment is sufficiently a component of a "builders mortgage" that the advance should be treated the same as the other advances under the two Skymark mortgages and Vicano has priority to the extent of unpaid holdback; or (b) like the \$1,000,000 advance under the Merk Charge, the Colliers Payment is not a part of a builder's mortgage, and is therefore a prior advance under a prior mortgage, with priority to the Vicano Lien pursuant to Section 78(3) of the *Construction Act*.
4. Given that the Receiver's conclusion is that the Vicano Lien has priority over the 2017 Skymark Charge and the 2018 Skymark Charge to the extent of unpaid holdback, and that there are sufficient proceeds from the Real Property to pay the full claimed amount of Vicano's holdback entitlement without considering the Colliers Payment, the distributions to the affected parties are unchanged by the characterization of the Colliers Payment. In other words, because there are sufficient funds to pay the whole of Vicano's priority claim and the whole of the Colliers Payment, it doesn't matter which of the two is paid in priority: both will be paid in full regardless of how the Colliers Payment is characterized.

6.4.7 Vicano Lien Priority to Golden Miles Charge

1. Section 78(5) of the *Construction Act* provides:

Special Priority against subsequent mortgages - Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV.
2. Section 78(6) of the *Construction Act* provides:

General priority against subsequent mortgages – Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect of the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

 - a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
 - b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.
3. The Vicano Lien was preserved on March 7, 2019 and April 10, 2019 by registration of notices of lien, and perfected by registration of a certificate of action on May 16, 2019. The Golden Miles Charge was registered on March 26, 2021.
4. Accordingly, pursuant to Sections 78(5) and 78(6) of the *Construction Act*, the Golden Miles Charge is subordinate to the Vicano Lien, in full.

7.0 Real Property Charge Priority Analysis

- Based on Blakes' review of the relevant documents, the Receiver has concluded that the priority waterfall for the Mahal VC Proceeds is as follows:

Priority	Charge/Claim	Beneficiary	Total Amount Secured as of August 23, 2023
First	Vicano Construction Lien, to the extent of the unpaid holdback	Vicano	\$1,659,413.00
Second	2017 Skymark Charge	Skymark	\$16,577,003.94
		KLN	\$4,637,487.92
Third	2018 Skymark Charge	Skymark	\$2,035,713.05
		KLN	\$442,644.84
		Thompson	\$177,133.47
		262 Co.	\$88,377.89
		258 Co.	\$177,133.47
		Janodee	\$147,674.17
		C. Renaud	\$91,777.04
		106 Co.	\$442,644.84
		Seagrave	\$177,133.47
		Fourth	Merk Charge
Fifth	Golden Miles Charge	Golden Miles	Undetermined

- The foregoing priority analysis is subject to a "circular priority" issue. As discussed above, (i) the Merk Charge has priority to the Vicano Lien, (ii) the 2017 Skymark Charge and the 2018 Skymark Charge have priority to the Merk Charge, and (iii) the Vicano Lien has priority to the 2017 Skymark Charge and the 2018 Skymark Charge. Accordingly, based on the application of the law to each bi-lateral priority contest, no charge has first priority over the others.
- On the facts of the present case, the Receiver believes that the foregoing chart reflects the appropriate resolution of this circular priority issue, because:
 - pursuant to the First Postponement and the Second Postponement, Merk agreed to be subordinate to the 2017 Skymark Charge and the 2018 Skymark Charge in full, which, as discussed above, amount to \$24,994,724.12¹⁷ in priority debt as of August 23, 2023;¹⁸
 - there are insufficient Real Property Proceeds to fund the 2017 Skymark Charge and the 2018 Skymark Charge in full, even without accounting for a \$1,659,413 priority payment to Vicano, meaning that even without the Vicano Lien, Merk would receive no distributions in these proceedings;

¹⁷ This represents the sum of the \$21,214,491.86 2017 Skymark Charge debt and the \$3,780,232.26 2018 Skymark Charge debt.

¹⁸ The Receiver notes that the Orr Plaintiffs (defined below) dispute the enforceability of the two postponements. The Orr Holdback is intended to address this issue and does not prejudice the parties regarding the circular priority: whether or not the Orr Plaintiffs' challenge of the postponements as it relates to the Orr Plaintiffs is successful, Merk is still subordinate to Skymark.

- c) there are sufficient Real Property Proceeds to fund the Merk Charge and the Vicano Lien priority claim in full, meaning that Vicano would be paid in full on its priority claim regardless of the relative priorities of the Merk Charge, on the one hand, and the 2017 Skymark Charge and 2018 Skymark Charge, on the other hand;
 - d) it would be a windfall for Merk if Merk were to receive any payments before the 2017 Skymark Charge and 2018 Skymark charge are paid in full; and
 - e) it would be unfairly prejudicial to the beneficiaries of the 2017 Skymark Charge and 2018 Skymark Charge if their distributions were reduced by the amount of the Merk Charge simply because the Merk Charge has priority to the Vicano Lien priority claim.
4. Accordingly, the Receiver's proposed resolution to the circular priority issues (a) avoids a windfall for Merk; (b) avoids unfair prejudice to the beneficiaries of the 2017 Skymark Charge and the 2018 Skymark Charge; and (c) is economically neutral to Vicano.
 5. The Receiver's factum will elaborate on the legal analysis that leads to this conclusion.

