



**First Report of  
KSV Restructuring Inc.  
as Receiver of 1000093910 Ontario Inc.**

December 13, 2023

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**COURT FILE NO: CV-23-00004031-0000**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**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**

**FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER**

**DECEMBER 13, 2023**

## **1.0 Introduction**

1. On September 13, 2023, the Ontario Superior Court of Justice (the "Court") granted an order (the "Receivership Order") appointing KSV Restructuring Inc. ("KSV") as the receiver and manager (in such capacity, the "Receiver") of 1000093910 Ontario Inc. (the "Company") and all the assets, undertakings and properties of the Company (collectively, the "Property"). The Receivership Order and the Receiver's appointment became effective on October 2, 2023. A copy of the Receivership Order and the Endorsement of Justice S. Lavine is provided in Appendix "A".
2. The principal asset of the Company is real property located at 20 Regina Road, Vaughan, Ontario (the "Real Property").
3. The application to appoint KSV as Receiver was made by Peakhill Capital Inc. ("Peakhill"), the senior secured creditor of the Company. Peakhill is the largest creditor of the Company, as more fully detailed below.

4. The principal purpose of this receivership proceeding is to conduct a sale process for, among other things, the Real Property within a stabilized environment.
5. This first report (the “Report”) is filed by KSV in its capacity as Receiver.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about this receivership proceeding;
  - b) discuss the terms of an Agreement of Purchase and Sale dated September 7, 2023 (the “Original APS”) between the Company and 2557904 Ontario Inc. (“255”) for the sale of the Real Property and the reasons that the Original APS cannot be completed on its terms in the current circumstances and should be terminated;
  - c) summarize the terms of an Agreement of Purchase and Sale (the “Stalking Horse Agreement”) between 255 and the Receiver dated November 13, 2023 to purchase the Real Property which, subject to the approval of this Court, would act as the “stalking horse bid” in the sale process for the Real Property (the “Sale Process”);
  - d) describe the proposed terms of the Sale Process, including the related bidding procedures (the “Bidding Procedures”), and to seek approval for the Receiver to retain Jones Lang LaSalle (“JLL”) as the listing agent to sell the Real Property in the Sale Process;
  - e) recommend that the Court issue an order, *inter alia*:
    - i. terminating the Original APS;
    - ii. directing Ren/Tex Realty Inc. (“Ren/Tex”) to return the deposit it is holding in respect of the Original APS to 255;
    - iii. approving the Stalking Horse Agreement, solely for the purposes of being the “stalking horse bid” in the Sale Process, provided that if 255 is the successful bidder, completion of the transaction contemplated by the Sale Process will be subject to the Court’s approval, upon a further motion by the Receiver in these receivership proceedings;
    - iv. approving the Sale Process, including the Bidding Procedures;
    - v. authorizing the Receiver to engage JLL pursuant to the terms of a listing agreement (the “Listing Agreement”); and
    - vi. approving this Report.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon (i) discussions with the Company and the Company's legal counsel; (ii) discussions with Peakhill and its legal counsel; (iii) discussions with 255 and its legal counsel, and (iv) the receivership application materials (collectively, the "Information").
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information is required to perform its own diligence.

## 1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

## 2.0 Background

1. The Company is an Ontario corporation and the owner of the Real Property. Ravi Aurora is the sole director of the Company.
2. The Receiver was advised by Mr. Aurora that there are no current financial statements for the Company. The Receiver understands that the Real Property is the only asset held by the Company.
3. The Real Property is an industrial property occupied by 3 tenants. A summary of the current leases for the Real Property is provided below.

(\$000s; unaudited)		Monthly	Arms-length/non-arms
	Lease term	Occupancy Costs	length
Countertop Solutions Inc.	Expires Apr 30, 2032	\$34,375	Non-arms length
Grafco International Laminating Corp.	Expires Apr 30, 2027	\$39,875	Non-arms length
2524162 Ontario Inc.	Expires Apr 30, 2027	\$18,750	Unknown

4. Countertop Solutions Inc. ("Countertop") is operated by Mr. Aurora. Rent has not been paid by Countertop since the commencement of these receivership proceedings despite several requests and demands by the Receiver. In connection with Peakhill making its loan to the Company, it entered into a Termination Agreement re: Lease with the Company and Countertop (the "Lease Termination Agreement"). A copy of the Lease Termination Agreement is attached as Appendix "B". The Lease Termination Agreement provides, among other things, that if there is an Event of Default (as defined in the Lease Termination Agreement), Peakhill has the option to terminate the lease with Countertop Solutions at any time by notice in writing to the tenant and the Company. As of the date of the Report, neither the Receiver nor Peakhill has taken any steps to terminate the lease.

5. Neither Grafco International Laminating Corp. ("Grafco") nor 2524162 Ontario Inc. ("252") has paid rent since the commencement of these receivership proceedings either, despite several requests and demands by the Receiver. Counsel to the Company has advised the Receiver that Grafco is related to Mr. Aurora. It is not clear to the Receiver whether 252 is also related to Mr. Aurora.
6. Further background information regarding the Company and the reasons that Peakhill sought the appointment of the Receiver are provided in the affidavit of Remy Caruso, a Director of Peakhill, sworn on August 29, 2023 (the "Caruso Affidavit"), and is not repeated herein. A copy of the Caruso Affidavit and other Court materials filed to-date in these receivership proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/1000093910ontario>.

### **3.0 Creditors**

#### **3.1 Secured Creditors**

1. Peakhill is the Company's senior secured creditor with a first mortgage on the Real Property. The Company is indebted to Peakhill for approximately \$20 million, plus interest, costs and expenses which are continuing to accrue.
2. In addition to Peakhill, Zaherali Visram has a \$4 million charge registered against the Real Property.

#### **3.2 Unsecured Creditors**

1. According to the Company, as of October 11, 2023, the Company's only unsecured creditor was in respect of property taxes owing to the City of Vaughan for \$162,786. The property taxes remain unpaid.

### **4.0 20 Regina JV Ltd. Statement of Claim**

1. Early in these receivership proceedings, counsel to the Receiver was contacted by counsel to 20 Regina JV Ltd. ("Regina JV"), an entity that purports to hold equity in the Company. Counsel for Regina JV was added to the service list and provided with a copy of the Receivership Order.
2. On December 4, 2023, counsel to the Receiver received a statement of claim (the "Original Regina JV SOC") via email which listed, among others, each of Peakhill, the Receiver and the Company as defendants, and sought certain relief related to the Real Property. A copy of the Original Regina JV SOC is attached as Appendix "C".
3. Following receipt, counsel to the Receiver promptly advised counsel to Regina JV that the Original Regina JV SOC was issued in direct breach of the Receivership Order and that the action needed to be discontinued immediately.
4. On December 10, 2023, the Receiver was served with a Notice of Discontinuance in respect of the Original Regina JV SOC. A copy of the Notice of Discontinuance is attached as Appendix "D".

5. Counsel to Regina JV has now issued a revised statement of claim which no longer names Peakhill, the Receiver or the Company as defendants, and does not seek specific relief related to the Real Property.

## 5.0 The Original APS

1. Six days prior to the issuance of the Receivership Order, the Company and 255 entered into the Original APS. A copy of the Original APS is attached as Appendix "E". The key terms of the Original APS are summarized below.
  - **Purchaser:** 255
  - **Purchased Assets:** The Real Property
  - **Purchase Price:** \$31,000,000. The purchase price is to be adjusted on closing for property taxes and other adjustments standard for a real estate transaction.
  - **Deposit:** \$1,500,000, including \$1 million paid on signing of the Original APS.
  - **Representation and Warranties:** include:
    - the Company is the registered legal owner of the Real Property;
    - the Company is not now and shall not be on the closing date a non-resident of Canada within the meaning of the *Income Tax Act*;
    - any orders or deficiency notices outstanding against the Real Property shall be satisfied by the Company at its sole expense before the date of closing;
    - that no contracts exist for the servicing, maintenance or management of the Real Property which may be binding upon the Purchaser after closing other than disclosed by the Company; and
    - it is duly authorized to enter into the Original APS with power and capacity to complete the transaction provided therein in accordance with the terms thereof.
  - **Closing:** December 21, 2023.
  - **Material Conditions:** Unconditional, other than it includes a leaseback condition which states:
    - upon completion of the Original APS, 255 will allow the Company to lease the premises back, for a term of four months from closing at a semi-gross rental rate of \$20.00 per square foot per annum.
    - said lease shall have no option to renew and shall contain standard lease terms as in a transaction of this nature and size. The Company shall be responsible for all liability insurance and utilities.

2. In connection with the Original APS, 255 paid a cash deposit of \$1 million to the Company's realtor, Ren/Tex (the "Original APS Deposit").
3. As a result of the intervening receivership proceedings (which the Company was already on notice at the time of entering into the Original APS), the Original APS could not be closed on its terms because, among other things, the closing mechanics are different in a receivership than in an ordinary course real estate transaction. Accordingly, forthwith after the commencement of the receivership proceedings, the Receiver approached 255 seeking to amend the Original APS to, among other things: (i) add a mutual condition that the Original APS was conditional on the Receiver obtaining an Approval and Vesting Order vesting title in the Real Property to 255, and (ii) contemplate the closing mechanics required in a receivership sale. However, 255 was not prepared to agree to such amendments. Accordingly, the Receiver was unable to close the transaction contemplated by the Original APS. The Receiver has kept all stakeholders advised of these developments, including the Company, Peakhill and Mr. Visram.
4. In light of the foregoing, and as is discussed further below, the Receiver is seeking relief from the Court: (i) terminating the Original APS and any related agreements; and (ii) directing Ren/Tex to forthwith return the Original APS Deposit to 255.

## 6.0 SISP and Stalking Horse Agreement<sup>1</sup>

### 6.1 The Stalking Horse Agreement

1. The Receiver subsequently entered into discussions with 255 to determine whether 255 was still interested in acquiring the Real Property. 255 advised it was prepared to purchase the Real Property at a significantly reduced purchase price. However, the Receiver was not prepared to recommend a transaction for Court approval at a reduced price that would not provide for a market test. Ultimately, after consultation with Peakhill, the Receiver entered into the Stalking Horse Agreement. The Stalking Horse Agreement provides for a floor price for the Real Property, but provides the Receiver with the opportunity to see if a higher offer can be achieved. Provided the Court approves the Stalking Horse Agreement and the Sale Process, the Real Property will be marketed for approximately 30 days by JLL in order to determine if there are any better bids for the Real Property. A copy Stalking Horse Agreement is attached as Appendix "F".
2. The key terms and conditions of the Stalking Horse Agreement are summarized below.
  - **Purchaser:** 255
  - **Purchased Assets:** all of the Company's right, title and interest in and to the following:
    - a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority related to the Real Property;

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<sup>1</sup> Capitalized terms in this Section 5 have the meanings provided to them in the Stalking Horse Agreement, unless otherwise defined herein. The summary provided herein of the Stalking Horse Agreement is for convenience purposes only and readers are strongly encouraged to review the Stalking Horse Agreement itself.



- b) the Real Property;
  - c) the Chattels;
  - d) the Plans; and
  - e) the Permits and Contracts, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees.
- **Purchase Price:** \$24,255,000. The purchase price will be adjusted on closing for property taxes and other adjustments standard for a real estate transaction.
  - **Deposit:** \$2,400,000. The Receiver has received the deposit.
  - **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
  - **Closing:** first business day which is five business days after receipt of the Approval and Vesting Order, or such other date as agreed in writing by the Parties.
  - **Material Conditions:** the Court will have issued an Approval and Vesting Order approving the transaction and vesting the Real Property in the Purchaser free and clear of all Encumbrances other than Permitted Encumbrances.
  - **Excluded Liabilities:** include:
    - except as otherwise noted in the Stalking Horse Agreement, all taxes payable by the Company arising with respect to the period prior to the Closing Date and all taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
    - any liability, obligation or commitment associated with (i) the Accounts Payable incurred prior to Closing; or (ii) any employees of the Company;
    - any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
    - any liability, obligation or commitment associated with any of the Excluded Assets; and
    - any liability, obligation or commitment in respect to claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

- **Excluded Assets:** include:
  - a) any leases;
  - b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Company that do not relate exclusively or primarily to any of the Purchased Assets; and
  - c) the benefit of any refundable taxes payable or paid by the Company in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Company to any refund, rebate or credit of taxes for the period to the Closing Date.
- **Termination:** the Stalking Horse Agreement can be terminated, among other things:
  - a) upon mutual written consent of the parties;
  - b) by the Receiver if any condition contained in Section 8.1 of the Stalking Horse Agreement is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver;
  - c) by the Purchaser if any condition contained in Section 8.3 of the Stalking Horse Agreement is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser;
  - d) if, prior to the Closing Date, all or a material part of any of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of any of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three business days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either (i) complete the Transaction contemplated in the Stalking Horse Agreement in accordance with the terms without reduction of the Purchase Price, and all compensation for expropriation of any of the Real Property shall be payable by the Purchaser and all right, title and interest of the Company to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis, or (ii) terminate the Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith; and

- e) if, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).

## **6.2 Bid Protections**

1. The Stalking Horse Agreement includes a break fee of \$200,000 (inclusive of HST) (the “Break Fee”) in the event that the Purchaser is not the successful bidder.
2. The Stalking Horse Agreement also includes an expense reimbursement of up to \$50,000 (inclusive of HST) (the “Expense Reimbursement”) in respect of legal, diligence and other costs incurred by the Purchaser in respect of the SISP, including drafting and negotiating the Stalking Horse Agreement. The purpose of the Expense Reimbursement is to provide 255 with a means to recover its costs and expenses incurred in connection with the Stalking Horse Agreement if it is not the successful bidder or upon certain events of termination of the Stalking Horse Agreement.
3. The Receiver is of the view that the bid protections are not punitive in nature, nor will they discourage competitive bidding with respect to the SISP.
4. Bid protections in the context of stalking horse sale processes are generally around 2.5%-5% of the purchase price, and the bid protections in this case represent approximately 1% of the purchase price. A copy of a stalking horse break fee and expense reimbursement analysis of other insolvency proceedings current as to August 21, 2023, is attached at Appendix “G”.<sup>2</sup> The Receiver advised 255 that any Bid Protections would need to be minimal in these circumstances given the prior Original APS.

## **6.3 Termination of Original APS and Return of Original APS Deposit**

1. On November 20, 2023, in accordance with the terms of the Stalking Horse Agreement, counsel for 255, Concorde Law Professional Corporation, delivered an irrevocable direction to Ren/Tex directing Ren/Tex to the Original APS Deposit to the Receiver (the “Direction”).

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<sup>2</sup> Sourced from Insolvency Insider.

2. The Direction was not complied with as Ren/Tex expressed concerns over a breach of trust claim as a result of the Confirmation of Co-operation and Representation Agreement that was executed with 255's brokerage as part of the Original APS.
3. The Receiver is seeking the termination of the Original APS and a direction to Ren/Tex to return the Original APS Deposit to 255.
4. The Receiver and its legal counsel have engaged extensively with counsel to the Company regarding the Original APS. Counsel to the Company has advised that prior to the return of this motion, the Company intends to either: (a) repay Peakhill and bring a motion to terminate the receivership proceedings; or (b) bring a motion to amend the receivership order to allow the Company to close the Original APS. In connection with the foregoing, the Receiver has been advised by counsel to the Company that the Company is negotiating a commitment letter to repay Peakhill. As of the date of this Report, the Receiver has not seen a copy (including any drafts) of any such commitment letter, despite multiple requests therefor.
5. As the Receiver has not seen any commitment letter and the Company has not filed its materials as of the date of this Report, the Receiver intends to file a supplemental report with its views on any motion brought by the Company. The supplemental report may or may not include revised recommendations for the Court.

