



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

**June 17, 2024**

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERANTIONAL INC.

RESPONDENT

THIRD REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER

JUNE 17, 2024

## 1.0 Introduction

1. This report (“**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and properties of La Pue International Inc. (the “**Company**”) acquired for or used in relation to a business carried on by the Company.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 19, 2023, KSV was appointed Receiver.
3. The Company’s principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”). The principal purpose of the receivership proceeding is to market the Real Property for sale in a Court-supervised process.
4. On December 20, 2023, the Court issued an order (the “**Sale Process Order**”) approving a sale process for the Real Property and certain related assets (the “**Sale Process**”). A copy of the Sale Process Order is attached hereto as **Appendix “A”**.

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) summarize the results of the sale process for the Real Property;

- b) provide an update on the Allendale Properties (as defined below);
- c) recommend that the Court issue an order, among other things:
  - i. approving an Asset Purchase Agreement (the “**APA**”) between the Receiver and Lakeshore Luxe Design & Build Group (the “**Purchaser**”) and vesting title in and to the Property (as defined in the APA, including the Real Property) free and clear of all liens, claims and encumbrances (the “**Approval and Vesting Order**”);
  - ii. sealing the APA until the closing of the sale transaction contemplated therein (the “**Transaction**”);
  - iii. approving this Third Report and the Receiver’s conduct and activities described therein; and
  - iv. amending the Receivership Order to exclude 5978 Allendale (as defined below) from the definition of Property under the Receivership Order.

## 1.2 Currency

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

## 1.3 Restrictions

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

## 2.0 Background

1. The Company is a single purpose entity that owns the Real Property. Pawel Fugiel (“**Fugiel**”) is the sole officer and director of the Company.
2. The Company intended to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Property (the “**Project**”). Prior to the receivership proceedings, the Company completed significant shoring and excavation work on the Project, although no other phases of construction have commenced.

3. Prior to the receivership proceedings, the Receiver understands the Company pre-sold 359 units (the “**Sale Agreements**”) and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
4. The Receiver was appointed on an application by MarshallZehr. As at May, 2023, when MarshallZehr first served its receivership application, there was approximately \$13 million owing to MarshallZehr by the Company.
5. Sovereign General Insurance Company holds a second ranking charge in the principal amount of \$2 million as security for deposit insurance. SGIC also registered a financing statement against the Debtor under the *Personal Property Security Act* (Ontario) (“**PPSA**”).
6. In addition to a PPSA registration in favour of SGIC and MarshallZehr, as at the date of the Receiver’s appointment, five construction liens totalling approximately \$12.87 million were registered against the Real Property.
7. Following its appointment, on October 23, 2023, the Receiver wrote to Fugiel to request information regarding, among other things, the Company’s creditors. In November 2023, the Receiver also requested during telephone conversations with Fugiel that he provide, among other things, the Company’s books and records. Despite numerous follow up attempts via email and telephone calls, the information requested by the Receiver has not been provided.
8. As a consequence of Fugiel’s failure to cooperate, the Receiver was forced to incur additional costs to obtain the required information and documents, including copies of all existing Agreements of Purchase and Sale. The Receiver reserved its rights to bring a motion in the future to recover these costs from Fugiel.

## 3.0 Sale Process and the APA

### 3.1 Update on Sale Process

1. Colliers Macaulay Nicolls Inc. (“**Colliers**”) was retained by the Receiver as the listing agent pursuant to the terms of the Sale Process Order.
2. The Receiver carried out the Sale Process in accordance with the Sale Process Order. A summary of the Sale Process is as follows:

#### Pre-marketing Phase

- a) Immediately after the Sale Process Order was issued, the Receiver and Colliers assembled information to be used for due diligence purposes and uploaded this information to a virtual data room (“**VDR**”);
- b) Colliers and/or the Receiver prepared:
  - an investment summary detailing the acquisition opportunity (the “**Investment Summary**”);

- a confidentiality agreement (“**CA**”);
- a VDR, which included, among other things, various reports concerning the Real Property, including environmental reports, site plans and a budget to build-out the Project which was commissioned by the Receiver;
- a form of asset purchase agreement. Pursuant to the terms of the Sale Process, the Receiver recommended that interested parties submit their offers using this agreement and blackline any changes to it. A copy of the form of asset purchase agreement was made available in the VDR; and
- a Confidential Information Memorandum (“**CIM**”), which included a summary of the Real Property and details concerning the Sale Process.

### Marketing Phase

- a) on January 17, 2024, Colliers sent the Investment Summary to over 4,700 parties in its database, including real estate developers in the Niagara region;
- b) the CA was attached to the Investment Summary. To obtain a copy of the CIM and access to the VDR, interested parties were first required to sign the CA;
- c) the listing was posted on the Real Estate Board Multiple Listing Services (“**MLS**”);
- d) the Receiver, in conjunction with Colliers, set a “bid not before date” of March 22, 2024 at 5:00 p.m. (Toronto time).

## 3.2 Sale Process Results

1. A summary of the results of the Sale Process is as follows:
  - a) 22 parties executed the CA and were provided a copy of the CIM and access to the VDR; and
  - b) 2 parties submitted offers. An offer summary in respect of the final bids received for the Real Property (the “**Offer Summary**”) is attached as **Confidential Appendix “1”**.
2. Following extensive negotiations between the Receiver and the Purchaser, the Receiver entered into the APA, subject to the approval of the Court. Attached as **Appendix “B”** is a copy of the APA with the purchase price redacted. An unredacted copy of the APA will be filed with the Court as **Confidential Appendix “2”**. The Receiver’s recommendation regarding sealing this information is discussed in Section 3.4 below.

