

Court File No.: CV-23-00004031-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

-and-

1000093910 ONTARIO INC.

Respondent

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

SECOND AFFIDAVIT OF REMY CARUSO

I, **Remy Caruso**, of the City of Toronto, in the Province of Ontario **MAKE OATH AND SAY:**

1. I am a Director of the Applicant, Peakhill Capital Inc. ("**Peakhill**") and, as such, have knowledge of the matters contained in this Affidavit.

2. I am making this affidavit in support of an application by the Applicant for the appointment of KSV Restructuring Inc. ("**KSV**"), as receiver and manager (the "**Receiver**") for of all assets, undertakings and properties owned by the Respondent, 1000093910 Ontario Inc. (the "**Borrower**"), including the property municipally known as 20 Regina Road, Vaughan, Ontario

(the “**Property**”). I am making this affidavit to provide an update as to the status of the herein receivership matter in accordance with the Terms for Consent Order for Appointment of Receiver of Justice Lavine dated September 13, 2023 (the “**Terms for Consent Order**”). A copy of the Terms for Consent Order together with a copy of the Order of Justice Lavine dated September 13, 2013 wherein KSV was appointed as Receiver is attached are attached as **Exhibit “1”**.

3. In accordance with paragraph 2 of the Terms of Consent Order, I confirm that the Borrower has breached the Terms for Consent Order and that the indebtedness owed to Peakhill by the Borrower remains unpaid.

4. I am swearing this affidavit in order to make the receivership effective.

SWORN remotely by Remy Caruso at the City of Toronto, in the Province of Ontario, before me on the 2nd day of October, 2023, in accordance with *O. Reg. 431/20*, Administering Oath or Declaration Remotely.

DocuSigned by:

Dominique Michaud

Commissioner for Taking Affidavits
(or as may be)

Dominique Michaud

DocuSigned by:

Remy Caruso

REMY CARUSO

THIS IS **EXHIBIT "1"** REFERRED TO IN
THE AFFIDAVIT OF **REMY CARUSO**
SWORN BEFORE ME THIS 2ND
DAY OF OCTOBER, 2023

DocuSigned by:

Dominique Michaud

5295D6ADCEAA451...

Commissioner for Taking Affidavits etc./Notary Public

DOMINIQUE MICHAUD

ONTARIO



COURT FILE NO.
CV-23-4031

SUPERIOR COURT OF JUSTICE

ENDORSEMENT

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

APPLICANT: PEAKHILL CAPITAL INC.

COUNSEL: *Dominique Michaud* (dmichaud@robapp.com)
 Joey Jamil (jjamil@robapp.com)
 Lawyers for the Applicant

RESPONDENT: 1000093910 Ontario Inc.

COUNSEL: *Jason Arbuck* (jarbuck@cassels.com)
 Manraj Mukkar (mmukkar@cassels.com)
 Lawyers for the Respondent

Heard: September 13. 2023

For reasons to follow, order to go on consent on terms attached as "Schedule A". Order
signed by me.

Justice S. Lavine

SCHEDULE A

Court File No.: CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

-and-

1000093910 ONTARIO INC.

Respondent

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

TERMS FOR CONSENT ORDER FOR APPOINTMENT OF RECEIVER

The Applicant and the Respondent agree to on the following terms in respect of the consent appointment of KSV Restructuring Inc. ("**KSV**" or the "**Receiver**") as Receiver of the Respondent:

1. The Receivership Order sought by the Applicant shall be granted in the form uploaded to Caselines;
2. Notwithstanding the granting of the Order of today's date, the order shall not be in force or effect until:

- 2 -

- a. The earlier of a breach of terms set out herein or after 9:00 a.m. on Monday, October 2, 2023; and
 - b. the Applicant has delivered an affidavit to both the Receiver and to counsel for the Respondent attesting to the fact that the Respondent has breached the terms set out herein and/or that the indebtedness owed to the Applicant remains unpaid as of 9:00 a.m. on October 2, 2023.
3. In the event that the Applicant receives full payment as set out herein, the Order shall be null and void and shall never become effective.
4. The Respondent agrees to pay the Applicant a further forbearance fee of \$200,000 (the "**Further Forbearance Fee**"). Payment of the Further Forbearance Fee shall be added to the indebtedness owing to by the Respondent to the Applicant effective September 13, 2023. However, in the event that Applicant's Mortgage is fully repaid on or before 4:00 p.m. on September 29, 2023, the Further Forbearance Fee shall be reduced to \$100,000.
5. The Respondent shall pay \$300,000 to the Applicant on or before 4:00 p.m. on September 15, 2023, towards the indebtedness owing by the Respondent to the Applicant. This payment is to be applied towards the indebtedness in the Applicant's sole discretion.
6. The Respondent shall have until 4:00 p.m. September 29, 2023 to pay the amounts necessary to pay the items set out below (collectively the "**Payment**"):
 - i. the full amount owing under the Applicant's Mortgage including all principal and interest and forbearance fees due and owing. This

amount shall be calculated at the interest rate of RBC Prime Rate plus 3.5% per annum; and

- ii. the fees, including legal fees, incurred by both the Applicant in respect of the enforcement its security and of this receivership.

