

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

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

**RESPONDING MOTION RECORD OF THE RECEIVER
(Mahal Security Motion)
Returnable November 4, 2022**

November 2, 2022

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(as at April 12, 2022)

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- and -

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Respondents

RESPONDING MOTION RECORD OF THE RECEIVER

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TAB 1



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

November 1, 2022

And

**First Report to Court of
KSV Restructuring Inc.
as Licensed Insolvency Trustee of Golden
Miles Food Corporation**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

RESPONDENTS

FOURTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

IN THE MATTER OF THE BANKRUPTCY OF GOLDEN MILES FOOD CORPORATION,
OF THE CITY OF BRANTFORD IN THE PROVINCE OF ONTARIO
FIRST REPORT TO COURT OF KSV RESTRUCTURING INC. AS LICENCED INSOLVENCY
TRUSTEE OF GOLDEN MILES FOOD CORPORATION

NOVEMBER 1, 2022

1.0 Introduction

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

4. The principal purpose of the receivership proceedings was to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies' creditors. As discussed below, the Property has been sold and the Receiver is presently considering distribution matters associated with the proceeds.
5. A draft of this Report was provided on October 17, 2022 to counsel representing Santokh Mahal ("Mr. Mahal") and Skymark Finance Corporation ("Skymark"), in connection with the Mahal Security Motion (defined below). At that time, the Receiver was attempting to settle certain details in these proceedings related to the sale of litigation (unrelated to the Mahal Security Motion) before finalizing and serving this Report. The Receiver has determined that such details will not be settled in the short-term and therefore has issued this Report without reference to the sale of litigation that had been included in the draft Report shared with Mr. Mahal and Skymark. The provisions in this Report dealing with the Mahal Security Motion are unchanged from the draft that was circulated.

1.1 Purposes of this Report

1. This Report is being filed in response to the motion brought by Mr. Mahal pursuant to a notice of motion dated November 21, 2021, seeking, among other things, a declaration that the security in favour of Mr. Mahal over all of the personal property of Golden Miles, other than inventory, is valid and enforceable, and ranks in priority to any other security interest registered under the *Personal Property Security Act* (the "Mahal Security Motion").
2. For the reasons set out in this Report, the Receiver has concluded that although Mr. Mahal's security is valid, enforceable and properly perfected to the extent it secures advances made after such security was granted, there is only sufficient evidence of secured debt claimed by Mr. Mahal against Golden Miles to justify a distribution to Mr. Mahal on account of his security in the amount of \$281,600.
3. The Receiver is accordingly seeking the Court's advice and directions regarding any distribution on account of Mr. Mahal's security.
4. This Report does not address priority or distribution matters with respect to claims against or secured by Mahal VC's real property. The Receiver is currently finalizing its distribution analysis for the real property, and intends to bring a motion for an order authorizing an interim distribution to secured creditors before the end of the year.

1.2 Currency

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

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon certain of the Companies' unaudited financial statements, limited books and records obtained from the Companies' principals, Santokh and Jesse Mahal ("Jesse", and together with Mr. Mahal, the "Mahals") and discussions with the Mahals and a former advisor to the Companies.

2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2.0 Background

1. Detailed information regarding the Companies, their stakeholders and these proceedings is included in the First through the Third Reports of the Receiver, which are incorporated herein by reference. These reports and other materials filed with the Court in this proceeding can be accessed from the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc>.
2. On April 11, 2022, the Court granted an order in the Receivership Proceedings (the “AVO”) approving the sale of substantially all of the Property to 12175622 Canada Inc. (the “Purchaser”) pursuant to an agreement of purchase and sale dated March 18, 2022 between the Companies, acting by the Receiver, and the Purchaser (as amended, the “APA”).
3. The Purchaser is owned and controlled by Mr. Mahal, who is the owner and sole officer and director of Golden Miles, and the father of Jesse Mahal, the owner and sole officer and director of Mahal VC.
4. The sale transaction contemplated by the APA (the “Transaction”) was closed on May 18, 2022. The aggregate net proceeds received were \$18.47 million (the “Proceeds”). Of the Proceeds, \$16 million was allocated to the real property owned by Mahal VC, and \$2.47 million was allocated to the personal property owned by Golden Miles (the “Personal Property Proceeds”).
5. Prior to the Transaction, Mahal VC owned the Real Property, which totaled over 20 acres and the Mahals have advised the Receiver that Golden Miles owned the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operated from the Real Property and described itself in its unaudited financial statements as at June 30, 2020 as being “engaged in the sale of cookies, crackers, and dried plant material”.
6. As the Purchaser is owned and controlled by Mr. Mahal, the moving party in the Mahal Security Motion, the APA includes the concept of a “Refund”. The “Refund” is defined as “an amount equal to the amount, if any, that the Court declares in a Final Order, as the resolution of a motion brought by Santokh Mahal pursuant to a Notice of Motion dated November 21, 2021, is indebtedness owing by Golden Miles to Santokh Mahal that is secured by a security interest in any of Golden Miles’ personal property ranking in priority to all other encumbrances on such personal property (other than super-priority charges created by Court order in the Receivership Proceedings)”.