### 3.3 The Transaction

1. The key terms of the APA are provided below. Reference should be made directly to the APS for all of its terms and conditions:
  - **Purchased Assets:** means the Company's right, title and interest in the Real Property, the assumed Sale Agreements and deposits thereunder, all permits and project documents;
  - **Purchase Price:** the Receiver seeks an order sealing the purchase price under the APA until the closing of the Transaction. The purchase price under the APA is higher than any other offer received by the Receiver in the sale process;
  - **Excluded Assets:** the Purchaser may, at its option and upon written notice to the Receiver not less than two business days prior to closing, exclude any of the Purchased Assets from the Transaction. In the event that the Purchaser exercises such option, there shall be no reduction and/or abatement to the Purchase Price as a result of such exclusions;
  - **Deposits:** a first deposit in the amount of \$500,000 was received by the Receiver (the "**First Deposit**"). At the request of MarshallZehr, the Company's senior secured lender, and notwithstanding the fact that the Second Deposit (as defined in the APA) was not received, the Receiver will proceed to obtain the Approval and Vesting Order and close the Transaction. Marshallzehr has made this request so that the Transaction can close expediently once all conditions have been satisfied or waived. The First Deposit will be forfeited by the Purchaser if the Transaction is approved and does not close;
  - **Conditions:** the APA was conditional on the purchaser completing or waiving its due diligence inspection condition. This condition was waived on April 30, 2024. The only material outstanding condition under the APA is the Receiver obtaining the Approval and Vesting Order;
  - **Representations 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 Date:** the Transaction shall be completed seven (7) business days following the date on which the Approval and Vesting Order is granted.
2. The Receiver recommends the Court issue the proposed Approval and Vesting Order approving the Transaction for the following reasons:
  - a) the process undertaken by the Receiver to market the Real Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
  - b) Colliers has extensive experience selling development properties and widely canvassed the market for prospective purchasers;
  - c) the Purchaser's offer represents the highest and best offer received for the Real Property;

- d) the Receiver and Colliers are of the view that the Transaction provides for the greatest recovery available for the benefit of the Company's stakeholders in the circumstances; and
- e) MarshallZehr consents to the Transaction.

### 3.4 Sealing

1. The Receiver recommends that the Offer Summary and an unredacted copy of the APA be filed with the Court on a confidential basis and remain sealed until the closing of the Transaction. These documents contain confidential information, including with respect to value of the Real Property, the identity of the bidders and the value of the other bids received that could adversely impact the future marketability of the Real Property should the Transaction not close.
2. Sealing this information is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the sale process.
3. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full. The Receiver is of the view that the sealing of the Confidential Appendix is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendix is appropriate in the circumstances.

### 4.0 The Allendale Properties

1. After its appointment as Receiver, the Receiver learned that in addition to the Real Property, the Company was also the registered owner of two small adjacent lots municipally known as 5978 Allendale Avenue, Niagara Falls, Ontario ("**5978 Allendale**") and 6092 Allendale Avenue, Niagara Falls, Ontario ("**6092 Allendale**", and together, the "**Allendale Properties**").
2. Attached hereto as **Appendix "C"** is the parcel search for 5978 Allendale that discloses the following registrations against this property:
  - a) a first ranking charge in favour of Framajo Enterprises Limited ("**Framajo**"), as amended, in the principal amount of \$1,100,000;
  - b) a second ranking charge in the principal amount of \$800,000 in favour of Tomasz Sobota, Andrzej Zalewski and Daniela Lupu; and
  - c) a construction lien in favour of Buttcon Limited in the amount of \$8,205,941.
3. The Receiver was provided with a copy of the tax certificate with respect to this property as at April 24, 2024, a copy of which is attached hereto as **Appendix "D"** that discloses that as at April 24, 2024, there were outstanding property taxes on this property in the amount of \$20,267.29.

4. The Receiver was advised that Framajo issued a Notice of Sale to the Company, a copy of which is attached hereto as **Appendix "E"**. In the Notice of Sale, Framajo states that the amounts owing under its first mortgage is \$1,458,429.57.
5. Counsel for the Receiver requested and received copies of Framajo's loan and security documents together with evidence of advances. Following its review of the documents provided, counsel for the Receiver has opined that Framajo has a validly secured first mortgage against 5978 Allendale.
6. The Receiver has obtained an opinion of value for this property from Colliers which disclosed that the value of this property is less than the amount owing to Framajo under its first mortgage.
7. Framajo has requested that it be permitted to proceed to enforce mortgage against 5978 Allendale under power of sale. In light of the value of this property and the amounts owing to Framajo, the Receiver has agreed to request an amendment to the Receivership Order that excludes 5978 Allendale from the definition of Property subject to this receivership.
8. Attached hereto as **Appendix "F"** is the parcel search for 6092 Allendale. The search discloses the following registrations against this property in order of registration:
  - a) Charge in the principal amount of \$1,505,000 in favour of Jaroslaw Proborszcz and Yasmeeen Moroz; and
  - b) A charge in the principal amount of \$820,000 in favour of Dariusz Konopka and Aleksander Jacak.
9. The Receiver was contacted by Marek Tufman, who advised that he is acting as legal counsel for all of the parties holding a registered mortgage against 6092 Allendale. The Receiver and its counsel were advised by Mr. Tufman that his clients also wish to proceed with enforcement on their mortgages. Counsel for the Receiver and Mr. Tufman are continuing to engage in discussions about this request.

## 5.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## **Appendix “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 20<sup>TH</sup>  
 )  
JUSTICE STEELE ) DAY OF DECEMBER 2023  
 )

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

**ORDER  
(Sale Process Approval)**

**THIS MOTION**, made by KSV RESTRUCTURING INC. in its capacity as Court-appointed receiver, without security (in such capacities, the “**Receiver**”), over all assets, undertakings and properties La Pue International Inc. (the “**Debtor**”) for an order, *inter alia*, approving a sale process (the “**Sale Process**”) for the Debtor’s property, including the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of the Receiver dated December 13, 2023 and on hearing the submissions of counsel for the Receiver, and such other counsel as are present and listed on the counsel slip,

**SERVICE**

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

**APPROVAL OF SALE PROCESS**

2. **THIS COURT ORDERS** that the Listing Agreement between the Receiver and Colliers Macaulay Nicolls Inc., for the sale of the Real Property substantially in the form attached as Appendix A to the First Report (the "**Listing Agreement**") be and hereby is approved and the Receiver is authorized to engage Colliers as a listing agent for the sale of the Real Property on the terms set out in the Listing Agreement.