8.0 Claims by 198 Co.

1. On November 7, 2022, the Receiver and Blakes received a letter from Bennett Jones LLP ("Bennett Jones"), counsel to 198 Co. and 7539088 Canada Inc. ("753 Co."), corporations under the common control of Michael Orr (198 Co. and 753 Co. referred to together as the "Orr Plaintiffs"). The letter advised that 198 Co. advanced principal amounts to Skymark and Merk, which amounts were claimed by the Orr Plaintiffs to have been used by Skymark and Merk to fund mortgage loans, including the loan secured by the Merk Charge (the "Orr Plaintiff Letter"). A copy of the Orr Plaintiff Letter is attached hereto as Appendix "T".
2. The Orr Plaintiff Letter enclosed three trust declarations apparently executed by Merk in favour of 198 Co., dated June 22, 2015, June 13, 2018 and December 17, 2018, each providing that Merk holds \$1,000,000 of a mortgage registered against the Real Property in trust for 198 Co. (the "Trust Declarations"). The Receiver understands that the mortgage referred to in the Trust Declarations is the mortgage defined herein as the Merk Charge.
3. The November 7, 2022 letter also enclosed an issued statement of claim, pursuant to which the Orr Plaintiffs claim various relief against Skymark, Merk and Mr. Slattery, which statement of claim was subsequently amended to add defendants Paul Millar, 1266845 Ontario Limited, 1690682 Ontario Inc. and 1429458 Ontario Limited (as amended, the "Orr Plaintiff Statement of Claim"). Copies of the Trust Declarations and the Orr Plaintiff Statement of Claim are attached hereto as Appendices "U" and "V", respectively.¹⁹

¹⁹ The Receiver has been advised by counsel to the Orr Plaintiffs that a Statement of Defence and Crossclaim was delivered by defendants Paul Millar, 1266845 Ontario Limited, 1690682 Ontario Inc. and 1429458 Ontario Limited on or about May 10, 2023, and a Statement of Defence was delivered by defendant Michael Slattery on or about May 12, 2023. The Receiver has been provided with copies of each.

4. The Orr Plaintiff Letter alleges that Mr. Slattery, who the Receiver understands to be a director, officer and shareholder of Merk and Skymark, made representations to the Orr Plaintiffs that the Merk Charge, in which the Orr Plaintiffs claim an interest, was at all times to have first priority to the Real Property, and that these representations were breached by Skymark entering into the First Postponement and the Second Postponement.
5. The Orr Plaintiff Letter takes the position that 198 Co. holds a \$3,000,000 interest in the Merk Mortgage, and that the Merk Mortgage ranks in priority to the 2017 Skymark Charge and the 2018 Skymark Charge. The letter further requests that no distributions be made to any creditors of the Companies until the Orr Plaintiffs' entitlement and priority is determined by the Court.
6. Following receipt of the Orr Plaintiff Letter, the Receiver engaged in discussions with the Orr Plaintiffs' counsel regarding how the Orr Plaintiffs' claims would be dealt with in these proceedings. As the Orr Plaintiffs' claims are not against the Companies directly, but are rather trust claims against the Mahal VC Proceeds, the resolution of the claims is not appropriately dealt with by the Receiver. Instead, the Receiver proposed to hold back a portion of any distributions to Skymark (or Merk) from the Mahal VC Proceeds, pending final resolution of the Orr Plaintiffs' claims.
7. On February 10, 2023, the Orr Plaintiffs' counsel delivered a second letter to the Receiver (the "Second Orr Plaintiff Letter"), proposing that the Receiver hold back \$3,650,000 from distributions, which amount includes the \$3,000,000 of principal in respect of which a trust is claimed, plus an estimate for interest that has accrued and will continue to accrue until the resolution of the Orr Plaintiffs' claims. A copy of the Second Orr Plaintiff Letter is attached hereto as Appendix "W".
8. The Receiver takes no position regarding the merits of the allegations set out in the Orr Plaintiff Letter or the Orr Plaintiff Statement of Claim, as the claims are not against the Companies and relate to facts outside of the receivership proceedings. Pending the adjudication of the Orr Plaintiffs' claims, the Receiver proposes to hold back \$3,650,000 from the proposed interim distributions of the Mahal VC Proceeds to Skymark (the "Orr Holdback").
9. The Receiver proposes to take the holdback from the proposed Skymark interim distribution only, and not to pro rate it to the proposed interim distributions to Skymark and KLN, on the basis that KLN is not a defendant in the Orr Plaintiffs' action, which relates to Skymark, Merk and certain related parties. In the Receiver's view, it would be unfair to KLN to hold back a portion of the proposed KLN interim distribution in response to the issues raised by the Orr Plaintiffs, and it does not prejudice the Orr Plaintiffs if the Orr Holdback is only taken from Skymark's proposed interim distribution.
10. The Receiver proposes to hold the Orr Holdback in an interest-bearing account until the earlier of: (a) the Receiver's discharge; and (b) the final resolution of the Orr Plaintiffs' claims. Should the Receiver be in a position to seek its discharge prior to the resolution of the Orr Plaintiffs' claims, it will seek directions on how to deal with the Orr Holdback at its discharge hearing, on notice to Skymark and the Orr Plaintiffs.