7. The function and purpose of the Refund provision was to mirror a credit-bid: if Mr. Mahal has a valid first-priority claim against any of the assets of the Companies, that claim could have been credit bid as part of the Transaction, which would have meant the purchase price stayed the same, but the actual cash payment on closing was reduced accordingly. Because Mr. Mahal's secured claim had not been adjudicated when the APA was executed, the Refund structure permitted Mr. Mahal to obtain the same economic result as he could have achieved if his claim was accepted or rejected as of that date.
8. Accordingly, the Mahal Security Motion is intended to determine the treatment of the Refund. If Mr. Mahal has a valid first-priority secured claim against the personal property of Golden Miles, then the Refund will be paid to Mr. Mahal in the adjudicated amount of such priority claim. If Mr. Mahal does not have a valid first-priority secured claim against the personal property of Golden Miles, then no Refund is payable and the majority of the Personal Property Proceeds will be unencumbered assets, to be distributed by the Trustee to the unsecured creditors of Golden Miles.

3.0 The Mahal Security Motion

1. On November 21, 2021, Mr. Mahal commenced the Mahal Security Motion in these proceedings, seeking, among other things, "a declaration that the security in favour of Santokh Mahal over all of the personal property of Golden Miles, other than inventory, is valid and enforceable, and ranks in priority to any other security interest registered under the *Personal Property Security Act*..., with the exception of specific equipment, which specific equipment is subject to prior-ranking security in favour of the Bank of Nova Scotia and Caterpillar Financial Services Limited".
2. The basis for Mr. Mahal's secured claim is a general security agreement dated December 14, 2020 granted by Golden Miles to Mr. Mahal (the "Mahal GSA"), a copy of which is included in Mr. Mahal's November 21, 2021 motion record. The Mahal GSA is executed by Mr. Mahal, on behalf of Golden Miles.
3. Mr. Mahal's November 21, 2021 motion includes an affidavit of Mr. Mahal, sworn November 21, 2021, which indicates that a total of \$27,278,766.46 and US\$328,000 was advanced by Mr. Mahal to Golden Miles between March 16, 2016 and September 15, 2021. However, the affidavit advises that "for the purposes of this motion, the declaration I seek is limited to CAD \$3,183,305.08 and USD \$328,000, which represents the advances made after December 15, 2020". The Receiver understands that this limitation is intended to restrict Mr. Mahal's claim to only those amounts advanced by Mr. Mahal after the date of the Mahal GSA and to thereby avoid any preference issues raised by security being granted to secure pre-existing indebtedness.
4. Mr. Mahal filed a supplementary motion record in the Mahal Security Motion on or about December 17, 2021. This supplementary record includes an affidavit of Mr. Mahal, sworn December 17, 2021, that indicates: "To date, I have located documents to support advances of CAD \$2,182,915.08 under the Loan. I am therefore limiting my secured claim against Golden Miles to this amount, without prejudice to my right to produce further evidence of additional Loan advances at a later date."