3. **THIS COURT ORDERS** that the Sale Process, as described in section 3.2 of the First Report, be and is hereby approved and the Receiver is hereby authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.



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Applicant

Respondent

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

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

PROCEEDING COMMENCED AT  
TORONTO

**SALE PROCESS APPROVAL ORDER**

**CHAITONS LLP**

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**Lawyers for KSV Restructuring Inc., in its capacity  
as Court-Appointed Receiver**

## **Appendix “B”**

## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** dated the 4<sup>th</sup> day of April, 2024.

**BETWEEN:**

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

- and -

**Lakeshore Luxe Design & Build Group** (the "**Purchaser**")

**RECITALS:**

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

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

**1. DEFINITIONS.**

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

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

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

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

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

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

## 2. SCHEDULES.

The following schedules are appended to this Agreement:

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

## 3. AGREEMENT TO PURCHASE AND SELL.

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

## 4. PURCHASE PRICE.

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

## 5. SATISFACTION OF PURCHASE PRICE.

The Purchase Price shall be paid and satisfied as follows:

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

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

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

#### 6. DEPOSIT.

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

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

#### 7. APPROVAL AND VESTING ORDER.

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

#### 8. CLOSING ADJUSTMENTS.

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

#### 9. ASSUMED LIABILITIES.

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

#### 10. ASSUMED AGREEMENTS OF PURCHASE AND SALE AND CONTRACTS.

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

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

#### 11. ASSIGNMENT OF PURCHASED ASSETS.

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

#### 12. EXCLUDED ASSETS.

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

#### 13. CLOSING DATE.

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

#### 14. ELECTRONIC REGISTRATION.

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

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

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

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

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

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

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

#### 15. **PRE-CLOSING RISK.**

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

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

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

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

**17. VENDOR'S REPRESENTATIONS AND WARRANTIES.**

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

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

**18. "AS IS, WHERE IS".**

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

**19. ENCROACHMENTS.**

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

**20. INDEMNIFICATION AND RELEASE BY PURCHASER.**

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

**21. NON-REGISTRATION.**

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

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

## 22. VENDOR'S CLOSING CONDITIONS.

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

## 23. PURCHASER'S CLOSING CONDITIONS.

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

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

## 24. VENDOR'S CLOSING DELIVERIES.

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

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

## 25. PURCHASER'S CLOSING DELIVERIES.

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

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

## 26. DOCUMENTATION PREPARATION AND REGISTRATION.

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

## 27. LAND TRANSFER TAXES.

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

## 28. HARMONIZED SALES TAX.

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

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

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

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

**29. Remedies for Breach of Agreement.**

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

**30. Termination If No Breach of Agreement.**

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

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

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

**31. PLANNING ACT (ONTARIO).**

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

**32. NOTICE.**

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

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

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

*ADF*

Attention: Noah Goldstein  
Email: ngoldstein@ksadvisory.com

(d) with a copy to the Vendor's Solicitors.

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission unless such notice is delivered or transmitted outside of usual business hours, in which event the notice shall be deemed to have been delivered or transmitted on the next Business Day. A Party may change its address and/or e-mail address by providing notice in accordance with this Section 32.

**33. WAIVER OF CONDITIONS.**

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such Party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting Party without prejudice to the benefiting Party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the Transaction by a Party shall be deemed to be a waiver by such Party of compliance with any condition inserted for its benefit and not satisfied at Closing.

**34. SEVERABILITY.**

If any provision contained in this Agreement or the application thereof to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to such Person or circumstances other than those to whom it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**35. DIVISION/HEADINGS.**

The division of this Agreement into sections, subsections, paragraphs and subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

**36. ENTIRE AGREEMENT.**

This Agreement and the Schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Purchased Assets. Each of the Parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the Parties agree that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive Closing.

**37. CUMULATIVE REMEDIES.**

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

**38. INTERPRETATION.**

This Agreement shall be read with all changes of gender and number as required by the context.

**39. STATUTE AND SECTION REFERENCES.**

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or subparagraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

**40. TIME OF ESSENCE.**

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

**41. CURRENCY AND PAYMENT OBLIGATIONS.**

Except as otherwise provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian Dollars and any payment contemplated by this Agreement shall be made by certified cheque, bank draft or wire transfer.

**42. TENDER.**

Any tender of notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by wire transfer, a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

**43. FURTHER ASSURANCES.**

Except as otherwise expressed herein to the contrary, each Party shall, without receiving additional consideration therefor, co-operate with and take such additional actions as may be requested by the other Party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

**44. CONFIDENTIALITY.**

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any Person. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and the Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such Person also keeps such terms confidential as aforesaid.

**45. NON-BUSINESS DAYS.**

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

**46. GOVERNING LAWS.**

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario and the laws of Canada applicable therein.

**47. ASSIGNMENT.**

No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, the Purchaser shall have the right, until five (5) Business Days before the hearing date for the motion to obtain the Approval and Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Purchased Assets herein to any company or companies affiliated (as that term is defined in the Ontario *Business Corporations Act*) with the Purchaser, provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

**48. VENDOR'S CAPACITY.**

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-Appointed Receiver of the Debtor and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any Liabilities against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Debtor and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

**49. SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

**50. COUNTERPARTS AND ELECTRONIC TRANSMISSION.**

This Agreement may be executed in any number of original counterparts, with the same effect as if each of the Parties had signed the same document, and will become effective when one or more counterparts have been signed by both of the Parties and delivered to other. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be

deemed to be dated the first date set out above and accepted on the date of the last signature, and only one of which need be produced for any purpose.

51. **IRREVOCABLE.**

This Agreement shall be irrevocable by the Purchaser.

*[remainder of this page intentionally left blank]*

DATED as of the date first mentioned above.