#### 6.4 Sale Process

1. The purpose of the Sale Process is to maximize the value for the Real Property. The Receiver has engaged JLL, subject to Court approval of its Listing Agreement. JLL is familiar with the Real Property and is able to immediately commence the Sale Process after the holidays. A copy of JLL's form Listing Agreement (which has not been executed) is attached as Appendix "H". In the event the Real Property sells for more than the Stalking Horse purchase price, JLL will receive a work fee of \$140,000, plus HST (the "Work Fee"). In the event the Real Property sells for a higher purchase price, JLL will receive the Work Fee plus 5% of additional proceeds above the purchase price amount contemplated in the Stalking Horse Agreement. The Receiver is of the view that the commission structure is fair and reasonable, and will appropriately incentivize JLL to seek a higher purchase price for the Real Property.
2. A summary of the proposed Sale Process is as follows:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	➤ JLL to review all available documents concerning the Real Property.	until January 8, 2024
Finalize marketing materials	➤ JLL and the Receiver to: <ul style="list-style-type: none"> <li>○ prepare a marketing brochure;</li> <li>○ populate an online data room;</li> <li>○ prepare a Confidentiality Agreement ("CA"); and</li> <li>○ prepare a Confidential Information Memorandum ("CIM").</li> </ul>	

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Prospect Identification	<ul style="list-style-type: none"> <li>➤ JLL will qualify and prioritize prospects;</li> <li>➤ JLL will also have pre-marketing discussions with targeted prospects.</li> </ul>	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ offering summary and marketing materials printed;</li> <li>○ telephone and email canvass of leading prospects; and</li> <li>○ meet with and interview bidders.</li> </ul> </li> <li>➤ JLL to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room;</li> <li>➤ JLL to facilitate diligence by interested parties;</li> </ul>	January 8, 2024 (for 30 days)
Stage 2	<ul style="list-style-type: none"> <li>➤ Bid deadline – in order to submit an offer, a prospective purchaser must submit a “Qualified Bid” (as discussed in section 5.4 below)</li> </ul>	February 8, 2024
<i>Phase 3 – Auction and Closing</i>		
Auction	<ul style="list-style-type: none"> <li>➤ An Auction will be held in a manner consistent with the Bidding Procedures set out below.</li> </ul>	Within five (5) business days of Bid Deadline
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder</li> </ul>	
Sale Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for sale approval and close transaction.</li> </ul>	Within ten (10) days of Auction, subject to Court availability

## 6.5 Bidding Procedures

1. The Bidding Procedures are attached as Appendix “I”. The Bidding Procedures are summarized below.

### 6.5.1 Qualified Bids

1. To be a “Qualified Bid”, a bid must meet the following requirements:
  - a) a base cash purchase price equal to or greater than \$24,555,000, which is the amount of the Stalking Horse Bid, plus \$300,000 (i.e. a Break fee of \$200,000, an Expense Reimbursement of up to \$50,000 and an overbid amount of \$50,000);
  - b) include a provision stating that the bidder’s offer is irrevocably open for acceptance until the first business day after the Real Property has been sold pursuant to the closing of the sale that is approved by the Court pursuant to the Sale Approval Order (as defined below);

- c) disclosure of the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Real Property or otherwise participating in such bid and the complete terms of any such participation;
- d) written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction comprising such bid, that will allow the Receiver to make a determination as to the bidder's financial and other capabilities to consummate the proposed transaction;
- e) written evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- f) an acknowledgment and representation of the bidder that: (A) it has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its bid; (B) it has relied solely upon its own independent review, investigation and/or inspection of the Real Property (including, without limitation, any documents in connection therewith) in making its bid; and (C) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Real Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) executed by the Receiver and approved by the Court;
- g) an executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting any variations from the Stalking Horse Bid; and
- h) a cash deposit in the amount of 10% of the purchase price in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the "Bid Deposit"), which shall be held by the Receiver in an escrow account (the "Escrow Account"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof or as otherwise provided for in the purchase agreement; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer;

### **6.5.2 Resubmission Procedures**

1. If no Qualified Bids are submitted by the Bid Deadline, 255 will be the Successful Bidder.
2. If one or more Qualified Bids are received by the Bid Deadline:
  - a) the Receiver will advise all Qualified Bidders of the best offer (the "Leading Bid") and invite all Qualified Bidders (including 255) to an Auction on a date that is not more than five business days following the Bid Deadline;

- b) the Receiver will provide all Qualified Bidders with a copy of the Leading Bid two Business Days before the Auction;
  - c) the Receiver may request that Qualified Bidders re-submit offers in as many rounds of bidding as the Receiver considers appropriate to maximize value. In each round of bidding, the Receiver will advise the Qualified Bidders of the material terms of the then best bid. The Receiver shall be entitled to establish any minimum bid increment in each round of bidding;
  - d) if at the end of any round of bidding, a Qualified Bidder has elected not to submit a further bid, then such Qualified Bidder shall not be entitled to participate in subsequent rounds of bidding;
  - e) if only one Qualified Bid is submitted after a round of offers, then that Qualified Bid shall be the Successful Bidder; and
3. if the Successful Bid is approved by Court and does not close pursuant to the date required by the Successful Bid, the Receiver can select any other bid to be the Successful Bid.

### **6.5.3 Sale Process Recommendation**

1. The Receiver recommends that this Court issue an order approving the Stalking Horse Agreement for the following reasons:
  - a) The Sale Process is commercially reasonable and consistent with other sale processes approved in insolvency proceedings;
  - b) JLL is a leading national brokerage, with the experience and expertise to market the Real Property. JLL's commission structure will incentivize it to get a higher purchase price than the Stalking Horse Agreement;
  - c) the Bidding Procedures allow a market test for the benefit of all stakeholders and provide an opportunity to complete a transaction with greater value than the Stalking Horse Agreement;
  - d) the Sale Process will be carried out by and under the oversight of the Receiver, to ensure fairness and transparency. The Receiver has significant experience in conducting sales processes of this nature, including in the real estate market;
  - e) the Original APS – while being for a higher price than the Stalking Horse Agreement – is not capable of being closed by the Receiver;
  - f) stalking horse sale processes are a recognized mechanism in insolvency proceedings to maximize recoveries. This will assist the Receiver to maximize value;
  - g) it is in the best interests of the Company's stakeholders that the Stalking Horse Agreement be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted; and

- h) the Receiver is of the view that the Break Fee and Expense Reimbursement are reasonable in the circumstances and reflect the costs of the Purchaser to prepare the Stalking Horse Agreement and to negotiate the SISP and other related motion materials. The Receiver is of the view that the Break Fee and Expense Reimbursement will not discourage interested parties from submitting offers in the SISP.

## 7.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief detailed in Section 1.1(1)(e) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
IN ITS CAPACITY AS RECEIVER OF  
1000093910 ONTARIO INC.  
AND NOT IN ITS PERSONAL CAPACITY**



## **Appendix “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

WEDNESDAY, THE 13<sup>TH</sup>

)

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.



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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.



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.**

*Applicant*

*Respondent*

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT NEWMARKET**

**ORDER**

**ROBINS APPELBY LLP**

Baristers + Solicitors

2600 - 120 Adelaide Street West

Toronto, ON M5H 1T1

**Dominique Michaud LSO No. 56871V**

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Tel: (416) 360-3783

Lawyers for the Applicant



**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

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APPLICANT: PEAKHILL CAPITAL INC.

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

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RESPONDENT: 1000093910 Ontario Inc.

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

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Heard: September 13. 2023

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

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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:

- 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.

## **Appendix “B”**

**TERMINATION AGREEMENT RE LEASE**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of April, 2022

FROM:

**1000093910 ONTARIO INC.**

(hereinafter called the “**Borrower**”)

and

**COUNTERTOP SOLUTIONS INC.**

(hereinafter called the “**Tenant**”)

IN FAVOUR OF:

**PEAKHILL CAPITAL INC.**

(hereinafter called the “**Lender**”)

**WHEREAS** the Borrower and the Tenant have entered into a lease agreement dated as of April 13, 2022 (as amended, amended and restated, renewed, extended, supplemented, replaced, or otherwise modified from time to time, the “**Lease**”), wherein the Borrower has agreed to lease to the Tenant a portion of the property located on the lands and premises municipally known as 20 Regina Road, Vaughan, Ontario and legally described as PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720 ; S/T LT576260,LT576262 VAUGHAN (the “**Property**”);

**AND WHEREAS** in consideration of the Lender making a loan to the Borrower under a commitment letter dated April 1, 2022 (the “**Commitment Letter**”) upon the security of, among other things, a charge (the “**Charge**”) and a notice of general assignment of rents (the “**Notice**”) in favour of the Lender and securing the Property and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and Tenant hereby agrees as follows:

1. Upon the occurrence of an Event of Default, as defined in the Charge, the Lender may, at its option, terminate the Lease at any time thereafter by notice in writing to the Tenant and the Borrower.
2. Each agreement and obligation of any of the parties hereto in this Agreement, even if not expressed as a covenant, is considered for all purposes to be a covenant.
3. The headings preceding the text of the sections and subsections hereof as well as the section numbers and references themselves are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Unless something in the subject matter is inconsistent therewith, the references herein to articles and sections are to articles and sections of this Agreement.



4. This Agreement and everything herein contained shall extend to and bind the heirs, executors, administrators, successors and assigns of the Borrower and Tenant and shall enure to the benefit of the successors and assigns of the Lender.

**[Signatures to Follow on Next Page]**

**IN WITNESS WHEREOF** the Borrower and Tenant have duly executed this Agreement on the day and year first above written.

**1000093910 ONTARIO INC.**

Per: 

Name: Ravi Aurora

Title: President

I have authority to bind the Corporation

**COUNTERTOP SOLUTIONS INC.**

Per: 

Name: Ravi Aurora

Title: President

I have authority to bind the Corporation

## **Appendix “C”**



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**20 REGINA JV LTD.**

Plaintiff

- and -

**1000093910 ONTARIO INC., AURORA HOLDINGS ONTARIO INC., RAVI  
AURORA, NICK AURORA, AKASH AURORA, ZAHERALI VISRAM,  
PEAKHILL CAPITAL INC. AND KSV RESTRUCTURING INC.**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November 29, 2023

Issued by \_\_\_\_\_  
Registrar

Address of court office:  
491 Steeles Ave E.  
Milton, Ontario L9T 1Y7

**TO: 1000093910 ONTARIO INC.**  
20 Caldari Road  
Concord, Ontario  
L4K 4N8

Defendant

**AND TO: AURORA HOLDINGS ONTARIO INC.**  
61 Beckenridge Drive  
Markham, Ontario  
L3S 2V3

Defendant

**AND TO: RAVI AURORA**  
20 Caldari Road  
Concord, Ontario  
L4K 4N8

Defendant

**AND TO: NICK AURORA**  
20 Caldari Road  
Concord, Ontario  
L4K 4N8

Defendant

**AND TO: AKASH AURORA**  
61 Beckenridge Drive  
Markham, Ontario  
L3S 2V3

Defendant

**AND TO: ZAHERALI VISRAM**  
7 Laredo Court  
Toronto, Ontario  
M2M 4H7

Defendant

**AND TO: PEAKHILL CAPITAL INC.**  
c/o Robins Appleby LLP  
120 Adelaide St W #2600  
Toronto, ON  
M5H 1T1

Defendant

**AND TO: KSV RESTRUCTURING INC.**  
c/o Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130  
Toronto, ON  
M5X 1A4

Defendant

## CLAIM

1. The Plaintiff claims:

- (a) a declaration that the Plaintiff is a 50% shareholder of the Respondent, 1000093910 Ontario Inc. (the “**Owner Corporation**”);
- (b) a declaration that the Plaintiff owns 50% beneficiary interest in the property legally described PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720 ; S/T LT576260,LT576262 VAUGHAN, with PIN No. 03221-0039 and municipal address of 20 Regina Rd, Vaughan, L4L 8L6 (the “**Regina Property**”);
- (c) an order granting leave to register the declaration in (b) against the land registry of the Regina Property;
- (d) a declaration that the Defendants, Ravi Aurora, Nick Aurora and Akash Aurora (collectively, the “**Individual Defendants**”), Aurora Holdings Ontario Inc. (“**Aurora Inc.**”), and the Owner Corporation (collectively, the “**Aurora Defendants**”), committed fraud against the Plaintiff in inducing the Plaintiff to make an investment in the Owner Corporation and the Regina Property in the amount of \$3,464,989.03 (the “**Investment Amount**”);
- (e) a declaration that the Aurora Defendants made fraudulent and material misrepresentations to the Plaintiff in inducing the Plaintiff to make an investment in the Owner Corporation and the Regina Property for the Investment Amount (i.e., \$3,464,989.03);

(f) an order directing and requiring the Aurora Defendants, jointly and severally, to purchase the shareholdings of the Plaintiff in the Owner Corporation for the Investment Amount (i.e., \$3,464,989.03);

(g) in the alternative to (g), an order directing and requiring the Aurora Defendants, jointly and severally, to pay to the Plaintiff damages in the amount of \$3,464,989.03;

(h) an order directing the Owner Corporation to sell the Regina Property and use the net sale proceeds of the sale to first pay the Investment Amount to the Plaintiff;

(i) an order granting leave for the issuance of a Certificate of Pending Litigation for this Action against the Regina Property;

(j) an order for accounting and disgorgement of all benefits and profits received by the Aurora Defendants in respect of the Investment Amount;

(k) an interim and interlocutory injunction in the nature of a *Mareva* Injunction restraining the Aurora Defendants from depleting, disposing of, transferring, or encumbering any monetary funds property under the control of the Defendants, an order requiring the preservation and safekeeping of all such monetary funds or property, and a direction that such an order be registered on title to any property under the control of the Defendants pending a trial of this action;



(l) an order requiring the Aurora Defendants, within 10 days of any Order, to produce to the Plaintiff, all documents, records, accounts, in whatever form, evidencing any transactions or negotiations that have taken place since 2022 to date, including but not limited to;

(1) financial records, including financial statements and banking records (including bank statements, transaction summaries, deposit and withdrawal records and cancelled cheques) of any bank account that the Aurora Defendants have power, possession, control or signing authority for;

(2) An order requiring the Defendants to provide a list of all bank and investment accounts (including bank accounts and investment accounts that have been closed) presently or previously owned or controlled in whole or in part by the Aurora Defendants, including any bank or investment account

(m) an order in the nature of a *Norwich* Order against all major banks in Canada to forthwith freeze and prevent any removal or transfer of monies or assets of the Aurora Defendants held in any account or on credit on behalf of the Aurora Defendants and to forthwith disclose and deliver up bank statements for the period of January 1, 2022 to the date of any such order on deposit accounts, credit facilities, investment products whether held jointly with another person, safe deposit box information and records of transfers into and out of the Aurora Defendants' accounts including the location and account numbers into which

such transfers have been made, if know, as well as the existence, nature, value and location of any monies or assets or credit, wherever situated, held on behalf of the Aurora Defendants by the banks;

(n) a declaration that any judgment against the Aurora Defendants survives any bankruptcy or insolvency filing under section 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC , 1985, c. B-3;

(o) a declaration that the purported loan provided by Zaherali Visram (the “**Undisclosed Lender**”) to the Owner Corporation, purportedly registered against the land registry of Regina Property as a charge with the Instrument No. YR3582894 (the “**Undisclosed Mortgage**”), is subordinate to the Plaintiff’s interest in the Regina Property;

(p) a declaration that the Notice regarding the Undisclosed Mortgage, purportedly registered against the land registry of the Regina Property as Instrument No. YR3598469, and any subsequent registration of the Undisclosed Mortgage against the land registry of the Regina Property, are subordinate to the Plaintiff’s interest in the Regina Property;

(q) a declaration that the Undisclosed Lender and the Aurora Defendants co-conspired for the purpose of depleting the equity and the Plaintiff’s interest in the Regina Property;

(r) an interim and interlocutory injunction directing any purported payment to the Undisclosed Lender for the Undisclosed Mortgage be held in the Court until the final disposition of this Action;

(s) an Order that the Defendants, Peakhill Capital Inc. and KSV Restructuring Inc., be bound by any interim, interlocutory and final order in this proceeding

(t) pre-judgment and post-judgment interest at 8 percent per annum, as against the Aurora Defendants, starting April 25, 2022;

(u) in the alternative to (t), pre-judgment and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as against the Aurora Defendants, starting April 25, 2022;

(v) costs of this Action on a substantial indemnity basis, together with post-judgment interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and HST thereon, as against the Aurora Defendants;

(w) costs of this Action on a substantial indemnity basis, together with post-judgment interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and HST thereon, as against the Undisclosed Lender, if any relief sought by the Plaintiff in this action is opposed by the Undisclosed Lender;

(x) costs of this Action on a substantial indemnity basis, together with post-judgment interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and HST thereon, as against the Defendants, Peakhill Capital Inc.

and KSV Restructuring Inc., if any relief sought by the Plaintiff in this action is opposed by them; and

(y) such further and other relief as to this Honourable Court may seem just.

### **The Parties and Relevant Individuals**

2. The Plaintiff, 20 Regina JV Ltd., is a corporation organized under the law of Ontario.

3. Johnson Ching Fung Yu ("**Johnson**") is a director and officer of the Plaintiff.

4. The Defendants, 1000093910 Ontario Inc. (i.e., the **Owner Corporation**), is a corporation organized under the law of Ontario. At all material times, the Owner Corporation is the registered owner of the Regina Property.

5. The Defendants, Aurora Holdings Ontario Inc. (i.e., **Aurora Inc.**), is a corporation organized under the law of Ontario.

6. The Defendants, Ravi Aurora, Nick Aurora and Akash Aurora (i.e., the **Individual Defendants**), are the directors, shareholders and controlling minds of the Owner Corporation and Aurora Inc. The Individual Defendants are siblings.

7. The Defendant, Zaherali Visram (i.e., the **Undisclosed Lender**), is a resident of Toronto, Ontario. The Undisclosed Lender is the purported lender of the Undisclosed Mortgage.

8. The Defendants, Peakhill Capital Inc. (the “**First Lender**”) and KSV Restructuring Inc. (“**KSV**”), are both corporations organized under the law of Ontario. The First Lender and KSV are included in this Action for the mere purpose that they are bound by any order made by this Honourable Court in this Action. No relief is sought against the First Lender and KSV by the Plaintiff.

### **Background**

9. In early 2022, Johnson was introduced to the Individual Defendants through a common friend, Angie.

10. The Individual Defendants invited Johnson to make investments in a commercial property, which did not go through.

11. During the process, the Individual Defendants advised Johnson that they owned many commercial real properties and had a family net worth of hundreds of millions of dollars or billions. They also told Johnson that because they owned many commercial properties, they were able to obtain preferable mortgages (including preferable interest rates, terms, and amounts) for future investments. They invited Johnson to keep a “long-term relationship” with them.