9.0 Omit Property Tax Invoices

1. On February 24, 2023, counsel to the Purchaser in the Transaction notified the Receiver that the City of Brantford was seeking property tax in arrears on the Real Property and provided the Receiver with three “omit” tax bills for 2020, 2021 and 2022, totalling \$1,091,423 (the “Omit Tax Claim”): \$391,116 for 2020, \$347,820 for 2021 and \$352,487 for the 137 days of 2022 prior to the closing of the Transaction. Copies of the Purchaser’s letter and the three omit tax bills are attached hereto as Appendix “X”.
2. The Purchaser has taken the position that the Mahal VC estate is liable for the Omit Tax Claim.
3. The Receiver does not agree that the Mahal VC estate, the Receiver or the Trustee is liable for the Omit Tax Claim. The basis for this position is as follows:
 - a) according to the City of Brantford, the omit tax bills were issued by the Municipal Property Assessment Corporation because of a reassessment related to the Flour Mill that was built on the Real Property and not historically taxed;
 - b) the omit tax bills were issued on November 25, 2022, over 6 months after the Transaction closed;
 - c) on closing of the Transaction (May 18, 2022), the Receiver paid all known outstanding municipal property taxes up to the date of closing, in the amount of \$167,402;
 - d) on closing of the Transaction (May 18, 2022), the Receiver gave the Purchaser an undertaking to re-adjust any amounts in the statement of adjustments for up to 45 days; this undertaking expired long before issuance of the omit tax bills;
 - e) pursuant to the APA, the Purchaser assumed “all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date”, which in the Receiver’s view includes the Omit Tax Claim that arose on November 25, 2022;
 - f) the approval and vesting order of Madam Justice Gilmore dated April 11, 2022, which approved the Transaction, provides that the following are not vested out of the purchased property (emphasis added): “Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested”. The Omit Tax Claim had not been made as of the date of the order being issued, let alone become due or in arrears – the effect of this is that the Omit Tax Claim was not vested out of the purchased property, and does not attach to the proceeds of the Transaction.

4. The Receiver is not seeking any relief in respect of the Omit Tax Claim at this time; however, it may require the Court's assistance if a resolution with the Purchaser and the City of Brantford cannot be reached consensually. Subject to such further order of the Court, or agreement with the Purchaser and the City of Brantford, the Receiver is proposing to hold back from the Mahal VC Proceeds the amount of the Omit Tax Claim plus an estimate for accruing interest, for a total hold back amount of \$1.5 million (the "Omit Tax Reserve").
5. The Omit Tax Reserve represents invoices of \$1,091,423 plus an estimate for interest (which accrues at 1.25%/month) to the date this matter is resolved.

10.0 Mahal VC Proceeds, Interim Distribution and Reserve

1. As discussed above, and as set out in the R&D, the Receiver is holding approximately \$14.7 million of Mahal VC Proceeds.
2. The Receiver recommends that it hold back the following amounts from the Mahal VC Proceeds:
 - a. \$600,000 as a reserve for the professional costs to address the unresolved claims and to complete the administration of the receivership proceedings (the "Mahal VC Cost Reserve");
 - b. \$3,650,000, referred to above as the "Orr Holdback", to be held back from the proposed interim distribution to Skymark (but not KLN), pending resolution of the trust claim made by the Orr Plaintiffs; and
 - c. \$1,500,000, referred to above as the "Omit Tax Reserve", pending the resolution of the Omit Tax Claim.
3. After accounting for the Mahal VC Cost Reserve and the Omit Tax Reserve, there remains approximately \$12.9 million of Mahal VC Proceeds to be distributed in accordance with the priority waterfall discussed above. As this amount is less than the Vicano priority claim and the aggregate amount secured by the 2017 Skymark Charge, the interim distribution proposed in this Report is limited to distributions under the 2017 Skymark Charge.
4. Accordingly, the Receiver recommends that the Court issue an order authorizing the Receiver to make distributions to the following parties in the following amounts, on account of the Mahal VC Proceeds:

Creditor	Amount of Interim Distribution
Vicano	\$1,659,413, being 10% of Vicano's accepted claim
Skymark	\$5,097,556 on account of the 2017 Skymark Charge, being 78.14% of the Mahal VC Proceeds, less the Orr Holdback, Vicano's distribution and reserves set out above
KLN	\$2,447,166 on account of the 2017 Skymark Charge, being 21.86% of the Mahal VC Proceeds less the Vicano distribution and reserves set out above

11.0 Outstanding Litigation By and Against the Companies

1. As discussed in the Fourth Report, the Receiver has discussed with Santokh a potential sale of certain litigation to which the Companies are a party. As of the date of the Fourth Report, those discussions were not sufficiently progressed to develop an appropriate stalking horse sale process, and no material progress has been made since that time.
2. The outstanding actions to which the Companies are a party are as follows:
 - a) *Vicano Construction Limited v. Golden Miles Food Corporation, Mahal Venture Capital Inc., Skymark Finance Corporation and KLN Holdings Inc.*, Court File No. CV-19-113 (the “Vicano Action”);
 - b) *Golden Miles v. Vicano Construction Limited, Lanhack Consultants Inc., Peter Vicano aka Peter Joseph Vicano, Peter J. Vicano and David Hacking*, Court File No. CV-19-121 (the “Vicano Counterclaim”, together with the Vicano Action, the “Consolidated Vicano Action”);²⁰
 - c) *Golden Miles v. The Corporation of the City of Brantford, Michael Neves, and Andrew McMahon*, Court File No. CV-21-86 (the “Brantford Action”);
 - d) *Golden Miles Food Corporation v. Talib et al*, Court File No. CV-18-0000-5169-0000;
 - e) *Amex Bank of Canada v. Mahal et al*, Court File No. CV-19-0014-2165-0000;
 - f) *Ford Credit Canada Company v. Mahal Venture Capital Inc.*, Court File No. CV-19-0002-8227-0000;
 - g) *Canadafresh Corporation et. al. v. Bridging Finance Inc. et al*, Court File No. CV-19-0063-1456-0000;
 - h) *Garage Living Inc. v. Golden Miles Food Corporation et al*, Court File No. CV-20-0064-2848-0000;
 - i) *Mahal et al v. Skymark Finance Corporation et al*, Court File No. CV-21-0003-0348-0000;
 - j) *Mahal et al v. Skylark Holdings Limited et al*, Court File No. CV-21-0000-1817-0000;
 - k) *Skymark Finance Corporation v. Mahal Venture Capital Inc. et al*, Court File No. CV-21-0066-4778-00CL;