**LAKESHORE LUXE DESIGN & BUILD GROUP**

*Anthony De Francesco*

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

Name: Anthony De Francesco

Title: Authorized Signing Officer

I have authority to bind the Corporation.

The Vendor hereby accepts this Agreement and agrees with the Purchaser to complete the Transaction, subject to and in accordance with the provisions contained herein.

DATED at Toronto, Ontario this 4<sup>th</sup> day of April, 2024.

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

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

Name: Noah Goldstein

Title: Authorized Signing Officer

I have authority to bind the Corporation.

**SCHEDULE "A"**  
**ASSUMED AGREEMENTS OF PURCHASE AND SALE**

To be inserted pursuant to the provisions of Subsection 10(a) hereof.

**SCHEDULE "B"**  
**THE LANDS**

The lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in PIN 64349-0258 (LT).

**SCHEDULE "C"**  
**THE PERMITTED ENCUMBRANCES**

1. any registered reservations, restrictions, rights of way, easements or covenants that run with the Lands;
2. any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Lands;
4. any minor easements for the supply of utility service to the Lands or adjacent properties;
5. encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown;
8. liens for taxes if such taxes are not due and payable;
9. Instrument No. SN613492, registered on December 12, 2019, being an application to consolidate;
10. Instrument No. SN629148, registered on May 14, 2020, being a notice of agreement between the Debtor and the Corporation of the City of Niagara Falls;
11. Instrument No. SN642462, registered on September 18, 2020, being a notice of site plan agreement between the Debtor and the Corporation of the City of Niagara Falls;
12. Plan 59R-16793, registered on October 1, 2020, being a reference plan;
13. Instrument No. SN666113, registered on March 22, 2021, being By-Law 2020-04 from the Corporation of the City of Niagara Falls;
14. Instrument No. SN666891, registered on March 26, 2021, being a notice from the Corporation of the City of Niagara Falls;
15. Plan 59R-17206, registered on March 11, 2022, being a reference plan;
16. Instrument No. SN716940, registered on March 11, 2022, being an application for absolute title;
17. Instrument No. SN721529, registered on April 12, 2022, being an application (general) from the Corporation of the City of Niagara Falls;
18. Instrument No. SN721530, registered on April 12, 2022, being an application (general) from the Corporation of the City of Niagara Falls;
19. Instrument No. SN721531, registered on April 12, 2022, being an application (general) from the Corporation of the City of Niagara Falls;
20. Instrument No. SN723231, registered on April 26, 2022, being a notice from the Corporation of the City of Niagara Falls;
21. Plan 59R-17292, registered on June 13, 2022, being a reference plan;
22. Instrument No. SN754703, registered on January 13, 2023, being a transfer easement from the Debtor to Anastasia Georgina Loukas and 2779006 Ontario Inc.;
23. Instrument No. SN754853, registered on January 16, 2023, being a land registrar's order from the Niagara South Land Registry Office; and
24. Instrument No. SN763208, registered on April 17, 2023, being a notice from Anastasia Georgina Loukas, 2779006 Ontario Inc. and the Debtor.

*ADF*

**SCHEDULE "D"**  
**ASSUMED CONTRACTS**

To be inserted pursuant to the provisions of Subsection 10(b) hereof.

**SCHEDULE "E"**  
**PURCHASER'S DUE DILIGENCE INSPECTION CONDITION**

1. The Purchaser's obligation to complete the Transaction shall be subject to the Purchaser, in its sole, subjective, unfettered and unreviewable discretion, being satisfied with the following:

(a) the results all environmental assessments performed on the Property;

(b) confirmation that all funds held in trust for the sale of the condominium units within the Project shall be transferrable to the Purchaser on Closing;

(c) all building approvals from the City of Niagara Falls have not been modified and that approvals are still in place for three (3) condominium towers; and

(d) the Purchaser's subjective assessment of the economic viability of the Purchaser's proposed use of the Property and review of the Due Diligence Deliveries (as hereinafter defined) (the "**Due Diligence Period**").

2. The Due Diligence Period shall commence on the date that is the later of the following:

(a) the Acceptance Date; and

(b) the date that the Vendor has delivered and/or made available to the Purchaser the Due Diligence Deliveries.

The Due Diligence Period shall end at 5:00 p.m. Toronto time on the first Business Day that is ten (10) calendar days following the commencement thereof (the "**Due Diligence Deadline**").

3. (a) The Vendor shall deliver and/or make available to the Purchaser either in a virtual data room or at a designated location, within three (3) Business Days of the Acceptance Date, the following (collectively, the "**Due Diligence Deliveries**") provided that the Due Diligence Deliveries have not been previously made available to the Purchaser in any format, whether electronic, paper copy or otherwise:

all of the following materials affecting or pertaining to the Property currently within the Vendor's possession or control: plans (including "as-built" plans), surveys, area certificates, drawings, consultants' reports (including, without limitation, environmental reports and engineering reports), title insurance policies, agreements with Governmental Authorities (pending or executed), governmental approvals and permits, leases, licenses, all other agreements to occupy or use space at the Property (including, without limitation, a written summary of any oral agreements), income and expense statements for the past three (3) years, gross revenue and costs for the current calendar year, list and copies of all contracts for the management, operation, service or maintenance of the land and/or buildings (including, without limitation, agreements for security, landscaping or cleaning, listing agreements, commission agreements and written summaries of any oral agreements), list and copies of warranties and guarantees for structures, list of chattels included in the Purchase Price if not set out in of the standard pre-set portion of this Agreement (the "Standard Form") realty tax bills and assessment notices for the current and previous three (3) years, outstanding work orders, violation and deficiency notices and open building permits. The Purchaser agrees that all such materials shall be returned forthwith to the Vendor if the Transaction is not completed. The Vendor agrees that it shall promptly deliver to the Purchaser, as soon as reasonably possible after becoming aware of same, any updates to the Due Diligence Deliverables which arise after the deadline for delivery in this paragraph but prior to the Due Diligence Deadline.