12. Toward the end of April 2022, the Individual Defendants found Johnson and told him that they were going to close a purchase of a factory building very soon and invited Johnson to make an investment of approximately \$3.5 million in few days in exchange

for 50% interest in the investment. In order to persuade Johnson into making the investment, the Individual Defendants represented:

- (a) they would make an equal contribution of approximately \$3.5 million into the investment using their funds;
- (b) they have made arrangements to obtain a first mortgage for \$19,000,000 at a very preferable rate;
- (c) they would replace the first mortgage with a mortgage with better rate from the Business Development Bank of Canada (“**BDC**”) in a few months;
- (d) they would lease the building out, and the rent would be self-sustaining;
- (e) if Johnson’s company is not completely satisfied with the investment, it may terminate the investment at any time and receive their investment back, together with interest at eight (8) percent per annum commencing the date of the investment.

(the “**Aurora Representations**”)

13. In order to show their “good faith”, the Individual Defendants provided Johnson with a draft promissory for the amount of the proposed investment.

14. Relying upon the Aurora Representations, the Plaintiff corporation decided to make the investment.

15. At the end of April 2022, the Plaintiff, Aurora Inc. and the Owner Corporation entered into a co-ownership arrangement, pursuant to which:

(a) the Owner Corporation would purchase the property legally described PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720 ; S/T LT576260,LT576262 VAUGHAN, with PIN No. 03221-0039 and municipal address of 20 Regina Rd, Vaughan, L4L 8L6 (i.e., the **Regina Property**) and assume the title to the Regina Property upon completion of the purchase;

(b) the Plaintiff and Aurora Inc. would each acquire 50% shares in the Owner Corporation and a 50% beneficial ownership interest in the Regina Property by making a capital contribution of \$3,464,989.03 (the “**Contribution**”); and

(c) the Plaintiff and Aurora Inc. would negotiate and execute a Co-Ownership Agreement and/or a Shareholder Agreement within a reasonable period of time.

(the “**Co-Ownership Agreement**”)

16. Pursuant to the Co-Ownership Agreement, the Plaintiff acquires 50% interest in the joint investment in the Regina Property. It also becomes a 50% shareholder in the Owner Corporation and a 50% equitable and legal owner in the Regina Property.

17. On April 25, 2022, May 9, 2022 and May 16, 2022, the Plaintiff duly paid its Contribution in the aggregated amount of \$3,464,989.03 by way of three payments in



the amounts of \$3,000,000 (paid to the trust account of the legal counsel for the Owner Corporation by wire transfer), \$300,000 (paid to Aurora Inc. by bank draft) and \$164,989.03 (paid to Aurora Inc. by cheque), respectively.

### **Fraud and Fraudulent Misrepresentation by the Aurora Defendants**

18. Throughout the negotiation toward the Co-Ownership Agreement, the Aurora Defendants never advised the Plaintiff that they would use borrowed money to fund Aurora Inc.'s share of the Contribution. Rather, the Individual Aurora Defendants repeatedly confirmed that they would invest through Aurora Inc. with their own capital.

19. For the purchase of the Regina Property, Aurora Inc. arranged for a first mortgage from Peakhill Capital Inc. (i.e., "**First Lender**") against the Regina Property in the principal amount of \$19,000,000 (the "**First Mortgage**") with an interest rate of the RBC prime interest rate plus 3.5% per annum for a term of one year.

20. However, without any notice or disclosure to the Plaintiff, the Aurora Defendants did not make any investment into the Owner Corporation with their own money. Instead, before the closing of the purchase of the Regina Property, the Aurora Defendants secured another purported secured loan from the Undisclosed Lender (i.e., the **Undisclosed Mortgage**) to pay for their share of the investment to the Owner Corporation.



21. The Undisclosed Mortgage is a loan purportedly secured against all of the existing and future assets owned by the Owner Corporation, including the Regina Property.

22. The Plaintiff would have never made any investment in the Owner Corporation and the Regina Property had they known any of the following:

(a) the Aurora Defendants did not make any investment in the Owner Corporation and the Regina Property with their own funds;

(b) the Aurora Defendants borrowed funds, under the credit of the Owner Corporation, to pay for their shares in the investment in the Owner Corporation and the Regina Property; and

(c) the Undisclosed Mortgage would be secured against the Regina Property.

23. Therefore, by investing nothing in the purchase of the Regina Property and obtaining the Undisclosed Mortgage without any notice or disclosure to the Plaintiff, the Aurora Defendants committed fraud and made fraudulent and material misrepresentations regarding the name and source of their initial investment in an attempt to induce the Plaintiff into the investment in the Owner Corporation and the Regina Property.

24. After May 1, 2022, the Aurora Defendants prepared a draft shareholder agreement for the Owner Corporation. Counsel for the Plaintiff reviewed the draft agreement and proposed some revisions, together with a draft formal co-ownership

agreement which stipulates that the Plaintiff is a co-owner of the Regina Property. However, after that, the Aurora Defendants started a never-ending delay tactic to delay the preparation and execution of the Co-Ownership Agreement, Shareholder Agreement and related agreements regarding the Joint Investment.

25. At the same time, Aurora Inc. and Individual Aurora Defendants engaged in various acts that are oppressive or unfairly prejudicial to or that unfairly disregard the interests of the Plaintiff, including but not limited to:

- (a) the Owner Corporation leased the Regina Property to a cabinet manufacturer operated by the Individual Defendants, under which the tenant only pays the interest on the First Mortgage, utility, and the Real Property Taxes of the Regina Property (the “**Lease**”). The effective rent was significantly lower than the fair market rent, thus benefiting the Individual Defendants at the price of the Owner Corporation and the Plaintiff;
- (b) the Aurora Defendants refused to provide any documentation regarding the Lease to the Plaintiff, including but not limited to the Lease Agreement, rent payment record, payment of utility, etc.;
- (c) the Aurora Defendants never provided any corporate record of the Owner Corporation to the Plaintiff, including but not limited to financial statements, tax documents, bank statements and minutes book; and

(d) around the end of 2022, contrary to their promise that the tenant would cover all the expenses relating to the Regina Premises, the Aurora Defendants started to ask the Plaintiff to make contributions to the payment of interest.

26. It turned out that the Aurora Defendants made no attempt to refinance the First Mortgage with a loan from BDC in accordance with their original promise. Rather, when the interest rate on the First Mortgage raised sharply, they took no action to control the interest on the First Mortgage or to refinance it.

27. In or around February 2023, seeing no hope of getting the Aurora Defendants to sign the documents regarding the joint investment, the Plaintiff proposed a “business divorce” with respect to the Owner Corporation and the Regina Property by which Aurora Inc. shall buyout the Plaintiff’s 50% beneficial interest in the Owner Corporation and the Regina Property by returning the Contribution plus interest at 8% per annum from April, 2022, in accordance with the Aurora Representations (“**Buyout Arrangement**”). Counsel for parties agreed to the Buyout Arrangement. Counsel for the Aurora Defendants also expressly advised the Plaintiff that “the Auroras do not dispute that JV Ltd has a 50% interest in the Joint Venture”.

28. However, after counsel for the Plaintiff prepared the detailed agreement for the Buyout Arrangement, the Defendants continued their endless delay tactics and made no effort to finalize and execute the agreement, despite numerous correspondence from counsel for the Plaintiff to counsel for the Defendants. On November 3, 2023, counsel for the Plaintiff advised the Plaintiff that he “no longer act for Aurora Group or its principals”.

29. On or around April 30, 2023, the First Mortgage matured. The Plaintiff advised the Aurora Defendants that it has secured a lender for the renewal of the First Mortgage to avoid default or paying a higher interest rate. The Plaintiff also advised the Aurora Defendants that it secured a potential purchaser for the Regina Property. Both proposals were ignored by the Aurora Defendants.

30. Instead, the Aurora Defendants did nothing to renew or refinance the First Mortgage. Rather, the Owner Corporation signed a forbearance agreement with the First Lender on July 7, 2023. Under the forbearance agreement, the Owner Corporation agreed to an exorbitant interest of 16.7% (RBC Prime Rate plus 10%), despite the fact that the Plaintiff was able to secure a new First Mortgage with a lower interest rate (the **“Forbearance Agreement”**).

31. Upon the expiry of the Forbearance Agreement, the Aurora Defendants were unable to renew or refinance the First Mortgage. On August 23, 2023, the First Lender commenced an application against the Owner Corporation for the appointment of a receiver for the purpose of selling the Regina Property with the Court File No. CV-23-00004031-0000 (the **“Receivership Application”**).

32. The Receivership Application was unopposed by the Owner Corporation. On September 13, 2023, the Honourable Justice Lavine granted an order for the appointment of KSV as the receiver and manager over the Owner Corporation regarding all its properties, including the Regina Property (the **“Receivership Order”**). The Receivership Order was registered against the land registry of the Regina Property on October 11, 2023.



33. On August 8, 2023, without any notice or disclosure to the Plaintiff, the Undisclosed Lender registered the Undisclosed Mortgage against the land registry of the Regina Property for a principal amount of \$4,000,000.

34. On September 18, 2023, without any notice or disclosure to the Plaintiff, the Undisclosed Lender registered a Notice against the land registry of the Regina Property, increasing the Principal of the Undisclosed Mortgage from \$4,000,000.00 to \$8,000,000.00 (the “**Undisclosed Notice**”).

35. Despite the fact that counsel for the parties are in active discussion regarding the Buyout Arrangement, between May 2023 and October 2023, the Aurora Defendants made no disclosure to the Plaintiff regarding (1) the effort to renew or refinance the First Mortgage; (2) the Forbearance Agreement; (3) registration of the Undisclosed Mortgage; (4) increase of the principal amount on the Undisclosed Mortgage; and (5) the Receivership Application.

36. The Aurora Defendants’ concealment of these events is an outright and blatant infringement on the Plaintiff’s right as a shareholder of the Owner Corporation and a co-inventor and co-owner of the Regina Property.

37. As such, the Aurora Defendants committed further fraud and breached fiduciary duty, duty of care and trust to the Plaintiff for the concealment of (1) the Forbearance Agreement; (2) registration of the Undisclosed Mortgage; (3) increase of the principal amount on the Undisclosed Mortgage; and (4) the Receivership Application.

38. Because the Regina Property has been subject to a receivership proceeding and because the Undisclosed Lender increased the principal amount on the Undisclosed Mortgage to \$8,000,000, it is probable that any equity in the Regina Property would be fully depleted after the sale by KSV as court-appointed receiver and monitor.

39. Therefore, it is probable that the Plaintiff would lose its entire Investment Amount (i.e., \$3,464,989.03) as a result of the fraud, fraudulent and material misrepresentation, breach of fiduciary duty, breach of duty of care and breach of trust made by the Aurora Defendants. The Plaintiff is entitled to the recovery of the Investment Amount (i.e., \$3,464,989.03), as well as the promised return of 8% per annum from April 25, 2022, until the date of the Judgment.

40. As a result of the fraud, fraudulent misrepresentation, breach of fiduciary duty and breach of trust made by the Aurora Defendants, any damages awarded to the Plaintiffs survive any bankruptcy filings of the Aurora Defendants.

41. The Plaintiff pleads and requests an interim and permanent injunction restraining the Aurora Defendants from disposing of any of their assets, wherever located, to the extent of satisfying the potential Judgment of this Action because:

- (a) the Plaintiff has a strong *prima facie* case against the Aurora Defendants for fraud, fraudulent and material misrepresentation, breach of fiduciary duty, breach of duty of care and breach of trust;
- (b) the Plaintiff would suffer irreparable harm if the Aurora Defendants are allowed to dissipate their assets and become judgment-proof; and

(c) balance of convenience favours perseverance of the Aurora Defendants' asset to the extent of satisfying the potential Judgment of this Action.

42. The Plaintiff also requests an order granting leave to register a Certificate of Pending Litigation for this Action against the Regina Property because an interest in the Property is in question.

### **RELIEF AGAINST THE UNDISCLOSED LENDER**

43. The Undisclosed Mortgage is a highly suspicious arrangement between the Aurora Defendants and the Undisclosed Lender for the following reasons:

(a) despite being a purported secured interest against the Regina Property, the Undisclosed Lender did not register it against the Regina Property for over a year; and

(b) the Undisclosed Notice is unreasonable and suspicious because it is unreasonable and unbelievable for the principal amount of the Undisclosed Mortgage to increase by 100% within approximately one year's time.

44. Therefore, the Plaintiff pleads that the Aurora Defendants and the Undisclosed Lender conspired with respect to the Undisclosed Mortgage and the Undisclosed Notice for the purpose of using them as vehicles to deplete the equity in the Regina Property and perpetrate the fraudulent scheme against the Plaintiff. As such, the Plaintiff request a declaration that the Undisclosed Mortgage and the Undisclosed Notice are subordinate to the Plaintiff's interest in the Regina Property.



45. In addition, by the time of the registration of the Undisclosed Mortgage and the Undisclosed Notice, respectively (i.e., August 8, 2023 and September 21, 2023, respectively), the Plaintiff has registered its claim for interest in the Regina Property by way of a caution on April 26, 2023. Therefore, the Undisclosed Lender already had the notice of the Plaintiff's interest in the Regina Property before the registration of the Undisclosed Loan and Undisclosed Notice against the land registry of the Regina Property. Therefore, the Undisclosed Loan and the Undisclosed Notice are subordinate to the Plaintiff's interest in the Regina Property.

46. The damages of the Plaintiffs, not including interests and costs, exceed \$200,000.

47. The Plaintiffs propose that this Action be tried in the City of Milton.

Date: November 29, 2023

**Tan, He & Co. LLP**  
100 Wellington Street West,  
Suite 2130, PO Box 321  
Toronto, ON M5K 1K7

**Dr. Ran He** (LSO #72243P)  
rhe@thcllp.com

Tel: 647-792-7798  
Fax: 647-560-6547  
Lawyers for the Plaintiffs



20 REGINA JV LTD.  
Plaintiff

v.

1000093910 ONTARIO INC. *et al.*  
Defendants

Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT MILTON

**STATEMENT OF CLAIM**

**Tan, He & Co. LLP**  
100 Wellington Street W,  
Suite 2130, P.O. Box 321  
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M5K 1K7

**Dr. Ran He** (LSO #72243P)  
[rhe@thcllp.com](mailto:rhe@thcllp.com)

Tel: 647-792-7798  
Fax: 647-560-6547  
Lawyers for the Plaintiff

## **Appendix “D”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**20 REGINA JV LTD.**

Plaintiff

- and -

**1000093910 ONTARIO INC., AURORA HOLDINGS ONTARIO INC., RAVI  
AURORA, NICK AURORA, AKASH AURORA, ZAHERALI VISRAM,  
PEAKHILL CAPITAL INC. AND KSV RESTRUCTURING INC.**

Defendants

**NOTICE OF DISCONTINUANCE**

The plaintiff wholly discontinues this action.

Date: December 11, 2023

**Tan, He & Co. LLP**  
100 Wellington Street West,  
Suite 2130, PO Box 321  
Toronto, ON M5K 1K7

**Dr. Ran He** (LSO #72243P)  
rhe@thcllp.com

Tel: 647-792-7798  
Fax: 647-560-6547  
Lawyers for the Plaintiffs

**TO: 1000093910 ONTARIO INC.**  
20 Caldari Road  
Concord, Ontario  
L4K 4N8

Defendant

**AND TO: AURORA HOLDINGS ONTARIO INC.**

61 Beckenridge Drive  
Markham, Ontario  
L3S 2V3

Defendant

**AND TO: RAVI AURORA**

20 Caldari Road  
Concord, Ontario  
L4K 4N8

Defendant

**AND TO: NICK AURORA**

20 Caldari Road  
Concord, Ontario  
L4K 4N8

Defendant

**AND TO: AKASH AURORA**

61 Beckenridge Drive  
Markham, Ontario  
L3S 2V3

Defendant

**AND TO: ZAHERALI VISRAM**

7 Laredo Court  
Toronto, Ontario  
M2M 4H7

Defendant

**AND TO: PEAKHILL CAPITAL INC.**

c/o Robins Appleby LLP  
120 Adelaide St W #2600  
Toronto, ON  
M5H 1T1

Defendant

**AND TO: KSV RESTRUCTURING INC.**

c/o Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130

Toronto, ON

M5X 1A4

Defendant

NOTE: If there is a counterclaim, the defendant should consider rule 23.02, under which the counterclaim may be deemed to be discontinued.

NOTE: If there is a crossclaim or third party claim, the defendant should consider rule 23.03, under which the crossclaim or third party claim may be deemed to be dismissed.

20 REGINA JV LTD.  
Plaintiff

v.