²⁰ The Vicano Action and the Vicano Counterclaim have been procedurally consolidated by the Brantford Superior Court of Justice, and are referred to collectively herein as the “Consolidated Vicano Action”.

- l) *Skymark Finance Corporation v. Mahal et al; Court File No. CV-22-0067-5228-0000*;
- m) *Vivian Group Inc. v. Mahal Venture Capital Inc.; Court File No. CV-18-00001205-000* (the “Vivian Action”).

The Consolidated Vicano Action and Brantford Action

3. On February 15, 2023, Santokh’s counsel sent the Trustee a letter requesting that the Trustee formally elect to proceed with the Consolidated Vicano Action and the Brantford Action by February 24, 2023, failing which Santokh would seek an order assigning the two actions to himself pursuant to Section 38 of the BIA. A copy of Santokh’s counsel’s letter is attached hereto as Appendix “Y”.
4. At the time the request was received by the Trustee, the Altus reports had not been delivered, and the merits of the claims in the Consolidated Vicano Action, to the extent the Class D Report would deal with the validity of the costs incurred, were not fully understood. Similarly, at that time, the Trustee did not have a view on the merits of the Brantford Action. The Trustee’s position on the Consolidated Vicano Action and the Brantford Action was communicated to Santokh by the Trustee and Receiver by letter dated February 23, 2023, a copy of which is attached hereto as Appendix “Z”.
5. Given the conclusions in the Altus Project Report and Class D Report, and taking into account the nature of the dispute in the Consolidated Vicano Action (which would realistically require access to the Flour Mill and extensive participation by the Mahals), the Receiver has discussed pursuing the Consolidated Vicano Action with the Skymark Receiver (which is the party with the largest secured claim to any potential recoveries to Mahal VC from the Consolidated Vicano Action), regarding the prudence of pursuing the Consolidated Vicano Action through the receivership. The Receiver is concerned that such uncertain, time consuming and costly litigation is not in the best interests of the Mahal VC stakeholders.
6. Similarly, the Trustee of Golden Miles, which is responsible for distributing the unencumbered proceeds in the Golden Miles estate, has considered the merits of pursuing the Consolidated Vicano Action or the Brantford Action, and shares the Receiver’s concerns.
7. The Trustee, in its capacities as trustee of Golden Miles and Mahal VC, will convene an inspectors’ meeting to take instructions regarding proceeding with the Consolidated Vicano Action and, in its capacity as trustee of Golden Miles, the Brantford Action. If the Trustee is instructed not to pursue these actions, the Trustee expects that Santokh will seek an assignment of the Consolidated Vicano Action and the Brantford Action pursuant to Section 38 of the BIA; the Trustee will advise the Court regarding its position on such relief if and when Santokh brings it before the Court.
8. The Receiver proposes to take a reserve to account for fees associated with finally resolving these litigation matters, as discussed in Section 10.

The Vivian Action

9. The Receiver has been contacted by counsel representing the plaintiff in the Vivian Action, and advised that an order to continue the Vivian Action in the name of David Andrew Vivian (“Mr. Vivian”) was issued by the Ontario Superior Court of Justice in Kitchener on April 17, 2023 (the “Order to Continue”). A copy of the Order to Continue is attached hereto as Appendix “AA”.
10. The basis for the Vivian Action is a transaction for the purchase of a piece of real property that Mahal VC allegedly entered into with Vivian Group Inc. (“Vivian Group”) on or about April 25, 2018, which transaction was never consummated. The Vivian Group alleges that Mahal VC breached the agreement of purchase and sale by failing to close on the closing date, and seeks damages and forfeiture of a \$750,000 deposit. Mahal VC alleges that the purchase agreement was never formally finalized and that its failure to close was not a breach.
11. The Receiver and the Trustee note that because the dispute arises from a transaction that was unrelated to the Flour Mill, the Vivian Action is not “Property” in the Receivership Proceedings, but rather subject to the Mahal VC bankruptcy, being administered by the Trustee.
12. The statement of claim in the Vivian Action was issued on September 19, 2018. Mahal VC filed a statement of defence and counterclaim on or about December 3, 2018, which was followed by a “fresh and amended statement of defence and counterclaim” dated September 2, 2020 and a “third party claim” by Mahal VC against Ajay Kaushik and Re/Max Twin City Realty Inc. (collectively, the “Realtor”) issued on October 8, 2020. The Vivian Group filed a “fresh as amended reply and defence to counterclaim to the fresh as amended statement of defence and counterclaim” dated November 17, 2020, and a third party defence of the Realtor was issued on November 30, 2020. Copies of the foregoing pleadings are collectively attached hereto as Appendix “BB”.
13. The Trustee understands that on or about June 7, 2021, Vivian Group and related parties filed a proposal under the BIA, which culminated in an asset sale pursuant to which, among other things, the Vivian Action was sold to Sun Pac Holdings Ltd. (“Sun Pac”) on or about September 17, 2021. The Trustee further understands that Sun Pac assigned the Vivian Action to Mr. Vivian on or about October 2, 2022.
14. Following receipt by Mr. Vivian of the Vivian Action, Mr. Vivian filed a requisition for the Order to Continue on or about April 12, 2023, which was issued on April 17, 2023.
15. The requisition for, and issuance of, the Order to Continue were technically done in breach of the stay of proceedings in the Mahal VC Bankruptcy Proceedings. The Trustee was made aware of the Order to Continue after it was granted, by Mr. Vivian’s counsel, and has been advised that Mr. Vivian’s counsel will be seeking an order in these proceedings lifting the stay of proceedings for the limited purpose of retroactively approving the issuance of the Order to Continue.