(b) The Due Diligence Deliveries are being provided to the Purchaser by the Vendor as a courtesy only and without the intention that the Purchaser will rely on same. The Purchaser acknowledges and agrees that the Vendor makes no representation or warranty as to the accuracy of any of the Due Diligence Deliveries, and the Purchaser shall have no remedy or recourse against the Vendor if any of the Due Diligence Deliveries are later determined to be materially or immaterially inaccurate.

4. In the event the Due Diligence Inspection Condition is not satisfied or waived on or before the Due Diligence Deadline, this Agreement shall be terminated, null and void and of no further force or effect whatsoever and neither Party to this Agreement shall have a claim against the other Party with respect to this Agreement other than the return of the Deposit to the Purchaser pursuant to the provisions of this Agreement. If by 5:00 p.m. Toronto time on the Due Diligence Deadline the Purchaser has not given notice to the Vendor or the Vendor's Solicitors that the Due Diligence Inspection Condition has not been satisfied or has been satisfied or has been waived, the Due Diligence Inspection Condition shall be deemed not to have been satisfied or waived.

## **Appendix “C”**

PROPERTY DESCRIPTION: LT 54 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS (AMENDED BY REGISTRAR #27 1999/11/26 AT 15:19PM)

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

1999/09/20

OWNERS' NAMES

LA PUE INTERNATIONAL INC.

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p><b>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1999/09/20 ON THIS PIN**</b></p> <p><b>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1999/09/20**</b></p> <p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1999/09/17 **</b></p> <p><b>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</b></p> <p><b>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</b></p> <p><b>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</b></p> <p><b>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</b></p> <p><b>**DATE OF CONVERSION TO LAND TITLES: 1999/09/20 **</b></p>						
RO718054	1996/12/20	TRANSFER		*** COMPLETELY DELETED ***	MALMER HOLDINGS LTD.	
LT236093	2003/02/11	CHARGE		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	1211874 ONTARIO LIMITED	
SN3013	2003/08/05	APL DEL EXECUTION		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.		
		REMARKS: 99-00143				
SN3720	2003/08/12	CHARGE		*** DELETED AGAINST THIS PROPERTY *** MALMER HOLDINGS LTD.	AMARANTH RESOURCES LIMITED EPIREON CAPITAL LIMITED	
SN3721	2003/08/12	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** MALMER HOLDINGS LTD.	AMARANTH RESOURCES LIMITED	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
					EPIREON CAPITAL LIMITED	
SN24119	2004/02/19	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** AMARANTH RESOURCES LIMITED	MAPLE TRUST COMPANY	
SN24120	2004/02/19	NOTICE		*** COMPLETELY DELETED *** AMARANTH RESOURCES LIMITED	MAPLE TRUST COMPANY	
SN42112	2004/07/21	NOTICE		*** COMPLETELY DELETED *** EPIREON CAPITAL LIMITED MAPLE TRUST COMPANY	MALMER HOLDINGS LTD.	
SN61478	2004/12/17	CHARGE		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	COMMUNITY TRUST COMPANY	
SN61479	2004/12/17	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	COMMUNITY TRUST COMPANY	
SN61838	2004/12/21	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	COMMUNITY TRUST COMPANY	
SN62329	2004/12/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** MAPLE TRUST COMPANY EPIREON CAPITAL LIMITED		
SN164319	2007/05/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1211874 ONTARIO LIMITED		
SN288813	2010/07/30	NOTICE		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	COMMUNITY TRUST COMPANY	
SN288826	2010/07/30	CHARGE		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	EPIREON CAPITAL LIMITED FORSGATE FUNDING CORPORATION INC.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
SN371818	2013/03/28	DISCH OF CHARGE		*** COMPLETELY DELETED *** EPIREON CAPITAL LIMITED FORSGATE FUNDING CORPORATION INC.		
	REMARKS: SN288826.					
SN372166	2013/04/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** COMMUNITY TRUST COMPANY		
	REMARKS: SN61478.					
SN513034	2017/06/01	NO OPTION PURCHASE		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.	LA PUE INTERNATIONAL INC.	
SN532927	2017/11/07	APL (GENERAL)		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.		
	REMARKS: SN513034					
SN532928	2017/11/07	TRANSFER	\$355,000	MALMER HOLDINGS LTD.	LA PUE INTERNATIONAL INC.	C
	REMARKS: PLANNING ACT STATEMENTS.					
SN532929	2017/11/07	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	MALMER HOLDINGS LTD.	
SN532933	2017/11/07	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	SOBOTA, TOMASZ	
SN571524	2018/11/09	DISCH OF CHARGE		*** COMPLETELY DELETED *** SOBOTA, TOMASZ		
	REMARKS: SN532933.					
SN571525	2018/11/09	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	449486 ONTARIO LTD.	
SN571575	2018/11/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** MALMER HOLDINGS LTD.		
	REMARKS: SN532929.					
SN649374	2020/11/06	DISCH OF CHARGE		*** COMPLETELY DELETED *** 449486 ONTARIO LTD.		
	REMARKS: SN571525.					
SN666429	2021/03/24	CHARGE	\$550,000	LA PUE INTERNATIONAL INC.	FRAMAJO ENTERPRISES LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN710458	2022/01/26	CHARGE	\$800,000	LA PUE INTERNATIONAL INC.	SOBOTA, TOMASZ ZALEWSKI, ANDRZEJ LUPU, DANIELA	C
SN720373	2022/04/04	NOTICE		LA PUE INTERNATONAL INC.	FRAMAJO ENTERPRISES LIMITED	C
		REMARKS: SN666429				
SN720382	2022/04/04	POSTPONEMENT		SOBOTA, TOMASZ ZALEWSKI, ANDRZEJ LUPU, DANIELA	FRAMAJO ENTERPRISES LIMITED	C
		REMARKS: SN710458 TO SN720373 & SN666429.				
SN760306	2023/03/17	CONSTRUCTION LIEN	\$8,205,941	BUTTCO LIMITED		C
SN769190	2023/06/12	CERTIFICATE		BUTTCO LIMITED		C
		REMARKS: SN760306				
SN772975	2023/07/17	NOTICE		LA PUE INTERNATIONAL INC.	SOBOTA, TOMASZ ZALEWSKI, ANDRZEJ LUPU, DANIELA	C
		REMARKS: SN710458				