1000093910 ONTARIO INC. *et al.*  
Defendants

Court File No. CV-23-00003662-0000

---

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT MILTON

---

**NOTICE OF DISCONTINUANCE**

---

**Tan, He & Co. LLP**  
100 Wellington Street W,  
Suite 2130, P.O. Box 321  
Toronto, Ontario  
M5K 1K7

**Dr. Ran He** (LSO #72243P)  
[rhe@thcllp.com](mailto:rhe@thcllp.com)

Tel: 647-792-7798  
Fax: 647-560-6547  
Lawyers for the Plaintiff

## **Appendix “E”**



# Agreement of Purchase and Sale Commercial

Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 7 day of September, 2023

BUYER: 2537904 ONTARIO INC., agrees to purchase from  
(Full legal names of all Buyers)

SELLER: 1000093910 ONTARIO INC., the following  
(Full legal names of all Sellers)

## REAL PROPERTY

Address 20 Regina Rd. - City of Vaughan

fronting on the North side of Regina Rd

in the City of Vaughan

and having a frontage of more or less by a depth of \$31,000.00 more or less

and legally described as PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720; S/T LT576260, LT576262 VAUGHAN \$31,500,000.00

RA (Legal description of land including easements not described elsewhere) \$30,000.00 (the "property")

RA Thirty-One Million Five Hundred Thousand \$32,250,000

PURCHASE PRICE: Twenty-Eight Million Dollars

Thirty-Two Million two hundred Dollars

DEPOSIT: Buyer submits as otherwise described in this Agreement

(Herewith/Upon Acceptance/as otherwise described in this Agreement)

by negotiable cheque payable to REN/TEX REALTY INC., BROKERAGE "Deposit Holder"

to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A BUYER attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by SELLER BUYER until 11:59 am on 15th day of September, 2023

after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 21 day of December, 2023

Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): RA INITIALS OF SELLER(S): RA

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Form 500 Revised 2023 Page 1 of 6



3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein, and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No. ....  
(For delivery of Documents to Seller)

FAX No. ....  
(For delivery of Documents to Buyer)

Email Address: jracco@rentexrealty.com  
(For delivery of Documents to Seller)

Email Address: vkolanc89658@rogers.com  
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

RA all office and warehouse light  
fixtures and HVAC equipment  
Existing compressors

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

RA all equipment related to the operating business  
including but limited to air compressors and related  
equipment, lines, machinery, and electrical, and or  
HVAC specific to operations of the business.

Take what you want and leave what you want

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to cooperate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST. If the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA in illustration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of ..... December ..... 2023 ..... (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (..... Industrial ..... ) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagees, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTIONS:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

RS

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15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;  
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the Canadian Payments Act (R.S.C., 1985, c. C-21), as amended from time to time.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
23. **UFF:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the Electronic Commerce Act, 2000, S.O. 2000, c.17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
28. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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29. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

2557981 ONTARIO INC.

Sept 7/23

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

(Date)

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

(Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

1000093910 ONTARIO INC.

09/09/2023

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

(Date)

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

(Date)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

(Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties of this 11:40 day of 15 SEPT. 2023.

11:40 (a.m./p.m.)

15

SEPT.

2023

(Signature of Seller or Buyer)

### INFORMATION ON BROKERAGE(S)

Listing Brokerage: REN/TEX REALTY INC., Brokerage (Tel.No.) 905-850-3300  
Jason Racco/Michael Carlone (Salesperson/Broker/Broker of Record Name)  
Coop/Buyer Brokerage: Ren/Max Producers Inc. (Tel.No.) 416-987-8000  
Vesna Kolenc (Salesperson/Broker/Broker of Record Name)

### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Signature of Seller) 9/15/23 (Date)

(Signature of Buyer) (Date)

(Date)

(Date)

Address for Service

Address for Service

(Tel. No.)

(Tel. No.)

Seller's Lawyer: BARRY POLISUK (Tel. No.)

Buyer's Lawyer

Address

Address

Ext.

Email

(416) 496-3340 (Tel. No.)

(Tel. No.) (Fax No.)

### FOR OFFICE USE ONLY

### COMMISSION TRUST AGREEMENT

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MLSP Rules and Regulations of the Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLSP Rules and shall be subject to and governed by the MLSP Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale

Acknowledged by:

(Signature)

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)

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# Schedule A

## Agreement of Purchase and Sale - Commercial

### Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: 2557904 ONTARIO INC. and

SELLER: 1000093910 ONTARIO INC.

for the purchase and sale of 20 Regina Rd. - City of Vaughan Vaughan

ON L4R 0P6 dated the 7 day 21 September 2023

Buyer agrees to pay the balance as follows:

PAGE INTENTIONALLY LEFT BLANK

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)

RA



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**SCHEDULE "A" TO THE  
AGREEMENT OF PURCHASE AND SALE  
(FOR USE IN THE PROVINCE OF ONTARIO)**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** 2557904 ONTARIO INC., and

**SELLER:** 1000093910 ONTARIO INC.

for the purchase and sale of: 20 REGINA RD. - CITY OF VAUGHAN

**1. PURCHASE TERMS:**

a) Price and Payment:

Thirty-One Million Five Hundred Thousand

\$31,000,000.00

~~thirty two million two hundred fifty thousand dollars~~

The purchase price for the Real Property shall be the sum of TWENTY EIGHT MILLION (CDN\$ 28,000,000.00) DOLLARS in lawful money of Canada, payable as follows:

\$32,250,000 ~~\$30,000,000~~ \$31,500,000.00  
the sum of ONE MILLION TWO HUNDRED THOUSAND (CDN\$ 1,000,000.00) DOLLARS by cheque forthwith upon acceptance to Renvtex Realty Inc., pending completion or other termination of this transaction and to be credited on account of the purchase price on closing;

iii) the balance of the purchase price on closing, subject to usual adjustments.

b) Disbursement of the Deposit:

In the event the Agreement of Purchase and Sale is not completed by reason of the default of the Buyer, the Seller shall be entitled to retain the Deposit in full. The Seller and the Buyer acknowledge the deposit will not be cashed or certified by the Agent until acceptance of this Offer. If the deposit cheque is not paid when due or is not honoured by the Buyer's bank, this agreement may, at the Seller's option, be terminated by written notice to the Buyer and any deposit funds paid to the Seller shall be forfeited to the Seller.

The buyer will submit a further deposit of \$500,000.00 (Five hundred Thousand Dollars) 30 days after acceptance to The Listing Broker and to be used towards the purchase price.

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

X  
(Buyer)

Ravi Aurora  
(Seller)

(Seller)

(Buyer)

**SCHEDULE "A" CONTINUED****PAGE 2****2. ADJUSTMENTS**

All adjustments with respect to municipal taxes, local improvement charges and utilities and all other items normally adjusted between a Seller and a Buyer on the sale of similar commercial property shall be made with respect to the Property as of the Closing Date. The Buyer shall receive all income and pay all expenses relating to the Property from and including the Closing Date. The Seller shall deliver to the Buyer not less than five (5) days prior to the Closing Date the Statement of Adjustments.

**3. SELLER PROVIDED**

The Buyer acknowledges receipt of the following:

- (1) Copy of Final Property Tax Bill 2021;
- (2) Area Certificate dated 2023-08-14, including As-Built Overall and Office Plan (Project No. 202030069), and corresponding .dwg file (the "Plans");
- (3) Phase I ESA issued on Nov. 19, 2021;
- (4) Narrative Appraisal Report dated August 21, 2023.

The Buyer specifically acknowledges and agrees that the Seller does not represent, warrant, or guarantee the accuracy, completeness or reliability of any report or study provided to the Buyer. The Buyer agrees that the Seller shall not be liable for any losses as a result of reliance on information or report provided to the Buyer.

**4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SELLER:**

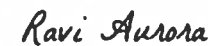
The Seller hereby represents, warrants, and covenants to the Buyer, as the case may be, the following representations, warranties and covenants:

- a) the Seller is the registered legal owner of the Property;
- b) the Seller is not now and shall not be on the Closing Date a non-resident of Canada within the meaning of the Income Tax Act;

..... 3

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

  
(Buyer)

  
(Seller)

(Buyer)

(Seller)

 RA

**SCHEDULE "A" CONTINUED**

**PAGE 3**

- c) any orders or deficiency notices outstanding against the property shall be satisfied by the Seller at its sole expense before the date of closing;
- d) that no contracts exist for the servicing, maintenance or management of the Property which may be binding upon the Buyer after closing other than those disclosed by the Seller;
- e) It is duly authorized to enter into the Agreement with power and capacity to complete the transaction provided herein in accordance with the terms thereof;

**5. AGENCY DISCLOSURE**

THE PARTIES to this transaction hereby acknowledge that the Co-operating Broker acts for the Buyer under a Buyer's Agency Agreement and that the Co-operating Broker will be compensated through the Listing Broker.

**6. WAIVER TO AGENT**

The parties to this Agreement acknowledge that the Agents have recommended that they obtain advice from their legal Counsel prior to signing this document. The parties further acknowledge that the information provided by the Agents is not legal, accounting, environmental or tax advice, and the parties are cautioned not to rely on any such information without seeking specific legal, accounting, environmental or tax advice with respect to their unique circumstances.

**7. FACSIMILE/ELECTRONIC COMMUNICATION OF AGREEMENT**

THE SELLER AND BUYER acknowledge and agree that this Offer, any subsequent counteroffer amendments, notices and acknowledges that are transmitted between the parties by facsimile or similar electronic transmission shall be treated as signed originals and shall be deemed communicated at the time and date of sending.

**8. CONDITION-BUYER**

*RA* THIS OFFER shall be conditional for TWO (2) business days from receipt of an up-to-date Phase I Environmental report and on the Property from the Seller to the Buyer in his sole discretion. otherwise this offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the sole benefit of the Buyer and may be waived at his option in writing to the Seller within the time period stated herein.

**8. SALE/LEASEBACK**

*RA* It is agreed and understood that upon completion of this transaction, the Buyer will allow the Seller to lease the premises back, for a term of FOUR (4) MONTHS from the completion date at a semi-gross rental rate of \$20.00 per sq. ft. per annum including Net Rent and T.M.F. Said Lease shall have a no Option to Renew and shall contain standard lease terms as in a transaction of this nature and size. The Seller/Tenant shall be responsible for all Liability Insurance and utilities.

*plus [unclear] and Utilities on entire building  
Seller/Tenant will pay his own contents insurance & Liability  
Only 40% of the entire space to be determined by the Buyer & Seller and agreed upon Both parties*

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

*[Signature]*

Ravi Aurara  
(Seller)

(Buyer)

(Seller)

*[Signature]* *RA*



**SCHEDULE "A" CONTINUED**

**PAGE 4**

**8. SEVERABILITY**

If any provision contained herein shall be found to be unenforceable, such provision shall be severed from the Agreement, and the remainder of this Agreement shall continue to be in full force and effect.

**9. SUCCESSORS AND ASSIGNS**

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

**10. APPLICABLE LAW**

This Agreement shall be interpreted in accordance with the laws of the province of Ontario and the laws of Canada applicable thereto.

**11. FURTHER ASSURANCES**

Except as provided herein, each of the parties shall, at the cost and expense of the other party, execute and deliver all such further documents and do such further acts and things that the other party may reasonably request from time to time to give full effect to this agreement.

**12. NO REGISTRATION BY BUYER**

The Buyer agrees that it will at no time prior to the Closing Date register or permit to be registered on title to the Property this Agreement or a notice or assignment or transfer thereof or a caution or any other document pertaining to this Agreement or the Property. Any such registration shall be a default by the Buyer, entitling the Seller to all remedies available to it, including, the right to terminate this Agreement and claim the Deposit. In the event of such termination, this Agreement shall be deemed not to have created any interest in the Property and any improvements thereon, and the Buyer shall forthwith remove any such registration. If such registration is not removed within 3 days of the Seller notifying the Buyer in writing to do so, the Buyer, by the execution of this Agreement, hereby expressly appoints the Seller as its lawful attorney to execute any transfers, releases or applications to have the said registration removed, released or deleted from the title to the Property.

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

  
(Buyer)

(Buyer)

  
Ravi Aurora

(Seller)

(Seller)

 RJA



**Form 105**

for use in the Province of Ontario

# Schedule B Agreement of Purchase and Sale

**Toronto  
Real Estate  
Board**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER, 2557904 ONTARIO INC.** .....

**SELLER, 1000093910 ONTARIO INC.** .....

for the property known as **20 REGINA RD.** ..... **City of Vaughan** .....

..... dated the **7TH** ..... day of **September** ....., 20**23** .....

The Parties to this Agreement hereby agree that Ren/Tex Realty Inc will not accept cash deposits. The Buyer agrees that the deposit, as stated herein, shall be submitted by Certified Cheque or Bank Draft, payable to Ren/Tex Realty Inc (the "Deposit Holder"), according to the time period contained in this Agreement, and will be held in a non-interest bearing Real Estate Trust Account.

The Buyer and Seller agrees and acknowledges that all the measurements and information provided by Rentex Realty Inc., Brokerage on the MLS Listing, Feature Sheets, Internet/Website and any other marketing materials for the subject property, have been supplied for reference purposes only, and such Rentex Realty Inc., Brokerage does not warrant their accuracy. The Buyer is advised to verify any measurements or information upon which he or she is relying.

The Parties to this Agreement acknowledge that the representatives of Listing and Co-operating Brokerages in this transaction have recommended that they obtain advice from their legal advisor, banker, accountant and inspector prior to signing this document. The Parties further acknowledged that no information provided by either Brokerages' representatives is to be construed as being expert legal, financial, tax, building condition or environmental advice.

**Buyer's Acknowledgment:** It is agreed and understood that notwithstanding anything contained herein to the contrary, the above-mentioned Property, the improvements within, and property condition are to be accepted in "as is" condition. The Seller or the Agent(s) named herein cannot be held liable for any of the above and that no representation or warranty exists in respect to all aspects of the Property. The Buyer agrees that this is a firm offer, without conditions and shall accept the entire Property in "as is" condition and is relying solely upon its own due diligence. The parties agree that this Buyer's Acknowledgment shall survive and not merge on completion of this transaction.

**FOR ALL PURPOSES** of this Agreement, the terms "banking day" or "business day" shall mean any day, other than Saturday, Sunday, or statutory holiday in the Province of Ontario.

**THE BUYER SHALL** have the Right to Assign this Agreement of Purchase and Sale and all its rights and obligations hereunder to a person(s), corporation(s), partnership of person(s) and/or corporation(s) or firm(s). Notwithstanding such assignment the purchasers named herein shall not be relieved of their obligations under the agreement and shall remain responsible hereunder in the event that the assignee defaults in its obligations under the Agreement of Purchase & Sale.

It is agreed and understood, in the case of any conflict between the provisions of the Agreement of Purchase and Sale, Schedule "A", or Schedule "B", then the terms of Schedule "B" shall prevail.

The form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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## **Appendix “F”**

**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN**

**KSV RESTRUCTURING INC.,**

solely in its capacity as court-appointed receiver and manager over **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, and not in its personal or corporate capacity

- and –

**2557904 ONTARIO INC.**

Dated: November 13, 2023

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## **AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** made this 13<sup>th</sup> day of November, 2023.

**BETWEEN:**

**KSV RESTRUCTURING INC.**, solely in its capacity as court-appointed receiver and manager over 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, and not in its personal or corporate capacity

(in such capacity, the "**Receiver**")

- and -

**2557904 ONTARIO INC.**

(the "**Purchaser**")

### **RECITALS**

- A. **WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (the "**Court**") dated September 13, 2023 (the "**Appointment Order**"), KSV Restructuring Inc. was appointed as receiver and manager of the Debtor, and all of the assets, undertakings and properties of the Debtor, including the Real Property (as defined hereafter);
- B. **AND WHEREAS** pursuant to the Appointment Order, the Receiver was authorized to, among other things, market the Purchased Assets (as defined hereafter) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** the Receiver will seek to obtain the Bidding Procedures Order (as defined herein) pursuant to which the Court will authorize the sale process with respect to the Purchased Assets in accordance with the Bidding Procedures (as defined herein);
- D. **AND WHEREAS** the Purchaser has agreed (a) to act as a "stalking horse bidder", and (b) to purchase the Purchased Assets in the absence of a superior bid pursuant to the Bidding Procedures for the Purchased Assets in accordance with the transaction of purchase and sale contemplated in this Agreement.