16. Subject to confirming that it is satisfied with the form of order sought by Mr. Vivian's counsel, the Trustee has advised that it will consent to the lift-stay order. In the Trustee's view, no creditor is prejudiced by the issuance of the Order to Continue, and as an administrative matter it ought to be retroactively approved. The relief requested is substantially the same as the limited lift-stay that the Trustee consented to in favour of Vicano, discussed in Section 6.4.1 above.
17. The Trustee will seek instructions from the Mahal VC bankruptcy inspectors on how to proceed on the merits of the Vivian Action, and will update the Court and creditors in a subsequent report. It is unclear to the Trustee whether Mr. Mahal will seek an assignment of the Mahal Action if the Trustee does not pursue it.

12.0 Lakeshore Condominium

1. As discussed in the Trustee's Preliminary Report to Creditors dated December 6, 2021, shortly following its appointment as bankruptcy trustee of Mahal VC, and in the Trustee's First Report to Court dated February 22, 2022 (the "First Trustee's Report"), the Trustee learned of an agreement of purchase and sale dated August 3, 2018 (the "Condo APS"), pursuant to which Mahal VC purchased a pre-construction penthouse condominium from Aquabella Bayside Toronto Inc. ("Aquabella"), municipally described as Suite GPH1, 118 Merchant's Wharf, Toronto (the "Condominium"). The purchase price of the Condominium was approximately \$7.7 million,²¹ with a deposit paid by Mahal VC of approximately \$1.3 million.
2. On January 20, 2022, Santokh brought a motion seeking an order declaring that the APS and the Condominium is held in trust for Santokh and not divisible among creditors of Mahal VC (the "Mahal Condominium Motion").
3. The Receiver guaranteed the Trustee's fees and costs, including to respond to the Mahal Condominium Motion, on the basis that there could be recoveries for the creditors of Mahal VC estate.
4. Santokh abandoned the Mahal Condominium Motion and on March 8, 2022, Mr. Justice McEwen issued an endorsement declaring that as between the Trustee and Mr. Mahal, all right, title and interest in and to (a) the Condo APS, (b) the Condominium, and (c) all deposits paid by Mahal VC under the APS are property of Mahal VC which has vested in the Trustee and constitutes property divisible among Mahal VC's creditors, and is not held in trust by the Mahals (the "Condominium Endorsement"). A copy of the Condominium Endorsement is attached hereto as Appendix "CC".

²¹ This represents the original \$6.6 million purchase price under the Condo APA, plus approximately \$1.1 million of upgrades requested by the Mahals prior to the Trustee becoming aware of the Condominium.

5. Following the issuance of the Condominium Endorsement, the Trustee retained a real estate broker to market and sell the Condo APS. The Trustee's objective was to sell the Condo APS to a third-party purchaser, who would then close the Condo APS with Aquabella and pay the purchase price for the Condominium, less the deposits already paid by Mahal VC. This would avoid the Trustee having to borrow significant funds to close on the Condominium itself, and was expected to generate a recovery to the Mahal VC estate to the extent the third-party purchaser was giving consideration for the deposits already paid.
6. As a result of, among other things, a challenging real property market created by several increases to prevailing interest rates and the price bracket of the Condominium (above \$7 million), no offers capable of closing were submitted. The Trustee was able to negotiate with Aquabella to obtain several extensions of the closing date under the condo APS, but Aquabella was ultimately not willing to extend the closing date beyond January 4, 2023 and the Trustee was not in a position to close at that time.
7. Following a rectification period between January 4, 2023 and January 11, 2023, Aquabella terminated the Condo APS by giving notice on January 11, 2023. Aquabella has retained the deposits paid under the Condo APS as liquidated damages for the termination. The Trustee has not yet determined whether it will challenge the retention of the deposits, but it does not intend to object to the termination of the Condo APS.
8. The Receiver does not expect that the Trustee will be able to repay the funding that the Receiver advanced to it as there are not expected to be any proceeds in the Mahal VC estate.