## **Appendix “D”**



**STATEMENT OF PROPERTY TAX OWING**  
**THE MUNICIPAL ACT, 2001, S.O. 2001, C.25, S.S. 352(1) AS AMENDED**

Certificate No.: 15770  
 Date : April 24, 2024

Lawyer: MICHAELS & MICHAELS  
 1288 CALEDONIA RD

Roll: 2725 070 001005000000  
 Property: PLAN 14 LOT 54 NP273

TORONTO ON  
 M6A3B9

Location: 5978 ALLENDALE AVE  
 Owner: LA PUE INTERNATIONAL INC.

Requested by: CAROLINE CABRAL

**TAX ARREARS**

YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST OUTSTANDING	TOTAL
2021 & Prior.:		0.00	0.00	0.00
2022:	8920.83	4948.15	1174.92	6123.07
2023:	10308.22	10308.22	1222.88	11531.10
<b>Total</b>		15256.37	2397.80 <sup>(A)</sup>	17654.17

**CURRENT YEAR BREAKDOWN**

INSTALLMENT	TAXES LEVIED	TAXES OUTSTANDING	TAXES PAST DUE
Feb 29, 2024 I	2549.38	2549.38	2549.38
Apr 30, 2024 I	2548.00	2548.00	
Penalty		63.74	63.74
Credit			0.00
Misc. Charges		0.00	0.00
<b>Total</b>	5097.38	5161.12 <sup>(B)</sup>	2613.12

**TOTAL PAST DUE <sup>(A+B)</sup> 20267.29**

**NO AREA CHARGES AND OTHER ADJUSTMENT CHARGES**

**NO LOCAL IMPROVEMENTS**

I hereby certify that the above statements respectively show all arrears of taxes returned to this office and due and owing against the above lands, and that no part of the said lands has been sold for taxes under the Municipal Tax Sales Act.

Pending adjustments required by legislation, and/or subsequent additional levies under the Assessment Act and/or Municipal Act are not included.

**WATER LIEN TO BE DETERMINED BY FINAL READING.**

  
 \_\_\_\_\_  
 FOR TREASURER  
 TIFFANY CLARK

## Jodi Lafortune

---

**From:** Tax Accounts  
**Sent:** Wednesday, April 24, 2024 12:16 PM  
**To:** Jodi Lafortune  
**Subject:** FW: [EXTERNAL]-Tax Certificate Request for 5978 ALLENDALE AV

**From:** City of Niagara Falls <donotreply@niagarafalls.ca>  
**Sent:** Wednesday, April 24, 2024 12:10 PM  
**To:** Tax Accounts <taxes@niagarafalls.ca>  
**Subject:** [EXTERNAL]-Tax Certificate Request for 5978 ALLENDALE AV



### Tax Certificate Request for 5978 ALLENDALE AV

**Roll Number: 2725070001005000000**

Caroline Cabral from Michaels & Michaels has requested a Tax Certificate with the following information:

- Address: 5978 ALLENDALE AV
- Roll Number: 2725070001005000000
- Mail Certificate: No
- Amount: \$70.00

### Mailing Information

- Name: Caroline Cabral
- Address: 1288 Caledonia Road, Toronto, Canada
- Postal Code: M6A3B9
- Phone: 4167826711
- Email: [ccabral@michaelslaw.ca](mailto:ccabral@michaelslaw.ca)

To attach the Tax Certificate, visit [Michaels & Michaels's requests](#)

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**CITY OF NIAGARA FALLS  
TAX ACCOUNT HARDCOPY**

PT4510B  
Page : 1

Date : 24-Apr-2024 Time : 3:24 pm

Roll : 2725 070 001005000000

5978 ALLENDALE AVE

Balance as of : 24-Apr-2024

ACTIVE

LA PUE INTERNATIONAL INC.

LA PUE INTERNATIONAL INC.  
511 MACDONALD RD  
OAKVILLE ON L6J 2B7

Phase in Value : 338000  
Cur Val Assmnt Portn : 338000  
Cur Val Assmnt Total : 338000  
Property Code : 105  
Depth of FFE Acreage : 170.30  
LOT SIZE KEY : SF  
LOT SIZE : 8515.00  
High School : 00  
Public School : 01  
Seperate School : 01

French Public : 01  
French Seperate : 01  
Unit Class : VL  
Zone : TC

Legal Description  
PLAN 14 LOT 54 NP273

5,097.38 Total 2024 Levy

TAXES ON ACCOUNT					
	Current	1 Year	2 Years	3+ Years	Total
Amount	5,097.38	10,308.22	4,948.15	0.00	20,353.75
Interest	63.74	1,222.88	1,174.92	0.00	2,461.54
<b>Total</b>	<b>5,161.12</b>	<b>11,531.10</b>	<b>6,123.07</b>	<b>0.00</b>	<b>22,815.29</b>
				Un-Applied:	0.00
				Balance:	22,815.29

	1st Installment		2nd Installment	
	Due Date	Amount	Due Date	Amount
Interim	29-Feb-2024	2,549.38	30-Apr-2024	2,548.00

**ASSESSMENT YEAR 2024**

Class Description	Category Description	Src	Effective Date	End Date	Gross Value
COM TX: VACANT LAN	NO SCHOOL SUPPORT	O	01-Jan-2024	31-Dec-2024	338,000