**NOW THEREFORE**, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

## **ARTICLE 1**

### **DEFINED TERMS**

#### **1.1 Definitions**

In this Agreement:

**“Acceptance Date”** means the date that this Agreement is executed by and delivered to all Parties hereunder;

**“Accounts Payable”** means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

**“Agreement”** means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

**“Applicable Law”** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**“Appointment Order”** has the meaning set out in the recitals hereof;

**“Approval and Vesting Order”** means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the Transaction and conveying to the Purchaser all of the Debtor’s right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule B hereto;

**“Bidding Procedures”** means the bidding procedures substantially in the form attached hereto as Schedule A;

**“Bidding Procedures Order”** has the meaning set out in Section 14.1(b);

**“Books and Records”** means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets that have been or will be delivered by the Receiver to the Purchaser at or before Closing; provided, however, that **“Books and Records”** shall not include any bank or accounting records;

**“Business”** means the business carried on by the Debtor with respect to the Real Property;

**“Business Day”** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;



**“Chattels”** means all chattels, furniture and equipment in, on, around or upon the Real Property and which are used in operating or maintaining the Real Property (including, without limitation, all elevating devices and equipment, furniture, telephones and other equipment in the onsite property management office(s), any computer software, marketing materials and management records used in the leasing and operation of the Real Property, to the extent owned by the Debtor, electric light fixtures, furniture, equipment, plumbing fixtures, furnace burner equipment, oil tanks, heating and ventilating and air conditioning equipment, air handling equipment, existing compressors, boiler machinery and equipment, sprinklers, drainage and other mechanical and electrical systems and any other chattels or tangible personal property), excluding: (i) any of the foregoing owned by any of the current tenants under any Leases; or (ii) in the case of services to the Real Property or subterranean fiber optic cables, any of the foregoing owned by third parties;

**“Claims”** means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and **“Claim”** means any one of them;

**“Closing”** means the successful completion of the Transaction;

**“Closing Date”** means the first Business Day which is Five (5) Business Days after receipt of the Approval and Vesting Order, or such other date as agreed in writing by the Parties;

**“Closing Time”** means 4:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

**“Contracts”** means all of the contracts, licences, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party and which relate to the Business;

**“Court”** has the meaning set out in the recitals hereof;

**“Debtor”** has the meaning set out in the recitals hereof;

**“Deposit”** has the meaning given in Section 4.2 herein;

**“Encumbrances”** means all liens, charges, security interests (whether contractual, statutory or otherwise), pledges, Leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

**“ETA”** means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

**“Excluded Assets”** means the Debtor’s right, title and interest in and to any asset of the Debtor other than the Purchased Assets, which Excluded Assets include the Debtor’s right, title and interest in and to the following:

- (a) any Leases;
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Purchased Assets; and
- (c) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date.

**“Excluded Liabilities”** has the meaning given in Section 3.3 herein;

**“Governmental Authority”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **“Governmental Authority”** means any one of them;

**“HST”** means harmonized sales tax imposed under Part IX of the ETA;

**“ITA”** means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

**“Lands”** means, that certain parcels or tract of land known as 20 Regina Road, Vaughan, Ontario, and as legally described in Schedule D hereto, and includes all rights and benefits appurtenant thereto;

**“Leases”** means, in respect of the Real Property, all offers to lease (unless a lease with respect thereto has been entered into which supersedes any such offer to lease), agreements to lease (unless a lease with respect thereto has been entered into which supersedes any such agreement to lease), leases, renewals of leases, and other rights or licenses granted to possess or occupy space within the Real Property to which it relates now or hereafter together with all security, guarantees and indemnities of the tenants' and licensees' obligations thereunder, in each case as amended, renewed or otherwise varied, and including any parking and storage space leases, if any; and **"Lease"** means any one of the Leases;

**“Notice”** has the meaning given in Section 17.3 herein;

**“Parties”** means the Receiver and the Purchaser;

**“Permits”** means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Real Property;

**“Permitted Encumbrances”** means all those Encumbrances described in Schedule C hereto;

**“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

**“Plans”** means all plans, designs and specification in connection with the Real Property which are in the possession or control of the Receiver (it being acknowledged that the Receiver is under no obligation to incur additional expense to obtain such plans, designs and specifications);

**“Purchase Price”** has the meaning set out in Section 4.1 herein;

**“Purchased Assets”** means all of the Debtor’s right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Chattels;
- (d) the Plans; and
- (e) the Permits and Contracts, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees.

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

**“Purchaser”** means 2557904 Ontario Inc.;

**“Qualified Bidder”** has the meaning set out in the Bidding Procedures;

**“Real Property”** means the Lands, together with all buildings, improvements and structures thereon) and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

**“Receiver's Certificate”** means the certificate referred to in the Approval and Vesting Order;

**“Receiver's Solicitors”** means Bennett Jones LLP;

**“Rights”** has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

“**Stalking Horse Bid**” has the meaning set out in Section 14.1(b);

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Transaction**” means the transaction of purchase and sale of the Purchased Assets as contemplated by this Agreement; and

“**Vendor**” means the Debtor, by KSV Restructuring Inc., in its capacity as Receiver.

## **ARTICLE 2** **SCHEDULES**

### **2.1 Schedules**

The following schedules are incorporated in and form part of this Agreement:

<b><u>Schedule</u></b>	<b><u>Description</u></b>
Schedule A	Bidding Procedures
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances
Schedule D	Legal Description of Lands

## **ARTICLE 3** **AGREEMENT TO PURCHASE**

### **3.1 Purchase and Sale of Purchased Assets**

- (a) Subject to the terms and conditions herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Debtor in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the “**Rights**”) under any Permits that form part of the Purchased

Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:

- (i) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the Permits in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
- (ii) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
- (iii) at the Purchaser's cost, the Receiver will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Permits to the Purchaser, including holding those Permits in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
- (iv) in the event that the Receiver receives funds with respect to those Permits, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Permits.

The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Receiver, in its sole, absolute and unfettered discretion, from seeking to be discharged as Receiver of the Debtor at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Receiver contained in this Section 3.1 shall terminate concurrently with the discharge of the Receiver as Receiver of the Debtor.

### **3.2 Excluded Assets**

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

### **3.3 Excluded Liabilities**

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with: (i) the Accounts Payable incurred prior to Closing; or (ii) any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

#### **ARTICLE 4**

#### **PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE**

##### **4.1 Purchase Price**

The purchase price for the Purchased Assets shall be the aggregate of Twenty-Four Million, Two Hundred and Fifty-Five Thousand (\$24,255,000) dollars (the “**Purchase Price**”), plus all applicable Taxes payable in respect of the Transaction.

##### **4.2 Deposit**

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver, in trust, a deposit by wire or certified cheque of Two Million, Four Hundred Thousand dollars (\$2,400,000.00) dollars (the “**Deposit**”), which Deposit shall be held by the Receiver in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date. The Parties acknowledge that Ren/Tex Realty Inc. is currently holding One Million dollars (\$1,000,000.00), in trust for the Purchaser, and in partial satisfaction of the Deposit due to the Receiver, the Parties agree to direct Ren/Tex Realty Inc. to pay such amount to the Receiver by wire transfer on or before the date on which the Deposit is due.

##### **4.3 Satisfaction of Purchase Price**

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or bank draft on Closing by the Purchaser to the Receiver or as the Receiver may otherwise direct in writing.

#### **4.4 Allocation of Purchase Price**

The Parties, acting reasonably and in good faith, covenant to use commercially reasonable efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each of the Parties shall be free to make its own reasonable allocation.

#### **4.5 Adjustment of Purchase Price**

- (a) The Purchase Price shall be adjusted as of the Closing Time for any realty taxes and local improvement rates and charges (including interest thereon), utilities, rental income, and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets as contemplated by this Agreement. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than three (3) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

### **ARTICLE 5** **TAXES**

#### **5.1 Taxes**

In addition to the Purchase Price, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least three (3) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

## **ARTICLE 6**

### **ACCESS**

#### **6.1 Authorizations**

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

## **ARTICLE 7**

### **CLOSING ARRANGEMENTS**

#### **7.1 Closing**

Closing shall take place at the Closing Time.

#### **7.2 Tender**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Receiver and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

#### **7.3 Receiver's Closing Deliverables**

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued Approval and Vesting Order and the Receiver's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than three (3) Business Days prior to Closing;
- (c) to the extent applicable, an assignment and assumption agreement with respect to all Permits and Contracts and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);



- (d) a bill of sale with respect to the Chattels;
- (e) a certificate signed by the Receiver confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the ITA and that, to the best of the Receiver's knowledge, the Debtor is not a non-resident of Canada within the meaning of the said section 116;
- (f) a certificate from the Receiver, dated as of the Closing Date, certifying:
  - (i) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and
  - (ii) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (g) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and
- (h) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

#### **7.4 Purchaser's Closing Deliverables**

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) an assignment and assumption agreement with respect to all Permits and Contracts pertaining to the Real Property (to the extent assignable) and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (d) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof; and

- (e) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, or by Applicable Law or any Governmental Authority.

## **7.5 Receiver's Certificate**

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate, and shall file same with the Court.

## **ARTICLE 8**

### **CONDITIONS PRECEDENT TO CLOSING**

## **8.1 Conditions in Favour of the Receiver**

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser contained in Article 10 to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) this Agreement shall be the Successful Bid with respect to all or any of the Purchased Assets; and
- (e) the Court shall have issued the Bidding Procedures Order and Approval and Vesting Order, which Approval and Vesting Order shall provide for the termination of the Leases, and the operation and effect of such orders shall not have been stayed, amended, modified, reversed or dismissed at the Time of Closing.

## **8.2 Conditions in Favour of Receiver Not Fulfilled**

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion (other than as stipulated below) and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or

- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

### **8.3 Conditions in Favour of the Purchaser**

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order; and
- (e) this Agreement shall be the Successful Bid with respect to all or any portion of the Purchased Assets; and
- (f) the Court shall have issued the Bidding Procedures Order and Approval and Vesting Order, and the operation and effect of such orders shall not have been stayed, amended, modified, reversed or dismissed at the Time of Closing.

### **8.4 Conditions in Favour of Purchaser Not Fulfilled**

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

**ARTICLE 9**  
**REPRESENTATIONS & WARRANTIES OF THE RECEIVER**

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (b) the Receiver has been duly appointed as the Receiver of the Debtor by the Appointment Order and such Appointment Order is in full force and effect and has not been stayed, and, subject to obtaining the Approval and Vesting Order, the Receiver has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Debtor in and to the Purchased Assets;
- (c) the Receiver is not a non-resident of Canada for the purposes of the ITA; and
- (d) subject to any charges created by the Appointment Order, the Receiver has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Debtor that may affect its ability to convey any of the Purchased Assets as contemplated herein.

**ARTICLE 10**  
**REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (a) the Purchaser is and will be at closing a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all

necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

## **ARTICLE 11**

### **COVENANTS**

#### **11.1 Mutual Covenants**

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

#### **11.2 Receiver Covenants**

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

## **ARTICLE 12**

### **POSSESSION AND ACCESS PRIOR TO CLOSING**

#### **12.1 Possession of Purchased Assets**

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

## **12.2 Risk**

- (a) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (b) The Receiver covenants that, on Closing, vacant possession of the Real Property shall be given to the Purchaser, subject only to the Permitted Encumbrances.
- (c) If, prior to the Closing Date, all or a material part of any of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of any of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation of any of the Real Property shall be payable to the Purchaser and all right, title and interest of the Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis, or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.
- (d) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this Section 12.2(b), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).

## **ARTICLE 13** **AS IS, WHERE IS**

### **13.1 Condition of the Purchased Assets**

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets

shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

## **ARTICLE 14**

### **Bidding Procedures**

#### **14.1 Bidding Procedures**

- (a) The Receiver and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- (b) The Receiver and the Purchaser acknowledge and agree that the Receiver shall apply to the Court as soon as practicable for an order (the “**Bidding Procedures Order**”), *inter alia*, recognizing this Agreement, and in particular the Purchase Price, as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”) and approving the Bidding Procedures, the payment of the break fee and expense reimbursement in the circumstances set out in Section 14.2, and the parties will use commercially reasonable efforts to have the Bidding Procedures Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

#### **14.2 Break Fee and Expense Reimbursement**

In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to (a) a break fee in the amount of \$200,000 (inclusive of HST) of the amount of the Purchase Price in the event that the Purchaser is not the Successful Bidder, and (b) an expense reimbursement amount for legal expenses and disbursements actually incurred, such amount not to exceed \$50,000 (inclusive of HST), in each case payable by the Receiver to the Purchaser only in the event that a Successful Bid for any of the Purchased Assets other than the Stalking Horse Bid is accepted by the Receiver, approved by the Court and completed. The payment of the

foregoing amounts shall be approved in the Bidding Procedures Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the Successful Bid for all of the Purchased Assets. Each of the Parties acknowledges and agrees that the foregoing amounts represent a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of the Purchaser not being the Successful Bidder, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. The Purchaser agrees to indemnify and hold harmless the Receiver from and against any Tax, interest and penalties assessed, reassessed or imposed upon the Receiver as a result of or in connection with the failure to withhold or remit any amount required to be withheld and remitted under Part XIII of the ITA in respect the break fee or expense reimbursement payable pursuant to this Section 14.2.

## **ARTICLE 15**

### **POST-CLOSING MATTERS**

#### **15.1 Books and Records**

The Purchaser shall keep and maintain the Books and Records for a period of two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Receiver, the Debtor or the Debtor's trustee in bankruptcy (the "**Retention Period**"). Upon reasonable advance notice, during such two (2) year period after the Closing Date, the Purchaser will grant the Receiver and the Debtor and, in the event the Debtor is adjudged bankrupt, any trustee of the estate of the Debtor and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver, Debtor or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser. After the Retention Period, the Purchaser shall give the Receiver, the Debtor or bankruptcy trustee of the estate of the Debtor, as the case may be, thirty (30) days' prior written notice of its intent to destroy the Books and Records. The Parties agree that the covenants of the Purchaser in this Section 15.1 shall survive the closing of the Transaction.

## **ARTICLE 16**

### **TERMINATION**

#### **16.1 Termination of this Agreement**

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Receiver;
- (c) pursuant to Section 8.4 hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.



## **16.2 Remedies for Breach of Agreement**

Notwithstanding any other term or condition of this Agreement, if this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

## **16.3 Termination If No Breach of Agreement**

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and:

- (a) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith; and
- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

## **ARTICLE 17** **GENERAL CONTRACT PROVISIONS**

### **17.1 Further Assurances**

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

### **17.2 Survival Following Completion**

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 16.2 and Section 16.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Receiver, the Parties' respective obligations by

reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

### 17.3 Notice

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a “**Notice**”) shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Receiver:

KSV Restructuring Inc.  
220 Bay Street, 13<sup>th</sup> Floor, PO Box 20  
Toronto, ON M5J 2W4

Attention: Noah Goldstein & Ben Luder  
Tel: (416) 932-6207 & (437) 889-9995  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com) & [bluder@ksvadvisory.com](mailto:bluder@ksvadvisory.com)

and a copy to the Receiver’s counsel to:

Bennett Jones LLP  
3400 One First Canadian Place  
Toronto, ON M5X 1A5

Attention: Sean Zweig & Aiden Nelms  
Tel: (416) 777-6254 & (416) 777-4642  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) & [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

(b) to the Purchaser:

Credible Group  
830 Edgeley Blvd.  
Concord, ON  
L4K 4X1

Attention: Anthony Marcucci  
Tel: (416) 745-9100  
Email: [anthony@crediblegroup.com](mailto:anthony@crediblegroup.com)

and a copy to the Purchaser's counsel to:

Concorde Law  
260 Edgeley Boulevard, Unit 12  
Vaughan, ON L4K 3Y4

Attention: Louis Raffaghello  
Tel: (647) 792-1272, x 208  
Email: [louisr@concordelaw.ca](mailto:louisr@concordelaw.ca)

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3<sup>rd</sup>) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1<sup>st</sup>) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4<sup>th</sup>) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

#### **17.4 Waiver**

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

#### **17.5 Consent**

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

#### **17.6 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

#### **17.7 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

### **17.8 Time of the Essence**

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

### **17.9 Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **17.10 Assignment**

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The foregoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion.

### **17.11 Expenses**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

### **17.12 Severability**

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

### **17.13 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

#### **17.14 Cumulative Remedies**

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

#### **17.15 Currency**

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

#### **17.16 Receiver's Capacity**

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed Receiver and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

#### **17.17 Planning Act**

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

#### **17.18 No Third Party Beneficiaries**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

#### **17.19 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

#### **17.20 Counterparts**

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

***/SIGNATURE PAGE FOLLOWS./***

**IN WITNESS WHEREOF** the Receiver has duly executed this Agreement as of the date first above written.

**KSV RESTRUCTURING INC.**, solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity



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

Name: Noah Goldstein

Title: Managing Director

**ACCEPTED** by the Purchaser this 13<sup>th</sup> day of November, 2023

**2557904 ONTARIO INC.**

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

Name: Anthony Marcucci

Title: Authorized Signing Officer

**IN WITNESS WHEREOF** the Receiver has duly executed this Agreement as of the date first above written.

**KSV RESTRUCTURING INC.**, solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

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

Name: Noah Goldstein

Title: Managing Director

**ACCEPTED** by the Purchaser this 13<sup>th</sup> day of November, 2023

**2557904 ONTARIO INC.**

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

Name: Anthony Marcucci

Title: Authorized Signing Officer

**SCHEDULE A**  
**BIDDING PROCEDURES**

Attached.



## **BIDDING PROCEDURES**

### **Introduction**

On September 13, 2023, the Superior Court of Justice (the “**Court**”) made an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (KSV, in such capacity, the “**Receiver**”) of 1000093910 Ontario Inc. (the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the land known as 20 Regina Road, Vaughan, Ontario, together with all buildings, improvements and structures thereon and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith (the “**Property**”).

The Receiver intends to bring a motion before the Court for an order (the “**Bidding Procedures Order**”), and such motion the (“**Bidding Procedures Approval Motion**”), among other things, approving: (i) the agreement of purchase and sale (the “**Stalking Horse Bid**”) made as of November •, 2023, between the Receiver and 2557904 Ontario Inc. (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Bidder has agreed to purchase the Property; (ii) the payment of a Break Fee and Expense Reimbursement (each as defined below) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid; and (iii) the procedures as described in this document (the “**Bidding Procedures**”).