13.0 Receiver's Activities

1. The Receiver's activities since the date of the Third Report of the Receiver dated April 4, 2022 (the "Third Report") have included, among other things, the following:
 - a) corresponding with the Mahals and their counsel regarding the Companies' affairs and these proceedings;
 - b) corresponding with Skymark and its counsel regarding all aspects of the receivership, including providing periodic status updates;
 - c) closing the Transaction;
 - d) prior to closing the Transaction, attending periodically at the Flour Mill to deal with operating matters, including to arrange for the maintenance and general upkeep of the Property;
 - e) corresponding with vendors regarding closing of the Transaction and the transfer and/or termination of existing services at the Flour Mill;
 - f) corresponding with the Interim Lender regarding the payment of Receiver's Certificates;
 - g) corresponding with representatives of the City of Brantford regarding property taxes owing by the Companies;

- h) dealing extensively with the Mahals and their counsel and Skymark and its counsel regarding the Mahal Security Motion;
- i) reviewing correspondence with certain judgment creditors or counterparties to litigation against the Companies, including Garage Living Inc. and Vivian Group Inc.;
- j) corresponding with Canada Revenue Agency regarding the Companies' payroll and HST accounts;
- k) preparing monthly HST filings for the Companies;
- l) corresponding with Bennett Jones regarding the trust claim asserted by the Orr Plaintiffs;
- m) preparing the Receiver's Supplement to the Third Report dated April 8, 2022;
- n) reviewing various Court materials filed in connection with the Mahal Security Motion, including a Responding Motion Record of Santokh dated August 26, 2022, a Supplementary Responding Motion Record of Santokh dated October 24, 2022, a Supplementary Affidavit of Santokh sworn October 26, 2022;
- o) preparing a Responding Motion Record of the Receiver returnable November 4, 2022;
- p) preparing the Fourth Report, the Fourth Report Supplement and the Receiver's factum in response to the Mahal Security Motion;
- q) attending the hearing of the Mahal Security Motion;
- r) preparing periodic statements of receipts and disbursements, including the R&D; and
- s) preparing this Report.

14.0 Professional Fees

1. The fees of the Receiver from March 1, 2022 to July 31, 2023 total \$195,469.75, excluding disbursements and HST. Blakes' fees for the same period total \$336,326.00, excluding disbursements and HST. Fee affidavits and accompanying invoices in respect of the fees and disbursements of the Receiver and Blakes for these periods are attached as Appendices "DD" and "EE", respectively, to this Report.
2. The average hourly rate for the Receiver and Blakes for the referenced billing period was \$594.40 and \$790, respectively.
3. The Receiver is of the view that Blakes' hourly rates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.

15.0 Conclusion

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)(f) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
MAHAL VENTURE CAPITAL INC. AND GOLDEN MILES FOOD CORPORATION AND AS
LICENSED INSOLVENCY TRUSTEE OF GOLDEN MILES FOOD CORPORATION
AND MAHAL VENTURE CAPITAL INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

TAB 12

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF MONTH, 20YR
)

B E T W E E N:

PLAINTIFF

Plaintiff

- and -

DEFENDANT

Defendant

APPROVAL AND VESTING ORDER

THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the

service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed¹:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ 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.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]⁴ 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, 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"⁵) including, without limiting the generality of

¹ This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; (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; and (iii) 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 Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ 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 sale⁸, 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 Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

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

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. 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.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. 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.

Schedule A – Form of Receiver’s Certificate

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

PLAINTIFF

Plaintiff

- and –

DEFENDANT

Defendant

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser 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 section •

of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) 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 Sale Agreement.

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 section ● of 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 _____ [TIME] on _____ [DATE].

**[NAME OF RECEIVER], in its capacity as
Receiver of the undertaking, property and
assets of [DEBTOR], and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

Schedule C – Claims to be deleted and expunged from title to Real Property

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

(unaffected by the Vesting Order)

TAB 13

This is Exhibit "D" to the Affidavit
of Pat Telfer sworn before me this
2nd day of May, 2024 at the
City of Brantford in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

A handwritten signature in cursive script that reads "Geoff Daley".

Commissioner for taking Affidavits

Geoffrey Daley

Patrick Telfer

From: Patrick Telfer
Sent: Tuesday, January 18, 2022 3:16 PM
To: Murtaza Tallat; Geoff B. Daley
Cc: Tommara E. Mcmillan; Mitch Vininsky; Noah Goldstein
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Hello Murtaza,
 MPAC responded to my enquiry back in November indicating that they required building permit information to complete the valuation.
 The building documents were provided to MPAC late November.
 I have followed-up with them today to get an update and timeline for the complete valuation for the property.
 I will let you know when I hear back from them.
 Thanks,
 Pat

Patrick Telfer
 Manager of Revenue/Tax Collector
 City of Brantford
 519-759-4222 ext. 5483

From: Murtaza Tallat [mailto:mtallat@ksvadvisory.com]
Sent: Tuesday, January 18, 2022 2:21 PM
To: Patrick Telfer; Geoff B. Daley
Cc: Tommara E. Mcmillan; Mitch Vininsky; Noah Goldstein
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Good afternoon Patrick,

I am sending this email to follow up with you regarding your email below dated October 28, 2021.

We have not heard anything further from the City of Brantford or MPAC regarding the assessment changes referenced in your below email. As you are aware, we are conducting a sale process for this property and interested parties need to know what the future property tax obligations would be on this property. As far as we are aware, the property is still incorrectly classified as Industrial Vacant Land.

Can you kindly advise whether MPAC has a timeline for completion of this assessment? If possible, are you able to hazard a guess as to the proper classification and approximate assessment value range for this property?