NO LOCAL IMPROVEMENTS

**HISTORY FROM JAN. 01, 2023 TO APR. 24, 2024**

Date	Description	Amount
Jan. 06, 2023	Interest	61.85
Jan. 31, 2023	Interest	61.85
Jan. 31, 2023	Tax Levies	4,278.74
Mar. 06, 2023	Interest	61.85
Mar. 06, 2023	Penalty	26.75
Apr. 04, 2023	Interest	61.85
Apr. 04, 2023	Penalty	26.75
May. 02, 2023	Interest	61.85
May. 02, 2023	Penalty	53.48
Jun. 01, 2023	Interest	61.85
Jun. 01, 2023	Penalty	53.48
Jul. 10, 2023	Interest	61.85
Jul. 10, 2023	Penalty	53.48
Jul. 31, 2023	Interest	61.85
Jul. 31, 2023	Penalty	53.48
Aug. 01, 2023	Tax Levies	6,029.48
Sep. 05, 2023	Interest	61.85
Sep. 05, 2023	Penalty	91.18
Oct. 03, 2023	Interest	61.85
Oct. 03, 2023	Penalty	91.18
Nov. 02, 2023	Interest	61.85
Nov. 02, 2023	Penalty	128.85
Dec. 04, 2023	Interest	61.85

**CITY OF NIAGARA FALLS  
TAX ACCOUNT HARDCOPY**

PT4510B  
Page : 2

Date : 24-Apr-2024 Time : 3:24 pm

Roll : 2725 070 001005000000

5978 ALLENDALE AVE

Balance as of : 24-Apr-2024

ACTIVE

LA PUE INTERNATIONAL INC.

LA PUE INTERNATIONAL INC.  
511 MACDONALD RD  
OAKVILLE ON L6J 2B7

Phase in Value : 338000  
Cur Val Assmnt Portn : 338000  
Cur Val Assmnt Total : 338000  
Property Code : 105  
Depth of FFE Acreage : 170.30  
LOT SIZE KEY : SF  
LOT SIZE : 8515.00  
High School : 00  
Public School : 01  
Seperate School : 01

French Public : 01  
French Seperate : 01  
Unit Class : VL  
Zone : TC

Legal Description  
PLAN 14 LOT 54 NP273

5,097.38 Total 2024 Levy

**HISTORY FROM JAN. 01, 2023 TO APR. 24, 2024**

Date	Description	Amount
Dec. 04, 2023	Penalty	128.85
Jan. 03, 2024	Interest	190.70
Jan. 31, 2024	Interest	190.70
Feb. 01, 2024	Tax Levies	5,097.38
Mar. 04, 2024	Interest	190.70
Mar. 04, 2024	Penalty	31.87
Apr. 02, 2024	Interest	190.70
Apr. 02, 2024	Penalty	31.87

**Additional penalty is added on 1<sup>st</sup> of each month. Phone or write for correct amount if necessary.**

**This information is not to be construed as a Tax Certificate per the Municipal Act and therefore is not binding on the City of Niagara Falls.  
E & OE**

## **Appendix “E”**

## **NOTICE OF SALE UNDER CHARGE/MORTGAGE OF LAND**

**TO:** Those parties set out in Schedule "A" attached hereto

**TAKE NOTICE** that default has been made in payment of the moneys due under a certain charge/mortgage made between:

**LA PUE INTERNATIONAL INC.,**  
as Chargor

- and -

**FRAMAJO ENTERPRISES LIMITED,**  
as Chargee

- and -

**PAWEL FUGIEL,**  
as Guarantor

upon the following property, namely:

PIN 64349-0178 (LT)  
LT 54 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS (AMENDED  
BY REGISTRAR #27 1999/11/26 AT 15:19PM)

and municipally known as 5978 Allendale Avenue, Niagara Falls, Ontario, L2G 3Z3,

which charge/mortgage was registered on the 24<sup>th</sup> day of March, 2021 in the Land Registry Office for the Land Titles Division of Niagara South (No. 59) as Instrument No. SN666429 and was subsequently amended by a notice registered with the said Land Registry Office on the 4<sup>th</sup> day of April, 2022 as Instrument No. SN720373.

**AND I HEREBY GIVE YOU NOTICE** that the amount now due on the mortgage for principal money, interest, taxes, and costs, respectively, are as follows:

For principal as at March 1, 2023	\$ 1,100,000.00
For interest from March 1, 2023 to April 1, 2023 @ 9%	8,408.82
For interest from April 2, 2023 to May 31, 2024 @ 20%	287,970.74
Three months' interest pursuant to s. 2.04(b) of Mortgage and Section 17 of the Mortgage Act	55,000.00
For returned payment fee re April 1, 2023 returned payment	300.00
Discharge Statement Fee	750.00
For legal fees, disbursements, and taxes	6,000.00
<b>TOTAL</b>	<b><u>\$1,458,429.57</u></b>

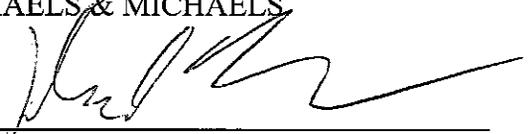
(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of twenty (20%) per cent per annum on the principal and interest hereinbefore mentioned, from the 31<sup>st</sup> day of May, 2024 to the date of payment.

**AND UNLESS** the said sums are paid on or before the 8<sup>th</sup> day of July, 2024, we shall sell the property covered by the said mortgage under the provisions contained in it.

**THIS NOTICE** is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 31<sup>st</sup> day of May, 2024.

**FRAMAJO ENTERPRISES LIMITED,**  
by its solicitors  
**MICHAELS & MICHAELS**

Per:   
\_\_\_\_\_  
Daniel Michaels

MICHAELS & MICHAELS,  
Barristers and Solicitors,  
1288 Caledonia Road,  
North York, Ontario, M6A 3B9  
Telephone: 647.812.1462  
Facsimile: 416.783.7611  
email: [dmichaels@michaelslaw.ca](mailto:dmichaels@michaelslaw.ca)  
File No. 17920

**SCHEDULE "A"**

TO: LA PUE INTERNATIONAL INC.  
2043 Ghent Avenue  
BURLINGTON, Ontario, L7R 1Y4

AND TO: LA PUE INTERNATIONAL INC.  
511 MacDonald Road  
OAKVILLE, Ontario, L6J 2B7