This document contains the Bidding Procedures to be followed by the Receiver in connection with the sale (the “**Sale**”) of the Property. The Receiver will conduct the Bidding Procedures in accordance with the Bidding Procedures Order. All amounts specified herein are in Canadian dollars.

### **Assets to Be Sold**

The Receiver is offering for sale all the Debtor’s right, title and interest in and to the Property.

### **The Bidding Procedures**

The Bidding Procedures Order approves the retention of • (the “**Broker**”) to act as real estate broker and listing agent for the Property, and the entry into a retention agreement with the Broker by the Receiver, among other things.

Interested parties may be provided by the Receiver with such access to due diligence materials and information relating to the Property as the Receiver deems appropriate in its reasonable business judgment. In the Receiver’s sole discretion, this may include the provision of access to an electronic data room of due diligence information. The Receiver shall require interested parties to execute a form of non-disclosure agreement in form and substance satisfactory to the Receiver prior to the provision of any such access.

The Receiver shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Procedures and/or achieving a Sale. The Receiver may seek Court approval of an amendment to the Bid Procedures that it considers material. The extension of any deadline by up to two weeks shall not be considered material.

## **Bid Deadline**

An interested party that desires to make a bid shall deliver written copies of its bid (including the Required Bid Terms and Materials) to the Broker, with a copy to the Receiver, by 5:00 p.m. (Toronto time) on the date that is one month after the Court approves the Bidding Procedures or the following business day (the “**Bid Deadline**”).

## **Bid Requirements**

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver in its sole discretion, the following:

- (i) A base cash purchase price equal to or greater than \$24,555,000, which is the amount of the Stalking Horse Bid plus \$300,000, being a break fee of \$200,000 (the “**Break Fee**”), an expense reimbursement of up to \$50,000 (the “**Expense Reimbursement**”) and \$50,000;
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the first business day after the Property has been sold pursuant to the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below);
- (iii) Disclosure of the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Property or otherwise participating in such bid and the complete terms of any such participation;
- (iv) Written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction comprising such bid, that will allow the Receiver to make a determination as to the bidder’s financial and other capabilities to consummate the proposed transaction;
- (v) Written evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (vi) An acknowledgment and representations of the bidder that: (A) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid; (B) it has relied solely upon its own independent review, investigation and/or inspection of the Property (including, without limitation, any documents in connection therewith) in making its bid; and (C) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) executed by the Receiver and approved by the Court;

- (vii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting any variations from the Stalking Horse Bid; and
- (viii) A cash deposit in the amount of 10% of the purchase price in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the "**Bid Deposit**"), which shall be held by the Receiver in an escrow account (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof or as otherwise provided for in the purchase agreement; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer;

provided, however, that a bid shall not be subject to further due diligence, financing, bid protections, expense reimbursement, third party approvals or any other conditions or conditions precedent except those that are customary in a transaction of this nature (collectively, the "**Required Bid Terms and Materials**").

A bid received from a bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**", and such bidder is a "**Qualified Bidder**". Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid and the Stalking Horse Bidder shall be deemed a Qualified Bidder.

The Receiver may waive strict compliance with the Bid Deadline or any one or more of the Required Bid Terms and Materials and deem such non-compliant bid to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Receiver of the Bid Deadline or the Required Bid Terms and Materials or an obligation on the part of the Receiver to designate any other bid as a Qualified Bid. At any time during the Bidding Procedures, the Receiver may, in its reasonable business judgment, eliminate an interested party, a bidder or a Qualified Bidder (other than the Stalking Horse Bidder) from the Bidding Procedures, in which case such party will no longer be an interested party, bidder or a Qualified Bidder for the purposes of the Bidding Procedures.

### **Credit Bids**

No person shall be permitted to credit bid the indebtedness owed to them by the corporation in connection with the making of a Qualified Bid or in the conduct of the Auction.

### **"As Is, Where Is, With All Faults"**

The sale of the Property shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, counsel, representatives, partners or employees, or any of the other parties participating in the procedures outlined in these Bidding Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. Any party (including, without limitation, a Qualified Bidder) shall be deemed to

acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, all of the Debtor's right, title and interest in and to the Property shall be sold free and clear of all liens and encumbrances pursuant to the Sale Approval Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

### **Selection of Successful Bidder**

If one or more Qualified Bids is received by the Bid Deadline or so designated by the Receiver, all such Qualified Bidders shall proceed to an auction with the Stalking Horse Bidder (an "**Auction**"), which shall proceed according to the Auction Procedures set out in Schedule "A" hereto (the "**Auction Procedures**") to identify the Successful Bidder. In such event, the Receiver shall determine, in its reasonable business judgment, which Qualified Bid is the highest and/or best bid (the "**Lead Bid**"). In determining the Lead Bid, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; and (v) the net economic effect of any changes from the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

The "**Successful Bid**" will be either (i) the Stalking Horse Bid if no Qualified Bid is received by the Bid Deadline or so designated by the Receiver; (ii) in the event of an Auction, the highest and best bid as determined by the Receiver at the Auction; or (iii) a bid that is so designated by the Receiver in the event that the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below) does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder). The party that submitted the Successful Bid is referred to herein as the "**Successful Bidder**".

### **Break Fee and Expense Reimbursement**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse

Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of \$200,000 and an Expense Reimbursement on account of its reasonable and documented fees and expenses up to a maximum of \$50,000. The Receiver will take into account the Break Fee and Expense Reimbursement in each round of bidding with respect to the Stalking Horse Bidder. The Break Fee and Expense Reimbursement were material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Bidding Procedures Order.

### **Sale Approval Motion**

Subject to the availability of the Court, within ten (10) business days following the conclusion of the Auction, the Receiver shall bring a motion (the “**Sale Approval Motion**”) for an order of the Court authorizing and approving the Sale of the Property to the Successful Bidder (such order, as approved, the “**Sale Approval Order**”). At the hearing of the Sale Approval Motion, the Receiver shall, among other things, seek approval from the Court to consummate the Successful Bid. Notwithstanding the foregoing, as part of the Bidding Procedures Order, the Receiver may seek approval to proceed with the Stalking Horse Bid without the need for the Sale Approval Motion in the event the Stalking Horse Bid is the Successful Bid.

### **Acceptance of Qualified Bids**

The sale of the Property to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court. The Receiver's presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. All of the Qualified Bids other than the Successful Bid, shall be deemed rejected by the Receiver on and as of the date of the closing of the Sale that is approved by the Court.

In the event that the closing of the Sale that is approved by the Court does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder), the Receiver shall be authorized, but not required, to: (a) exercise such rights and remedies as are available to the Receiver under the Successful Bid including, if applicable, deeming that the Successful Bidder has breached its obligations pursuant to the Successful Bid and that the Successful Bidder has forfeited its Deposit to the Receiver; (b) accept any Qualified Bid or other bid of a Qualified Bidder, including, without limitation, a bid made at the Auction, in which case such bid and bidder shall be a Successful Bid and Successful Bidder, respectively, for the purposes of these Bidding Procedures, and close the transaction under such bid; and/or (c) take such other steps as it deems advisable. The Receiver reserves its right to seek all available damages and remedies, including specific performance, from any defaulting Successful Bidder.

### **Miscellaneous**

The Receiver will oversee, in all respects, the conduct of the Bidding Procedures and, without limitation, the Receiver will participate in the Bidding Procedures in the manner set out in these Bidding Procedures and the Bidding Procedures Order. All discussions or inquiries regarding the Bidding Procedures should be directed to the Receiver.

The Sale Process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. Other than as specifically set forth in the Broker's retention agreement, the Stalking Horse Bid or in a definitive agreement between the Receiver and another Successful Bidder, the Bidding Procedures do not, and will not be interpreted to create any contractual or other legal relationship among the Receiver, the Broker, any interested party, any bidder, and Qualified Bidder, the Successful Bidder, or any other party.

The Receiver may consult with any other parties with a material interest in the receivership proceedings regarding the status and material information and developments relating to the Bidding Procedures to the extent considered appropriate by the Receiver; provided that such parties may be required to enter into confidentiality arrangements satisfactory to the Receiver.

Subject to the terms of the Receivership Order, participants in the Bidding Procedures are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bids, participation in the Auction, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order and the Bidding Procedures.

## Schedule “A”

### Auction Procedures

1. If the Receiver determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held either virtually or at the offices of Bennett Jones LLP at 10:00 a.m. (Toronto time) on date that is determined by the Receiver, provided that that is not later than five business days after the Bid Deadline, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures.
2. The Auction shall be conducted in accordance with the following procedures:
  - (a) Participation At The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid, a copy thereof and a blackline to the Stalking Horse Bid by 5:00pm (Toronto Time) two business days before the scheduled date of the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Toronto time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Receiver, the Receiver, Peakhill Capital Inc., Zaherali Visram and their respective counsel and other advisors shall be permitted to attend the Auction.
  - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the “Opening Bid” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
  - (c) Receiver Shall Conduct The Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any and all factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver’s assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the

highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- (d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Receiver may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of any Overbid shall not be less than the amount of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply.
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - (iv) *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
  - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction.



- (e) Additional Procedures. The Receiver may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures (including these Auction Procedures) and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- (f) Closing the Auction. The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and advised the Qualified Bidders participating in the Auction of such determination.
- (g) Finalizing Documentation. Promptly following a bid of a Qualified Bidder being declared the Successful Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.

**SCHEDULE B**  
**APPROVAL AND VESTING ORDER**

Attached.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	[•], THE [•]
	)	
JUSTICE [•]	)	DAY OF [•], 2024

B E T W E E N:

**PEAKHILL CAPITAL INC.**

Applicant

- and –

**1000093910 ONTARIO INC.**

Respondent

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") over 1000093910 Ontario Inc. (the "**Debtor**") and all of the assets, undertakings and properties of 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 2557904 Ontario Inc. (the "**Purchaser**") dated November [•], 2023, and appended to the First Report of the Receiver dated [•], 2024 (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 by way of video-conference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, and such other parties as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

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

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

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) 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 Lavine dated September 13, 2023; (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 C to the Purchase Agreement) 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.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Vaughan 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 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.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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 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.

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**Schedule A – Form of Receiver’s Certificate**

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

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**PEAKHILL CAPITAL INC.**

Applicant

- and –

**1000093910 ONTARIO INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Lavine of the Ontario Superior Court of Justice (the "**Court**") dated September 13, 2023, KSV Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") over 1000093910 Ontario Inc. (the "**Debtor**") and all of the assets, undertakings and properties of the Debtor.

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of November [●], 2023 (the "**Sale Agreement**") between the Receiver and 2557904 Ontario Inc. (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 Article 8 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 Article 8 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].

**KSV RESTRUCTURING INC., in its  
capacity as Receiver over 1000093910 Ontario  
Inc., and not in its personal capacity**

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

Name:

Title:



**Schedule B – Legal Description of Lands**

PIN 03221-0039 (LT): PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720; S/T LT576260, LT576262  
VAUGHAN

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

[●]

[NTD: Purchaser to populate]

**SCHEDULE C**  
**PERMITTED ENCUMBRANCES**

**PART I: GENERAL PERMITTED ENCUMBRANCES**

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Real Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Real Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Real Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

**PART II: SPECIFIC PERMITTED ENCUMBRANCES**

1. Instrument No. LT500542 registered on July 14, 1988 being a Notice of Agreement with The Corporation of the Town of Vaughan;
2. Instrument No. LT576260 registered on April 25, 1989 being a Transfer of Easement in favour of The Corporation of the Town of Vaughan;
3. Instrument No. LT576262 registered on April 25, 1989 being a Transfer of Easement in favour of Vaughan Hydro-Electric Commission;
4. Instrument No. LT643826 registered on January 12, 1990 being a Bylaw; and
5. Instrument No. LT1259800 registered on April 2, 1998 being a Notice of Agreement with The Corporation of the City of Vaughan.

**SCHEDULE D**  
**LEGAL DESCRIPTION OF LANDS**

PIN 03221-0039 (LT): PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720; S/T LT576260, LT576262  
VAUGHAN

## **Appendix “G”**



**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV	APA in Document Library?	Note
1194038 Alberta Ltd.	2262576 Alberta Ltd.	Receivership	EY	5-Jun-23	Alberta	Real Estate	125,000			4,375,000	2.8%	No (but available at Appendix D of the First Report)	
GreenSpace Brands Inc.	2762454 Ontario Inc.	Ontario	PwC	5-Apr-23	Ontario	Food & Accommodation	150,000	-	150,000	~9 million, plus certain assumed liabilities and other amounts	1.70%	No	
FlexiTy Solutions Inc. and FlexiTy Holdings Inc.	BHG-BC Holdings Ltd	NOI	Farber	29-Mar-23	Ontario	Technology	-	-	-	11.1 million		No, but available at Exhibit AA of Motion Record dated March 30,	
LoyaltyOne Co. (dba AIR MILES®)	BMO	CCAA	KSV	10-Mar-23	Ontario	Other	3 million	1 million	4 million	US 160 million	2.50%	No, but available in Motion Record dated March 13, 2023	
DCL Corporation	Pigments Holdings, Inc.	CCAA	A&M	21-Dec-22	Ontario	Distribution	-	-	-	\$166.2 million to \$170.9 million	0.00%	No, but available at Exhibit "D" to the Third Davido Affidavit	
11157353 Canada Corporation	ReFlourish Capital Limited	NOI	EY	14-Feb-23	Ontario	Cannabis	20,000	25,000	45,000	400,000 euros		No, but available in Application Record dated February 15, 2023	
Tehama Inc.	14667913 Canada Inc.	CCAA	Deloitte	7-Feb-23	Ontario	Technology	-	-	-	2.8 million credit bid, plus assumed liabilities, for total consideration of approximately 3 million		Yes	



**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV	APA in Document Library?	Note
Trichome Financial Corp.	L5 Capital Inc.	CCAA	KSV	12-Dec-22	Ontario	Cannabis	-	200,000	200,000	5,000,000 and certain deferred consideration payable pursuant to secured limited recourse promissory notes	4.00%	No (but available in Third Report dated February 22, 2023)	
Westoak Naturals Inc.	Avena Foods Limited	Receivership	BDO	9-Nov-22	Ontario	Distribution	30,000	25,000	55,000	1,000,000 credit bid plus the costs of the receivership	5.50%	No	
Robus Resources Inc.	Robus Equity Acquisition Corporation, as nominee of Blue Fin Group LLP and Robus Services LLC	Receivership	A&M	8-Dec-22	Alberta	Oil & Gas	182,000		182,000	USD\$9,100,000	2.00%	No	
The Flowr Corporation et al.	1000343100 Ontario Inc.	CCAA	EY	31-Oct-22	Ontario	Cannabis	185,000		185,000	\$3,888,888.88 plus the Closing DIP Loan (as defined below) and Assumed Liabilities	4.76%	No	
Solvaqua Inc.	2464525 Alberta Ltd.	Receivership	MNP	1-Oct-22	Alberta	Other	175,000		175,000	A cash payment sufficient to cover various security interests, a CRA claim and a holdback, plus the payment of the balance of the purchase price being \$2.5 million, to be paid by way of set-off against (as a non-cash credit reduction of) the Arnaki Claim.	7.00%	Y	
Cannapie Group Inc. et al.	Cardinal Advisory Limited	CCAA	BDO	8-Nov-22	Ontario	Cannabis	175,000	25,000	200,000	\$3.5 million cash, plus Assumed Liabilities, if any	5.70%	Yes	





**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV	APA in Document Library?	Note
IS5 Communications Inc.	Elektrophoenix GmbH	NOI	Grant Thornton	17-Oct-22	Ontario	Technology	USD \$200,000	USD \$200,000	USD \$250,000	USD \$5 million, a portion of which will be comprised of a "credit bid" of amounts owing under the DIP Term Sheet	5.00%	Yes	
Go-To Developments Holdings Inc.	2357616 Ontario Inc.	Receivership	KSV	8-Aug-22	Ontario	Real Estate	-	60,000	60,000	9.5 million or greater	1.00%	No	
Just Energy Group	The DIP lenders and one of their affiliates	CCAA	FTI	4-Aug-22	Ontario	Oil & Gas	US\$14.66 million	-	US\$14.66 million	US\$184.9 million in cash, plus up to an additional \$10 million, a credit bid of US\$252.7 million, plus the assumption of certain liabilities	3.40%	No	
Zenabis Group	2657408 Ontario Inc.	CCAA	EY	16-Jun-22	Quebec	Cannabis	-	750,000	750,000	Unclear - confidential	Unclear	No	
Freshlocal Solutions Inc.	Third Eye Capital Corporation	CCAA	EY	17-Jun-22	British Columbia	Retail	Unclear - confidential	Unclear - confidential	Unclear - confidential	Unclear - confidential	2.50%	No	
Cura-Can Health Corp. and its wholly-owned subsidiary The Clinic Network Canada Inc.	Avonlea-Drewry Holdings Inc.	Receivership	KPMG	14-Mar-22	Alberta	Cannabis	325,000		325,000	Approximately \$6,750,000 of which \$6,500,000 will be credited against the indebtedness owing to the purchaser	4.8	Yes	
Jam Hospitality Inc. et al.	2424115 Alberta Ltd.	Receivership	PwC		Alberta	Food & Accommodation	500,000			18.5 million		No	