Thank you,



Murtaza Tallat
 Manager

T 416.932.6031
 M 647.640.4248
 W www.ksvadvisory.com

From: Murtaza Tallat
Sent: October 28, 2021 12:13 PM
To: Patrick Telfer <PTelfer@brantford.ca>; Geoff B. Daley <GDaley@brantford.ca>
Cc: Tommara E. Mcmillan <TMcmillan@brantford.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Hi Pat,

Thanks for the attached. Please change the mailing address to our office. All correspondence from the City regarding this property should be directed to our office as per below:

Attention: Murtaza Tallat
 KSV Advisory Inc.
 150 King St. W #2308
 Toronto, ON, M5H 1J9

Thanks,



Murtaza Tallat

Manager

T 416.932.6031

M 647.640.4248

W www.ksvadvisory.com

From: Patrick Telfer <PTelfer@brantford.ca>
Sent: October 28, 2021 11:52 AM
To: Murtaza Tallat <mtallat@ksvadvisory.com>; Geoff B. Daley <GDaley@brantford.ca>
Cc: Tommara E. Mcmillan <TMcmillan@brantford.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Hello Murtaza,

Please find attached a statement of account for 155 Adams Blvd showing outstanding taxes as of today's date.

Upon review of this property, it has come to my attention that this property is still not properly assessed.

MPAC still has the property assessed as Industrial Vacant Land (IX) with a value of \$1,889,000.

A request was submitted to MPAC in the Spring to have this rectified as the property has not been vacant land for a least a couple of years.

I have followed up with MPAC again today with a request to have this property valued and assessed properly and omitted assessment notices issued before they close off assessment changes for 2021.

This will result in additional taxes being added to the property and omitted tax notices being issued.

Currently we have the following owner and mailing address information on file:

MAHAL VENTURE CAPITAL INC

6845 SECOND LINE W

MISSISSAUGA ON L5W 1M8

Does this need to change before any future correspondence is sent out?

Please let me know if you have any questions.

Thanks,

Pat

Patrick Telfer
 Manager of Revenue/Tax Collector
 City of Brantford
 519-759-4222 ext. 5483

From: Murtaza Tallat [<mailto:mtallat@ksvadvisory.com>]
Sent: Wednesday, October 27, 2021 4:44 PM
To: Patrick Telfer; Geoff B. Daley
Cc: Tommara E. Mcmillan; Mitch Vininsky; Noah Goldstein
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Yes, that would be helpful as a start. We may have further requests once we have had a chance to review.



Murtaza Tallat

Manager

T 416.932.6031
 M 647.640.4248
 W www.ksvadvisory.com

From: Patrick Telfer <PTelfer@brantford.ca>
Sent: October 27, 2021 4:42 PM
To: Murtaza Tallat <mtallat@ksvadvisory.com>; Geoff B. Daley <GDaley@brantford.ca>
Cc: Tommara E. Mcmillan <TMcmillan@brantford.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 155 Adams Boulevard - ppty tax arrears

Hello Murtaza,
 Can you let me know specifically what you are looking for.
 Will a statement of account showing the current level of tax arrears suffice?
 Thanks,
 Pat

Patrick Telfer
 Manager of Revenue/Tax Collector
 City of Brantford
 519-759-4222 ext. 5483

From: Murtaza Tallat [<mailto:mtallat@ksvadvisory.com>]
Sent: Wednesday, October 27, 2021 12:05 PM
To: Geoff B. Daley; Patrick Telfer
Cc: Tommara E. Mcmillan; Mitch Vininsky; Noah Goldstein
Subject: RE: 155 Adams Boulevard - ppty tax arrears

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Geoff, thank you for the introduction.

Pat, please see the attached copy of the receivership order dated October 1, 2021. A copy of the same, along with all other court materials in these proceedings, can be found on KSV's website, here:

<https://www.ksvadvisory.com/insolvency-cases/case/mahal-venture-capital-inc>

I also request that you please include Mitch Vininsky and Noah Goldstein (both copied) of the Receiver's office on correspondence regarding this matter.

Thank you,



Murtaza Tallat

Manager

T 416.932.6031

M 647.640.4248

W www.ksvadvisory.com

From: Geoff B. Daley <GDaley@brantford.ca>

Sent: October 27, 2021 11:53 AM

To: Murtaza Tallat <mtallat@ksvadvisory.com>

Cc: Tommara E. Mcmillan <TMcmillan@brantford.ca>; Patrick Telfer <PTelfer@brantford.ca>

Subject: 155 Adams Boulevard - ppty tax arrears

Hello Mr. Tallat,

This e-mail is further to the recent exchange between the City, the City's outside counsel and Chris Burr regarding outstanding property taxes owing for the property bearing municipal address 155 Adams Boulevard, Brantford, Ontario.

By way of this e-mail I am introducing you to Mr. Pat Telfer, the City's Manager of revenue/tax collector. Mr. Telfer will be able to provide the information you requested regarding outstanding property taxes for this property.

If you could please provide Mr. Telfer with a copy of the receivership order confirming KSV's appointment as receiver in the Golden Miles proceedings we will be in a better position to provide the information you are seeking.

If you could please copy me on any correspondence regarding this matter please let me know.

Thanks

Geoffrey B. Daley

Legal Counsel and Head of Litigation

T: 519.759.4150, ext. 5150 | F: 519.751.4757

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← Return to Work Objects List

2906 030 007 07200 · ENQ-0143537


RECEIVED


IN PROGRESS


COMPLETED

Property Summary

106 · Vacant industrial land

Roll Number

[2906 030 007 07200](#)

Region

20 - Brantford

Municipality

BRANTFORD CITY

Legal Description

BRANTFORD CON 3 PT LOTS 38 AND 39 RP 2R6545 PARTS 1 AND 2 RP 2R4747 PART 1 RP 2R1332 PARTS 1 TO 3

Type

INDUSTRIAL

Zoning

M2

Lot Size

23.15 Acres

Status

Active

Municipal Address

155 ADAMS BLVD

Data

Received Date

2022/01/18

Received Format

Portal

Municipal Rep Email

ptelfer@brantford.ca

Additional Email

John.Wight@mpac.ca,levy.wilson@mpac.ca

Response

Thank you for your enquiry received on 2022/01/18. As per your submission, please find the response(s) below:

Question - 1

Hello Levy,

Just looking for an update on the value and tax class for this property.