AND TO: LA PUE INTERNATIONAL INC.  
6158 Allendale Avenue,  
NIAGARA FALLS, Ontario, L2G 0A5

AND TO: LA PUE INTERNATIONAL INC.  
c/o Pawel Fugiel  
96 Cumberland Drive  
MISSISSAUGA, Ontario, L5G 3M8

AND TO: LA PUE INTERNATIONAL INC.  
c/o Keyser Mason Ball, LLP  
Attention: Oliver De Guerre  
900 - 3 Robert Speck Parkway  
MISSISSAUGA, Ontario, L4Z 2G5

AND TO: PAWEL FUGIEL  
6158 Allendale Avenue,  
NIAGARA FALLS, Ontario, L2G 0A5

AND TO: PAWEL FUGIEL  
96 Cumberland Drive  
MISSISSAUGA, Ontario, L5G 3M8

AND TO: PAWEL FUGIEL  
c/o Keyser Mason Ball, LLP  
Attention: Oliver De Guerre  
900 - 3 Robert Speck Parkway  
MISSISSAUGA, Ontario, L4Z 2G5

AND TO: DANIELA LUPU  
c/o 82 Queen Street South  
MISSISSAUGA, Ontario, L5M 1K6

AND TO: ANDRZEJ ZALEWSKI  
c/o 82 Queen Street South  
MISSISSAUGA, Ontario, L5M 1K6

AND TO: TOMASZ SOBOTA  
c/o 82 Queen Street South  
MISSISSAUGA, Ontario, L5M 1K6

AND TO: BUTTCON LIMITED  
8000 Jane St, Tower B, Suite 401  
CONCORD, Ontario, L4K 5B8

AND TO: BUTTCON LIMITED  
c/o Emilio Bisceglia  
9100 Jane Street, 2<sup>nd</sup> Floor  
CONCORD, Ontario, L4K 0A4

## **Appendix “F”**

PROPERTY DESCRIPTION: LT 2 E/S ALLEN ST PL 653 ABSTRACTED AS BLK 29 VILLAGE OF NIAGARA FALLS ; NIAGARA FALLS

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

1999/09/20

OWNERS' NAMES

LA PUE INTERNATIONAL INC.

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p><b>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1999/09/20 ON THIS PIN**</b></p> <p><b>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1999/09/20**</b></p> <p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1999/09/17 **</b></p> <p><b>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</b></p> <p><b>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</b></p> <p><b>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</b></p> <p><b>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</b></p> <p><b>**DATE OF CONVERSION TO LAND TITLES: 1999/09/20 **</b></p>						
RO703253	1996/03/29	TRANSFER		*** COMPLETELY DELETED ***	BAMBARA, CARMELA GULLA, GIUSEPPE	
RO703254	1996/03/29	CHARGE		*** COMPLETELY DELETED ***	DEAMICIS, GABRIEL	
SN210108	2008/06/05	DISCH OF CHARGE		*** COMPLETELY DELETED *** DEAMICIS, GABRIEL		
REMARKS: RE: RO703254						
SN451463	2015/11/06	TRANSFER		*** COMPLETELY DELETED *** BAMBARA, CARMELA GULLA, GIUSEPPE	2137499 ONTARIO INC.	
SN513037	2017/06/01	NO OPTION PURCHASE		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN532930	2017/11/07	APL (GENERAL) <i>REMARKS: DELETING SN513037</i>		2137499 ONTARIO INC. *** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	LA PUE INTERNATIONAL INC.	
SN532931	2017/11/07	TRANSFER <i>REMARKS: PLANNING ACT STATEMENTS.</i>	\$355,000	2137499 ONTARIO INC.	LA PUE INTERNATIONAL INC.	C
SN532932	2017/11/07	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	2137499 ONTARIO INC.	
SN532933	2017/11/07	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	SOBOTA, TOMASZ	
SN571523	2018/11/09	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	GIANNOU, JOHN	
SN571524	2018/11/09	DISCH OF CHARGE <i>REMARKS: SN532933.</i>		*** COMPLETELY DELETED *** SOBOTA, TOMASZ		
SN571576	2018/11/13	DISCH OF CHARGE <i>REMARKS: SN532932.</i>		*** COMPLETELY DELETED *** 2137499 ONTARIO INC.		
SN613141	2019/12/09	TRANSFER OF CHARGE <i>REMARKS: SN571523.</i>		*** COMPLETELY DELETED *** GIANNOU, JOHN	449486 ONTARIO LTD.	
SN698961	2021/11/02	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	GELER, KRZYSZTOF PROBORSZCZ, JAROSLAW	
SN698972	2021/11/02	DISCH OF CHARGE <i>REMARKS: SN571523.</i>		*** COMPLETELY DELETED *** 449486 ONTARIO LTD.		
SN699958	2021/11/09	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	JACAK, ALEKSANDER KONOPKA, DARIUSZ	
SN747322	2022/10/31	CHARGE	\$1,050,000	LA PUE INTERNATIONAL INC.	PROBORSZCZ, JAROSLAW	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #59

64349-0163 (LT)

PREPARED FOR Lynda001  
ON 2024/01/31 AT 10:36:47

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN747323	2022/10/31	POSTPONEMENT		*** COMPLETELY DELETED *** JACAK, ALEKSANDER KONOPKA, DARIUSZ	MOROZ, YASMEEN  PROBORSZCZ, JAROSLAW MOROZ, YASMEEN	
		REMARKS: SN699958 TO SN747322				
SN747324	2022/10/31	DISCH OF CHARGE		*** COMPLETELY DELETED *** GELER, KRZYSZTOF PROBORSZCZ, JAROSLAW		
		REMARKS: SN698961.				
SN750084	2022/11/25	CHARGE	\$820,000	LA PUE INTERNATIONAL INC.	KONOPKA, DARIUSZ JACAK, ALEKSANDER	C
SN750085	2022/11/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** JACAK, ALEKSANDER KONOPKA, DARIUSZ		
		REMARKS: SN699958.				