**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

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Balanced Energy Oilfield Services Inc. et al.	XDI Energy Solutions Inc.	Receivership	FTI	21-Mar-22	Alberta	Oil & Gas	250,000			(i) CA \$11,250,000 in cash; (ii) such amount as it required to pay out and satisfy, in full, the first charge held by Laurentian Bank over certain equipment	Unclear	Yes (term sheet)	
BlackRock Metals Inc. et al.	OMF Fund II H Ltd. and Investissement Québec	CCAA	Deloitte	22-Dec-21	Quebec	Mining	2.5 million		2.5 million	Credit bid of \$90,759 M	2.75	Yes	
Behr Technologies Inc.	13486826 Canada Inc.	NOI	Farber	19-Jan-22	Ontario	Technology	75,000		75,000	Purchase price comprised of a credit bid of \$1,000,000 in debt owing under the DIP Facility plus cash in a to-be-determined amount for priority payables	Unclear	Yes	
Harte Gold Corp.	1000025833 Ontario Inc.	CCAA	FTI	15-Dec-21	Ontario	Mining	-	-	-	-	0	No	
McEwan Enterprises Inc.	2864785 Ontario Corp.	CCAA	A&M		Ontario	Food & Accommodation	390,000		390,000	(A) \$2,200,000, plus (B) an amount equal to Cure Costs, plus (C) the assumption of the Assumed Obligations by the Purchaser	Unclear	No	
Junction Craft Brewing Inc.	1000003509 Ontario Limited	NOI	Richter	5-Nov-21	Ontario	Food & Accommodation	50,000	25,000	75,000	400,000 cash plus the assumption of certain liabilities	Unclear	Yes	
Nimbus Water Systems Inc.	2752837 Ontario Inc.	Receivership	BDO	6-Sep-21	Ontario	Professional Services	250,000	50,000	300,000	13,000,000	2.31%	Yes	



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Current as at August 21, 2023**

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O2 Industries Inc.	2841551 Ontario Limited	Receivership	RSM	2021	Ontario	Healthcare	-	-	-	-	0.00%	Yes	
Turuss (Canada) Industry Co. Ltd.	Westmount Park Investments Inc.	Receivership	MNP	13-Apr-21	Ontario	Manufacturing	Combined break fee and expense reimbursement amount of \$175,000	Combined break fee and expense reimbursement amount of \$175,000	175,000	6,500,000	2.69%	Yes	
Salt Bush Energy Ltd.	Ironbark Energy Ltd.	NOI	Deloitte	2-Feb-21	Alberta	Oil & Gas	50,000	25,000	75,000	Unclear	Unclear	Yes	
Allied Track Services Inc.	2806401 Ontario Inc.	NOI	KSV	21-Jan-21	Ontario	Professional Services	-	-	-	104,800,000	0.00%	Yes	
Family Fitness Inc.	BTA Real Estate Group Inc.	Receivership	A&M	15-Jan-21	Saskatchewan	Other	40,000		40,000	800,000 plus the assumption of assumed liabilities	5.00%	Yes	
Avenir Sports Entertainment Limited	Avina Acquisition Corp.	Receivership	KSV	15-Dec-20	Alberta	Entertainment	186,000		186,000	4,650,000	4.00%	Yes	
Urthecast Corp. (TSX:UR)	Antarctica Infrastructure Partners, LLC, an affiliate of Antarctica Capital LLC	CCAA	EY	15-Oct-20	British Columbia	Technology	2,070,000	1,000,000	3,070,000	69,000,000	4.45%	No	



**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

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110-112 Avenue Road; 114 Avenue Road and 116 Avenue Road	SC Land Inc.	Receivership	RSM	9-Oct-20	Ontario	Financial Services	-	385,000	385,000	16,100,000	2.39%	Yes	
Fun and Fitness Trampolines Inc.	2786323 Ontario Inc.	NOI	Crowe Soberman Inc.	26-Oct-20	Ontario	Entertainment	10,000	-	10,000	Purchase price confidential	Unclear - purchase price confidential	Yes	
Muskoka Grown	Arthur Zwingenberger, in trust for a corporation to be formed under the laws of the Province of Ontario, and 2685164 Ontario Inc.	NOI	Farber	27-Jul-20	Ontario	Cannabis	-	113,000	113,000	11,961,394	<1%	Yes	
Wire IE (Canada) Inc.	Crown Capital Private Credit Fund, LP	NOI	Farber	20-Jul-20	Ontario	Technology	-	200,000	200,000	\$9.5 million plus the assumption or satisfaction of certain liabilities	-%		
Bow River Energy Ltd.	2270943 Alberta Ltd.	CCAA	BDO	17-Jul-20	Alberta	Oil & Gas	175,000	-	175,000	4,290,221	4.08%	Y	
Cirque du Soleil	Spectacle Bidco LP	CCAA	EY	15-Jul-20	Quebec	Media	-	-	-	US\$1,215 million	-%	Y	APA is called Exhibit 23a in the Document Library
Dominion Diamond Mines	Washington Diamond Investments Holdings II, LLC	CCAA	FTI	21-May-20	Alberta	Mining	US2, 522,000	US2,250,000	4,772,000	US\$126.1 million in cash, plus up to US\$5.0 million in respect of any incremental amounts outstanding, plus the assumption of certain liabilities	2.0%	N	



**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV	APA in Document Library?	Note
Penady (Barrie) Ltd.	Choice Properties Limited Partnership	Receivership	RSM	2-Jun-20	Ontario	Real Estate	-	400,000	400,000	Unclear - credit bid	Unclear	Y (unsigned copy)	
James E. Wagner Cultivation Corporation	Trichome Financial Corp.	CCAA	KSV	31-Mar-20	Ontario	Cannabis	-	100,000	100,000	11,700,000	0.9%	Y	
Traverse Energy Ltd.	Barrel Oil Corp.	Receivership	EY	5-Feb-20	Alberta	Oil & Gas	97,500	-	97,500	3,250,000	3.0%	Y	
Viafoura Inc.	InterCap Equity Inc.	NOI	KSV	22-Jan-20	Ontario	Technology	25,000	45,000	70,000	1,491,000	4.7%	Y	
Waves E-Gaming Inc.	Amulka Ventures Inc.	Receivership	Dodick Landau	16-Jan-20	Ontario	E-gaming	-	-	-	370,000	0.0%	Y	
Trade Secret Web Printing Inc.	B&Y Property Holdings Inc.	NOI	Crowe Soberman Inc.	13-Dec-19	Ontario	Printing	-	50,000	50,000	1,800,000	2.8%	Y	
Clover Leaf Seafoods	Certain affiliates of FCF Co. Ltd	CCAA	Alvarez & Marsal	21-Nov-19	Ontario	Distribution	US \$27.75 million	US \$2.5 million	\$30.25 million	US \$925.6 million to \$930.6 million	3.0%	Y	6
3070 Ellesmere Developments Inc.	CoStone Development Inc. and Campus Suites Inc.	NOI	Crowe Soberman Inc.	19-Aug-19	Ontario	Real Estate	400,000		400,000	16,000,000	2.5%	Y	
Orbicare Inc.	iGan Partners Inc.	NOI	MNP	8-Aug-19	Ontario	Technology	60,000		60,000	1,200,000	5.0%	N	
Octopus Holdings Ltd.	East Winds Caribbean Limited Partnership	Receivership	Hardie & Kelly	3-Jun-19	Alberta	Hospitality	-	-	-	2,600,000	0.0%	Y	
Argex Titanium Inc.	Mr. Mazen Alnaimi and other investors	NOI	PwC	21-Jun-19	Quebec	Technology					5.0%	Y	5
Strategic Oil & Gas Ltd.	GMT Exploration Zama Inc.	CCAA	KPMG	3-May-19	Alberta	Oil & Gas	75,000		75,000	1,500,000	5.0%	Y	



**Stalking Horse Break Fee Analysis  
Current as at August 21, 2023**

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV	APA in Document Library?	Note
Strategic Oil & Gas Ltd.	GMT Exploration Zama Inc.	CCAA	KPMG	3-May-19	Alberta	Oil & Gas	75,000		75,000	1,500,000	5.0%	Y	
Divestco Inc.	2179602 Alberta Ltd.	CCAA	Grant Thornton	19-Mar-19	Alberta	Oil & Gas	425,000	-	425,000	15,410,517	2.8%	Y	
Versaccounts Limited	Seatl Atlantic, Inc.	NOI	Farber	23-Jan-19	Ontario	Technology	25,000	25,000	50,000	250,000	20.0%	Y	
Vari-Form Inc.	11032569 Canada Inc.	CCAA	PwC	7-Jan-19	Ontario	Automotive	1,500,000	-	1,500,000	50,000,000	3.0%	Y	4
Stantive Technologies Group Inc.	2671682 Ontario Inc.	NOI	EY	14-Dec-18	Ontario	Technology	93,000	25,000	118,000	5,400,000	2.2%	Y	
1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing	2657897 Ontario Inc.	Receivership	KSV	6-Dec-18	Ontario	Real Estate	-	-	-	16,500,000	0.0%	Y	
Ladacor AMS Ltd., Nomads Pipeline Consulting Ltd., and 2367147 Ontario Inc.	Sioux Lookout First Nations Health Authority	Receivership	A&M	16-Oct-18	Alberta	Real Estate			125,000	5,000,000	2.5%	Y	3
Purewal Blueberry Farms	0801226 B.C. Ltd.	CCAA	FTI	10-Oct-18	British Columbia	Agriculture			275,000	8,000,000	3.4%	Y	3
2301132 Ontario and 2309840 Ontario	E. Manson Investments Limited	NOI	KSV	5-Oct-18	Ontario	Real Estate	175,000	50,000	125,000	6,700,000	1.9%	Y	
Aralez Pharmaceuticals Inc.	Nuvo Pharmaceuticals Inc.	CCAA	Richter	18-Sep-18	Ontario	Pharmaceutical	2,187,500	575,000	2,762,500	62,500,000	4.4%	Y	
1760184 Ontario Ltd. (Surface Heat Treat &	Rampart Steel Treating Ltd.	NOI	Farber	18-Jun-18	Ontario	Manufacturing	42,500		42,500	850,000	5.0%	Y	1, 3
3291745 Nova Scotia	3308949 Nova Scotia Limited	Receivership	KSV	14-Jun-18	Nova Scotia	Real Estate	100,000	25,000	125,000	3,225,000	3.9%	Y	
Discovery Air	Various	CCAA	KSV	21-Mar-18	Ontario	Aviation	-	-	-	-	0.0%	Y	2

**Notes**

- Purchase price equal to the sum of \$191,000 in cash plus 90% of the inventory value as at the closing date, plus the purchaser's agreement to the AR collection agreement appended to the APA. Estimated TV is reported in Farber's first report.
- Four separate stalking horse agreements were entered into for various of the debtor's business units. The stalking horse bidder in each agreement is a corporation related to the debtor's 95.5% shareholder and most significant secured creditors. The purchase price in each case is in the form of a credit bid or assumption of debt. No break fees are contemplated in any of the stalking horse agreements.
- APA did not split break fee between termination fee and expense reimbursement amounts
- Estimated transaction value consists only of the cash portion of the purchaser's bid.
- Estimated transaction value equal to an amount sufficient to satisfy i) repayment of the amounts secured by the administration charge; ii) repayment of the DIP loan; iii) payment of amounts secured by KERF charge; and iv) funding of a proposal which will provide for payment of, among other things, the outstanding secured debentures and preferred claims.
- Transaction is for assets of both Canadian and US entities.

## **Appendix “H”**

This Listing Agreement (the “**Agreement**”) is entered into between Jones Lang LaSalle Real Estate Services, Inc (the “**Listing Brokerage**”) and KSV Restructuring Inc. (the “**Seller**”) in its capacity as receiver (in such capacity, the “**Receiver**”) of all the assets, undertaking and properties of 1000093910 Ontario Inc., including the real property located at 20 Regina Road, Vaughan, Ontario (the “**Real Property**”), without personal or corporate liability and solely in its capacity as Receiver. The Receiver was appointed pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (the “**Court**”) granted on September 13, 2023 and effective October 2, 2023. Pursuant to the Receivership Order, the Receiver is authorized to, among other things, market and sell the Real Property with the approval of the Court.

Notwithstanding anything contained in the Agreement, each of Listing Brokerage and the Seller acknowledges and agrees as follows:

**1. Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Receivership Order is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Real Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Real Property, lien claimants or any other future lenders are permitted by court order to enforce their rights and/or remedies against the Real Property.

**2. Price.** While it is the Seller’s intention to obtain the highest and best offer for the Real Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Real Property are subject at all times to the Seller’s approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage (except as detailed in Section 6 below) in respect of the Real Property unless and until the sale of the Real Property has been completed and the purchase price consideration payable to the Seller has been paid in its entirety.

**3. Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement (“**Holdover Period**”), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Real Property by the Listing Brokerage during the listing period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Real Property as the new Listing Brokerage (the “**New Agent**”) on the basis of an agreement with the New Agent entered into with respect to the Holdover Period. If the Listing Brokerage had introduced up to a maximum of two (2) different prospective bona fide purchasers to the Seller during the Listing Period (each being a “**Serious Prospect**”) and said Serious Prospect had entered into material negotiations with the Seller to purchase the Real Property, but said material negotiations had not resulted in a binding agreement of purchase and sale, then to the extent that each of the Listing Brokerage and the Seller agree in writing to designate said prospective purchaser as a Serious Prospect prior to the expiration of the Listing Period, and so long as the Seller is not prohibited from doing so, and provided that the New Agent has agreed to forego its fee should a sale to a Serious Prospect be completed, the Listing Brokerage shall be entitled to its commission in connection with the transaction being completed with the Serious Prospect upon terms and conditions acceptable to the Seller in their sole and absolute discretion, which transaction must be subject to Court approval and a binding and unconditional agreement of purchase and sale executed by each of the parties thereto prior to the expiration of the Holdover Period. During the Holdover Period, the Listing Brokerage will not be entitled to any commission, payment or fee as the Seller’s agent if the Listing Team (as defined below) represents the purchaser.

**4. Listing Brokerage’s Duties.** The Listing Brokerage covenants and agrees with the Seller to:

(a) pursuant to the Seller’s instructions as outlined below, offer the Real Property for sale on an unpriced basis (save and except (i) as described in (b) below with respect to the Multiple Listings Service (“**MLS**”); and (ii) the requirement of a Qualified Bid (including the minimum bid of \$24,555,000)) in the Court approved Sale Process (as defined below) being conducted by the Seller in accordance with the Court approved bidding procedures (the “**Bidding Procedures**”);

(b) if instructed by the Seller, offer the Real Property for sale on MLS, for which the listed price shall be \$1.00, or as otherwise directed by the Seller, and the Commissions to Co-operating Brokerage shall be as listed on Schedule “A”;



(c) unless otherwise agreed by the Seller, diligently market the Real Property for sale and use commercially reasonable efforts to sell the Real Property pursuant to the Court approved process set out in Schedule "B" attached hereto (the "**Sale Process**") in accordance with the Bidding Procedures;

(d) co-operate with all licensed real estate brokers and agents in the sale of the Real Property (collectively the "**Cooperating Agents**" and each a "**Cooperating Agent**"), with any commissions or fees of such Cooperating Agents to be paid by the Seller as set out in Schedule "A";

(e) ensure that there is continuity in the assignment of individual staff members and partners to the work performed by the Listing Brokerage under the terms of this engagement. In particular, the Listing Brokerage agrees to ensure that individual staff members originally assigned, including Bryce Gibson and Matt Picken (jointly, the "**Listing Team**"), to perform work in connection with the Listing Brokerage's engagement, will each be available and will devote the time required to undertake the assignment contemplated herein;

(f) subject to the instructions of the Seller, to assist the Seller in negotiating binding agreements of purchase and sale subject to Court approval with those parties identified by the Seller. Only the Seller shall have authority to accept offers and the Listing Brokerage shall not have any authority whatsoever to enter into any sale, financing or other contract on behalf of the Seller and/or to otherwise bind the Seller in any manner whatsoever;

(g) continue to assist the Seller in connection with the sale of the Real Property and seeking Court approval after the execution of a binding agreement of purchase and sale with respect to the same until such sale has been successfully concluded; and

(h) unless the Seller's written consent is provided in advance, to act solely for the benefit of the Seller in connection with the marketing and sale of the Real Property and not to have any direct or indirect interest in any entity purchasing or proposal to purchase the Real Property and not to receive any payments or other benefits from said purchasers or potential purchasers.

**5. Commission Payable to the Listing Brokerage.** Subject to the terms set out herein, the Seller shall pay to the Listing Brokerage upon the successful completion of sale of the Real Property, a commission payable in accordance with Schedule "A" attached hereto (the "**Listing Fee**"). The Seller acknowledges that payment of HST applies on all commissions payable. As it relates to the commission payable, a sale constitutes a Court approved sale of the Real Property, share transaction, exercise of first right to purchase, option or other form of sale or transfer of the rights of the Real Property. The Seller agrees to notify the Listing Brokerage of the successful completion or closing. The Seller hereby instructs its solicitors to distribute payment to the Listing Brokerage in the amount noted above directly out of the proceeds of sale in accordance with an accepted agreement of purchase and sale and to have same addressed as a closing cost to the transaction.