The owners of the property are in bankruptcy negotiations and the receiver for the property is trying to sell.

They are aware that the property is not assessed properly and prospective owners are asking what the potential property taxes may be.

I cannot provide that information without a property value and tax class.

Thanks,

Pat

Response - 1

Pat

This fell into my enquiries, I am cc Levy this response. I am sure he will get right back to you.

TAB 14

This is Exhibit "E" to the Affidavit
of Pat Telfer sworn before me this
2nd day of May, 2024 at the
City of Brantford in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

Geoff Daley

Commissioner for taking Affidavits

Geoffrey Daley

Patrick Telfer

From: Wilson, Levy <Levy.Wilson@mpac.ca>
Sent: Monday, February 7, 2022 9:36 AM
To: Patrick Telfer
Subject: 290603000707200 - 155 Adams Blvd - Work Object id: ENQ-0143537

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Hi Pat,

Good morning to you and I hope you had a good weekend.

The property above was assigned to me for assessment, I have received the plans and is in the process of carrying out the said assessment. However in order to complete my duties I need to carry out an inspection of the property. Each time I try to schedule an inspection, there is a freeze on the same. I hope to carry out one by end of February, which, is the scheduled time for the freeze on inspection to be lifted.

Should you require any other information, please feel free to reply to this email or contact me through any of the numbers listed below.

Kind regards,

Levy Wilson, M.Sc., A.I.M.A.

Property Valuation Specialist
Valuation & Assessment Standards | Centralized Properties
T: (647) 484-9986
C: (437) 221 9674

mpac.ca

Municipal Property Assessment Corporation
4271 King Street East, Suite 100
Kitchener, ON N2P 2E9



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TAB 15

Court of Appeal No:
Court File No. CV-21-00664778-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

and

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

**MNP LTD., IN ITS CAPACITY AS
COURT APPOINTED RECEIVER OF 12175622 CANADA INC.
AND GPM FOOD INC., CERTIFICATE OF EVIDENCE**

The Appellant, MNP Ltd., in its capacity as Court Appointed Receiver of 12175622 Canada Inc. and GPM Food Inc. and without personal or corporate liability (the “**MNP Receiver**”) certifies that the following evidence is required for the appeal, in the MNP Receiver’s opinion:

1. The Motion Record of KSV Restructuring Inc. (the “**KSV Receiver**”), in its capacity as licensed insolvency trustee of the Respondents, including:
 - (a) the Sixth Report of the KSV Receiver, dated March 26, 2024 (the “**Sixth Report**”);
 - (b) the Supplement to the Sixth Report of the KSV Receiver, dated April 3, 2024 (the “**Supplement**”); and

-2-

- (c) the Second Supplement to the Sixth Report of the KSV Receiver, dated May 10, 2024 (the “**Second Supplement**”, together with the Sixth Report and the Supplement, the “**Consolidated Sixth Report**”);
2. The Affidavit of Dale Snider, affirmed April 25, 2024 (the “**Snider Affidavit**”); and
3. The Affidavit of Pat Telfer, affirmed May 2, 2024 (the “**Telfer Affidavit**”).

June 28, 2024

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Tel: 416-862-7525

Fax: 416-862-7661

Clifton Prophet (LSO#34845K)

Tel: 416-862-3509

Fax: 416-862-7661

clifton.prophet@gowlingwlg.com

Heather Fisher (LSO#75006L)

Tel: 416-369-7202

Fax: 416-862-7661

heather.fisher@gowlingwlg.com

Lawyers for MNP Ltd., in its capacity as
Court Appointed Receiver of 12175622
Canada Inc. and GPM Food Inc.

TO: **THE SERVICE LIST**

SKYMARK FINANCE CORPORATION
Applicant

-and- MAHAL VENTURE CAPITAL INC. and GOLDEN MILES
FOOD CORPORATION
Respondents

Court of Appeal No.
Court File No. CV-21-00664778-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

MNP LTD.
CERTIFICATE RESPECTING EVIDENCE

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Clifton Prophet (34845K)

clifton.prophet@gowlingwlg.com

Tel: 416-862-3509

Heather Fisher (75006L)

heather.fisher@gowlingwlg.com

Tel: 416-369-7202

Tel: 416-862-7525

Lawyers for MNP Ltd., in its capacity as Court Appointed
Receiver of 12175622 Canada Inc. and GPM Food Inc.

File Number: T1033017

TAB 16

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

and

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

CERTIFICATE OF COMPLETENESS

I, Heather Fisher, lawyer for MNP Ltd., in its capacity as Court-appointed Receiver of 12175622 Canada Inc. and GPM Food Inc., certify that the appeal book and compendium in this appeal is complete and legible.

August 13, 2024



Heather Fisher

-2-

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Canada Inc. and GPM Food Inc.

SKYMARK FINANCE CORPORATION

- and - MAHAL VENTURE CAPITAL INC. et al.

Applicant

Respondents

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File Number: T1033017

SKYMARK FINANCE CORPORATION.

- and - MAHAL VENTURE CAPITAL INC. et al.

Court File No. COA-24-CV-0702

Applicant

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COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

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