7. The Applicant agrees that on the condition that the Payment is made on or before 4:00 p.m. on September 29, 2023, the calculation for the Payment shall not include the monthly Default Administration Fees owing by the Respondent to the Applicant in accordance with the Forbearance Agreement between, *inter alia*, the Applicant and the Respondent dated July 7, 2023. For greater clarification, should repayment of the indebtedness owing to the Applicant occur after 4:00 p.m. on September 29, 2023, the Default Administration Fees shall remain due and owing.
8. The Applicant and the Respondent agree to amend the terms of the Applicant's mortgage registered as instrument YR34416767 (the "**Peakhill Mortgage**") on or before 4:00 p.m. on September 15, 2023 to:
 - a. extend the maturity date of the Peakhill Mortgage to November 1, 2023;
 - b. amend the interest rate provision to reflect the Peakhill Mortgage shall calculate interest as follows:
 - i. up to September 30, 2023 at the greater of the interest rate of 6.20% per annum or the interest rate of RBC Prime Rate + 3.50% per annum; and
 - ii. from October 1, 2023 and thereafter, at interest rate of RBC Prime Rate + 10.00% per annum, calculated daily and compounded and payable in accordance with the Loan terms.

Court File No.: CV-23-00004031-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	WEDNESDAY, THE 13TH
)	
JUSTICE LAVINE)	DAY OF SEPTEMBER, 2023

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

-and-

1000093910 ONTARIO INC.

Respondent

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

ORDER
(Appointing Receiver)

THIS APPLICATION made by Peakhill Capital Inc. (“**Peakhill**” or the “**Lender**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) over the Respondent, 1000093910 Ontario Inc. (the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario (the “**Property**”) with the legal description set out in Schedule "A", and all other property, assets and undertakings relating

thereto, acquired for, or used in relation to a business carried on by the Debtor, and for other relief, was heard this day by way of video-conference.

ON READING the affidavit of Remy Caruso dated August 29, 2023 and the Exhibits thereto, on consent of the Applicant and the Respondent and on hearing the submissions of counsel acting for the Applicant, the Respondent and such other parties as were present, and on reading the consent of KSV to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (t) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/1000093910Ontario>.

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

RETENTION OF LAWYERS

27. **THIS COURT ORDERS** that the Receiver may retain lawyers, including the Applicant's lawyers, to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such lawyers may be the lawyers for the Applicant herein, in respect of any aspect, where the Receiver is satisfied that there is no actual or potential conflict of interest.

GENERAL

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

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

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

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

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

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



The Honourable Justice S. Lavine

SCHEDULE "A" THE PROPERTY

PIN: **03221-0039 (LT)**

DESCRIPTION: PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720 ; S/T
LT576260,LT576262 VAUGHAN

Address: 20 Regina Road, Vaughan, Ontario

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") over 1000093910 Ontario Inc. (the "**Debtor**") and all of the assets, undertakings and property of the Debtor municipally known as 20 Regina Road, Vaughan, Ontario (the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the _____, 2023 (the "**Order**") made in an application having Court file number CV-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 20__.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Debtor, and not in its
personal capacity

Per: _____

Name: Noah Goldstein

Title: Managing Director

PEAKHILL CAPITAL INC. - and- **1000093910 ONTARIO INC.**

<i>Applicant</i>	<i>Respondent</i>	Court File No.: CV-23-00004031-0000
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	<p><i>ONTARIO</i> SUPERIOR COURT OF JUSTICE PROCEEDING COMMENCED AT NEWMARKET</p>
	<p>ORDER</p>
	<p>ROBINS APPLEBY LLP Barristers + Solicitors 2600 - 120 Adelaide Street West Toronto, ON M5H 1T1</p> <p>Dominique Michaud LSO No. 56871V Email: dmichaud@robapp.com Tel: (416) 360-3795</p> <p>Joey Jamil LSO No. 74614L Email: jjamil@robapp.com Tel: (416) 360-3783</p> <p>Lawyers for the Applicant</p>

PEAKHILL CAPITAL INC. - and- **1000093910 ONTARIO INC.**

Applicant	Respondent	Court File No.: CV-23-00004031-0000
		<div><div>ONTARIO</div><div>SUPERIOR COURT OF JUSTICE</div><div>PROCEEDING COMMENCED AT NEWMARKET</div></div>
		<div>SECOND AFFIDAVIT OF REMY CARUSO</div>
		<div><div>ROBINS APPLEBY LLP Barristers + Solicitors 2600 - 120 Adelaide Street West Toronto, ON M5H 1T1</div><div>Dominique Michaud LSO No. 56871V Email: dmichaud@robapp.com Tel: (416) 360-3795</div><div>Joey Jamil LSO No. 74614L Email: jjamil@robapp.com Tel: (416) 360-3783</div><div>Lawyers for the Applicant</div></div>