**7. Acknowledgments.** The Listing Brokerage acknowledges and agrees in favour of the Seller that: (a) the Real Property is to be marketed and sold on an "as is, where is" basis and, accordingly, any agreement of purchase and sale shall provide an acknowledgment by such purchaser that the Real Property is being sold by the Seller on an "as is, where is" basis, and that no representations or warranties have been or will be made by the Seller or anyone acting on its behalf, to the Listing Brokerage or such purchaser as to the condition of the Real Property or any buildings located thereon; (b) the Seller may annex a schedule to the transfer/deed of land (or other registrable document with respect to the sale) expressly excluding any covenants deemed to be included pursuant to the *Land Registration Reform Act* of Ontario, other than one to the effect that the Seller has the right to convey the Real Property; (c) in lieu of a transfer/deed of land for the Real Property, the Seller will vest title to the Real Property by way of an approval and vesting order issued by the Court; and (d) the sale of the Real Property requires the prior approval of the Court in said Court's sole and absolute discretion.

**8. Advertisement Expenses, Third Party Consultants and Reporting.** All advertising and sales promotion shall be subject to the approval of the Seller and all such advertisement and promotional material shall be prepared, published and distributed by the Listing Brokerage and shall be at the expense of the Listing Brokerage. All third-party reports and legal service fees requested and/or approved by the Seller shall be at the expense of the Seller. The Listing Brokerage agrees to provide the Seller with detailed reporting regarding the status of the Sale Process, including weekly lists of its solicitation efforts, the parties interested in the opportunity, the status of their diligence and such other information as is reasonably requested by Seller to be kept apprised of all material developments in the Sale Process. The Listing Brokerage will participate in no less than one weekly update call with the Seller, in Seller's discretion.

**9. Indemnity.** The Listing Brokerage confirms that it owes an obligation to the Seller and its officers, employees and agents (collectively, the “**Indemnified Parties**”) to carry out its activities in a competent and professional manner acting reasonably and in good faith. As such, the Listing Brokerage hereby indemnifies the Indemnified Parties with respect to claims made by third parties against the Indemnified Parties arising out of work performed by the Listing Brokerage or the Listing Brokerage’s failure to comply with its obligations hereunder. This indemnity shall survive the expiration or termination of the Agreement.

**10. Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information in the Listing Brokerage’s possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder. The Listing Brokerage acknowledges that the Seller may disclose this Agreement in its sole and absolute discretion, including to stakeholders, creditors and the Court.

**11. Assignment.** This Agreement shall not be assigned in whole or in part by the Listing Brokerage without the prior written consent of the Seller which consent may be unreasonably and/or arbitrarily withheld and any assignment made without that consent is void and of no effect.

**12. Seller’s Capacity.** Notwithstanding the foregoing or anything else contained herein or elsewhere, the Listing Brokerage acknowledges and agrees that approval of the Sale Process (including the retention of the Listing Brokerage) and any transaction or transactions involving a sale of the Real Property require the prior approval of the Court in the Court’s sole and absolute discretion.

**13. Warranty.** Subject to Section 12 above and the remainder of this Section 13, the Seller represents and warrants that upon approval by the Court the Seller will have the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Real Property for sale. Notwithstanding the foregoing, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Real Property and cannot confirm any third-party interests or claims with respect to the Real Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Real Property, which may affect the sale of the Real Property.

**14. Execution.** This Agreement and any other agreement delivered in connection therewith, and any amendments thereto, may be executed by electronic copy or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this Agreement, or such other agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement, or such agreement or amendment, as the case may be, to the requesting party by electronic copy or such similar format. This Agreement may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date first written above.

**15. Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario. If any provision hereof is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed to be deleted and the remaining portions of this Agreement shall remain valid and binding on the parties hereto.

**16. Finder’s Fees.** The Seller does not consent to the Listing Brokerage or any Cooperating Agents (or their respective affiliates) receiving and retaining, in addition to the commission provided for or otherwise contemplated in this Agreement, a finder’s fee for any financing of the Real Property.

**17. Verification of Information.** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Real Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required, provided such authorizations expressly prohibit any inspections by such regulatory authorities. For greater certainty, none of the Listing Brokerage or the Listing Brokerage’s representatives may bind the Seller or execute any documentation on behalf of the Seller. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

**18. Listing Period.** The term of this Agreement shall begin upon acceptance of this Agreement (the “**Commencement Date**”) and shall expire one minute before midnight on the four month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any other provision in this Agreement, the Listing Brokerage shall not advertise the Real Property on MLS until the Seller provides expressed authority to do so and all marketing materials have been approved. The Listing Brokerage shall have five (5) days following said approval to post the Real Property on the MLS.

**Jones Lang LaSalle Real Estate Services, Inc**

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

Name:

Title:

**KSV RESTRUCTURING INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER OF 1000093910  
ONTARIO INC. AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY AND WITHOUT PERSONAL  
OR CORPROATE LIABILITY**

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

Name: Noah Goldstein

Title: Managing Director

## Schedule "A"

### Sale of the Real Property:

The Listing Brokerage will be entitled to a work fee of \$140,000.

The Listing Brokerage will be entitled to a commission of 5% on the portion of the purchase price in excess of \$23,255,000 (excluding taxes), being the stalking horse bid amount. For example, if the sale price is \$25,000,000, the Listing Brokerage will be entitled to a commission of \$87,250  $((\$25,000,000 - \$23,255,000) * 5\%)$ .

## Schedule "B"

### Sale Process:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Phase 1 – Underwriting		
Due diligence	➤ JLL to review all available documents concerning the Real Property	until January 8, 2024
Prepare marketing materials	➤ JLL and the Receiver to: <ul style="list-style-type: none"><li>○ prepare a marketing brochure;</li><li>○ prepare an online data rooms;</li><li>○ prepare a confidentiality agreement (“CA”); and</li><li>○ prepare a Confidential Information Memorandum (“CIM”).</li></ul>	
Prospect Identification	➤ JLL will qualify and prioritize prospects; ➤ JLL will also have pre-marketing discussions with targeted prospects.	
Phase 2 – Marketing		
Stage 1	➤ Mass market introduction, including: <ul style="list-style-type: none"><li>○ offering summary and marketing materials printed;</li><li>○ telephone and email canvass of leading prospects; and</li><li>○ meet with and interview bidders.</li></ul> ➤ JLL to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room. ➤ JLL to facilitate diligence by interested parties.	January 8, 2024 (for 30 days)
Stage 2	➤ Bid deadline – in order to submit an offer a prospective purchaser must submit a “Qualified Bid” (as defined within the Bidding Procedures).	February 8, 2024
Phase 3 – Auction and Closing		
Auction	➤ An Auction will be held in a manner consistent with the Bidding Procedures.	Within five (5) business days of Bid Deadline
Selection of Successful Bids	➤ Select successful bidder	
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	Within ten (10) days of Auction, subject to Court availability

## **Appendix “I”**

## **BIDDING PROCEDURES**

### **Introduction**

On September 13, 2023, the Superior Court of Justice (the “**Court**”) made an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (KSV, in such capacity, the “**Receiver**”) of 1000093910 Ontario Inc. (the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the land known as 20 Regina Road, Vaughan, Ontario, together with all buildings, improvements and structures thereon and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith (the “**Property**”).

The Receiver intends to bring a motion before the Court for an order (the “**Bidding Procedures Order**”), and such motion the (“**Bidding Procedures Approval Motion**”), among other things, approving: (i) the agreement of purchase and sale (the “**Stalking Horse Bid**”) made as of November 13, 2023, between the Receiver and 2557904 Ontario Inc. (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Bidder has agreed to purchase the Property; (ii) the payment of a Break Fee and Expense Reimbursement (each as defined below) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid; and (iii) the procedures as described in this document (the “**Bidding Procedures**”).

This document contains the Bidding Procedures to be followed by the Receiver in connection with the sale (the “**Sale**”) of the Property. The Receiver will conduct the Bidding Procedures in accordance with the Bidding Procedures Order. All amounts specified herein are in Canadian dollars.

### **Assets to Be Sold**

The Receiver is offering for sale all the Debtor’s right, title and interest in and to the Property.

### **The Bidding Procedures**

The Bidding Procedures Order approves the retention of Jones Lang LaSalle Real Estate Services, Inc. (the “**Broker**”) to act as real estate broker and listing agent for the Property, and the entry into a retention agreement with the Broker by the Receiver, among other things.

Interested parties may be provided by the Receiver with such access to due diligence materials and information relating to the Property as the Receiver deems appropriate in its reasonable business judgment. In the Receiver’s sole discretion, this may include the provision of access to an electronic data room of due diligence information. The Receiver shall require interested parties to execute a form of non-disclosure agreement in form and substance satisfactory to the Receiver prior to the provision of any such access.

The Receiver shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Procedures and/or achieving a Sale. The Receiver may seek Court approval of an amendment to the Bid Procedures that it considers material. The extension of any deadline by up to two weeks shall not be considered material.

## **Bid Deadline**

An interested party that desires to make a bid shall deliver written copies of its bid (including the Required Bid Terms and Materials) to the Broker, with a copy to the Receiver, by 5:00 p.m. (Toronto time) on the date that is one month after the Court approves the Bidding Procedures or the following business day (the “**Bid Deadline**”).

## **Bid Requirements**

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver in its sole discretion, the following:

- (i) A base cash purchase price equal to or greater than \$24,555,000, which is the amount of the Stalking Horse Bid plus \$300,000, being a break fee of \$200,000 (the “**Break Fee**”), an expense reimbursement of up to \$50,000 (the “**Expense Reimbursement**”) and \$50,000;
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the first business day after the Property has been sold pursuant to the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below);
- (iii) Disclosure of the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Property or otherwise participating in such bid and the complete terms of any such participation;
- (iv) Written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction comprising such bid, that will allow the Receiver to make a determination as to the bidder’s financial and other capabilities to consummate the proposed transaction;
- (v) Written evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (vi) An acknowledgment and representations of the bidder that: (A) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid; (B) it has relied solely upon its own independent review, investigation and/or inspection of the Property (including, without limitation, any documents in connection therewith) in making its bid; and (C) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) executed by the Receiver and approved by the Court;



- (vii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting any variations from the Stalking Horse Bid; and
- (viii) A cash deposit in the amount of 10% of the purchase price in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the "**Bid Deposit**"), which shall be held by the Receiver in an escrow account (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof or as otherwise provided for in the purchase agreement; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer;

provided, however, that a bid shall not be subject to further due diligence, financing, bid protections, expense reimbursement, third party approvals or any other conditions or conditions precedent except those that are customary in a transaction of this nature (collectively, the "**Required Bid Terms and Materials**").

A bid received from a bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**", and such bidder is a "**Qualified Bidder**". Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid and the Stalking Horse Bidder shall be deemed a Qualified Bidder.

The Receiver may waive strict compliance with the Bid Deadline or any one or more of the Required Bid Terms and Materials and deem such non-compliant bid to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Receiver of the Bid Deadline or the Required Bid Terms and Materials or an obligation on the part of the Receiver to designate any other bid as a Qualified Bid. At any time during the Bidding Procedures, the Receiver may, in its reasonable business judgment, eliminate an interested party, a bidder or a Qualified Bidder (other than the Stalking Horse Bidder) from the Bidding Procedures, in which case such party will no longer be an interested party, bidder or a Qualified Bidder for the purposes of the Bidding Procedures.

### **Credit Bids**

No person shall be permitted to credit bid the indebtedness owed to them by the corporation in connection with the making of a Qualified Bid or in the conduct of the Auction.

### **"As Is, Where Is, With All Faults"**

The sale of the Property shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, counsel, representatives, partners or employees, or any of the other parties participating in the procedures outlined in these Bidding Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. Any party (including, without limitation, a Qualified Bidder) shall be deemed to

acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, all of the Debtor's right, title and interest in and to the Property shall be sold free and clear of all liens and encumbrances pursuant to the Sale Approval Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

### **Selection of Successful Bidder**

If one or more Qualified Bids is received by the Bid Deadline or so designated by the Receiver, all such Qualified Bidders shall proceed to an auction with the Stalking Horse Bidder (an "**Auction**"), which shall proceed according to the Auction Procedures set out in Schedule "A" hereto (the "**Auction Procedures**") to identify the Successful Bidder. In such event, the Receiver shall determine, in its reasonable business judgment, which Qualified Bid is the highest and/or best bid (the "**Lead Bid**"). In determining the Lead Bid, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; and (v) the net economic effect of any changes from the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

The "**Successful Bid**" will be either (i) the Stalking Horse Bid if no Qualified Bid is received by the Bid Deadline or so designated by the Receiver; (ii) in the event of an Auction, the highest and best bid as determined by the Receiver at the Auction; or (iii) a bid that is so designated by the Receiver in the event that the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below) does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder). The party that submitted the Successful Bid is referred to herein as the "**Successful Bidder**".

### **Break Fee and Expense Reimbursement**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse

Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of \$200,000 and an Expense Reimbursement on account of its reasonable and documented fees and expenses up to a maximum of \$50,000. The Receiver will take into account the Break Fee and Expense Reimbursement in each round of bidding with respect to the Stalking Horse Bidder. The Break Fee and Expense Reimbursement were material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Bidding Procedures Order.

### **Sale Approval Motion**

Subject to the availability of the Court, within ten (10) business days following the conclusion of the Auction, the Receiver shall bring a motion (the “**Sale Approval Motion**”) for an order of the Court authorizing and approving the Sale of the Property to the Successful Bidder (such order, as approved, the “**Sale Approval Order**”). At the hearing of the Sale Approval Motion, the Receiver shall, among other things, seek approval from the Court to consummate the Successful Bid. Notwithstanding the foregoing, as part of the Bidding Procedures Order, the Receiver may seek approval to proceed with the Stalking Horse Bid without the need for the Sale Approval Motion in the event the Stalking Horse Bid is the Successful Bid.

### **Acceptance of Qualified Bids**

The sale of the Property to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court. The Receiver's presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. All of the Qualified Bids other than the Successful Bid, shall be deemed rejected by the Receiver on and as of the date of the closing of the Sale that is approved by the Court.

In the event that the closing of the Sale that is approved by the Court does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder), the Receiver shall be authorized, but not required, to: (a) exercise such rights and remedies as are available to the Receiver under the Successful Bid including, if applicable, deeming that the Successful Bidder has breached its obligations pursuant to the Successful Bid and that the Successful Bidder has forfeited its Deposit to the Receiver; (b) accept any Qualified Bid or other bid of a Qualified Bidder, including, without limitation, a bid made at the Auction, in which case such bid and bidder shall be a Successful Bid and Successful Bidder, respectively, for the purposes of these Bidding Procedures, and close the transaction under such bid; and/or (c) take such other steps as it deems advisable. The Receiver reserves its right to seek all available damages and remedies, including specific performance, from any defaulting Successful Bidder.

## **Miscellaneous**

The Receiver will oversee, in all respects, the conduct of the Bidding Procedures and, without limitation, the Receiver will participate in the Bidding Procedures in the manner set out in these Bidding Procedures and the Bidding Procedures Order. All discussions or inquiries regarding the Bidding Procedures should be directed to the Receiver.

The Sale Process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. Other than as specifically set forth in the Broker's retention agreement, the Stalking Horse Bid or in a definitive agreement between the Receiver and another Successful Bidder, the Bidding Procedures do not, and will not be interpreted to create any contractual or other legal relationship among the Receiver, the Broker, any interested party, any bidder, and Qualified Bidder, the Successful Bidder, or any other party.

The Receiver may consult with any other parties with a material interest in the receivership proceedings regarding the status and material information and developments relating to the Bidding Procedures to the extent considered appropriate by the Receiver; provided that such parties may be required to enter into confidentiality arrangements satisfactory to the Receiver.

Subject to the terms of the Receivership Order, participants in the Bidding Procedures are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bids, participation in the Auction, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order and the Bidding Procedures.

## Schedule “A”

### Auction Procedures

1. If the Receiver determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held either virtually or at the offices of Bennett Jones LLP at 10:00 a.m. (Toronto time) on date that is determined by the Receiver, provided that that is not later than five business days after the Bid Deadline, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures.
2. The Auction shall be conducted in accordance with the following procedures:
  - (a) Participation At The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid, a copy thereof and a blackline to the Stalking Horse Bid by 5:00pm (Toronto Time) two business days before the scheduled date of the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Toronto time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Receiver, the Receiver, Peakhill Capital Inc., Zaherali Visram and their respective counsel and other advisors shall be permitted to attend the Auction.
  - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the “Opening Bid” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
  - (c) Receiver Shall Conduct The Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any and all factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver’s assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the

highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- (d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Receiver may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of any Overbid shall not be less than the amount of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply.
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - (iv) *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
  - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction.

- (e) Additional Procedures. The Receiver may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures (including these Auction Procedures) and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- (f) Closing the Auction. The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and advised the Qualified Bidders participating in the Auction of such determination.
- (g) Finalizing Documentation. Promptly following a bid of a Qualified Bidder being declared the Successful Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.