5. The December 17, 2021 affidavit includes extensive bank statements, showing funds being advanced by Mr. Mahal to Golden Miles, as well as funds being advanced by corporations controlled by Mr. Mahal to Golden Miles. The Receiver understands that it is Mr. Mahal's position that all of the funds advanced, whether by him personally or by one of the companies that he controls, constitute loans made to Golden Miles, intended to be secured by the Mahal GSA.
6. The advances included in Mr. Mahal's December 17, 2021 affidavit are summarized as follows:

Advancing Party	Aggregate Advances
Mr. Mahal, personally	\$281,600
CanadaFresh Corporation	\$1,493,310
J.T. International Inc.	\$395,000
King MSP	\$13,004
Total	\$2,182,914

7. On or about January 14, 2022, Skymark commenced an application against Mr. Mahal and Golden Miles under the *Business Corporations Act* (Ontario) (the "Skymark Application"), seeking, among other things, an order (a) that Mr. Mahal's act of causing Golden Miles to grant the Mahal GSA was oppressive, unfairly prejudicial to or unfairly disregarded the interests of Skymark as secured creditor of Golden Miles, and (b) varying or setting aside the Mahal GSA as against Golden Miles' personal property that had been pledged to Skymark.
8. The Receiver understands that the basis for the Skymark Application is that by causing Golden Miles to execute the Mahal GSA, thereby granting security in favour of Mr. Mahal over collateral that was also pledged to Skymark, Mr. Mahal acted in breach of various contracts between Golden Miles and Skymark, including provisions that prohibited Golden Miles from encumbering any assets pledged to Skymark.
9. On or about August 26, 2022, Mr. Mahal filed a further motion record in these proceedings, which included an affidavit from Mr. Mahal sworn on August 26, 2022, indicating that "I do not claim a security interest ranking in priority to Skymark over any of the "Equipment" purchased by Golden Miles with funds advanced by Skymark pursuant to the [Skymark security documents]."
10. By limiting the scope of collateral subject to the Mahal Security Motion, in the Receiver's view, Mr. Mahal has addressed the oppression claims in the Skymark Application by agreeing that his secured claim does not overlap with Skymark's secured claim. As a result of this collateral limitation, the Receiver understands that the Skymark Application will be withdrawn.
11. Accordingly, based on the limitations to the amount of the debt claimed and the scope of the collateral, the Receiver understands that the Mahal Security Motion is essentially seeking a declaration that Mr. Mahal has first ranking security over the personal property of Golden Miles, other than equipment pledged to Skymark, as security for indebtedness incurred by Golden Miles to Mr. Mahal after the granting of the Mahal GSA, in the total amount of \$2,182,914.

12. In the Receiver's view: (a) the security granted by the Mahal GSA, to the extent it secures valid indebtedness incurred after the granting of the Mahal GSA, is valid, enforceable and ranks in priority to the other registered personal property secured creditors of Golden Miles (other than BNS over certain proceeds of insurance, as discussed below), however (b) there is insufficient evidence of indebtedness owing by Golden Miles to Mr. Mahal incurred after the date of the Mahal GSA for the Receiver to conclude that Mr. Mahal's secured debt claim of \$2,182,914 is valid.
13. The Receiver's conclusions are discussed in the next section.

3.1 Debt and Security Review

1. The Receiver's counsel, Blake, Cassels & Graydon LLP ("Blakes") has reviewed the security granted by Golden Miles, and issued an opinion that Mr. Mahal's security is valid, enforceable and properly perfected, to the extent that it secures valid indebtedness incurred by Golden Miles to Mr. Mahal after December 14, 2020, the date of the Mahal GSA. A copy of Blakes' security opinion is attached hereto as Appendix "A".
2. The Receiver is not satisfied that there is sufficient evidence of indebtedness owing to Mr. Mahal by Golden Miles in the relevant date range, other than the \$281,600 advanced directly by Mr. Mahal to Golden Miles. The Receiver is accordingly not willing to make a distribution of the Refund to Mr. Mahal on account of his security, based on the evidence before this Court, without a direction from the Court to do so. Should the Court make such a direction, the Receiver will make the distribution accordingly.
3. The Receiver has four primary concerns with the nature of the evidence of indebtedness that has been provided by Mr. Mahal in connection with the Mahal Security Motion:
 - a. **No Contractual Evidence of Indebtedness**
4. Mr. Mahal's affidavit sworn November 21, 2021 includes, as Exhibit "A", a promissory note dated December 14, 2020, issued by Golden Miles to Santokh Singh Mahal (the "Promissory Note"). A copy of the Promissory Note from Mr. Mahal's November 21, 2021 affidavit is attached hereto as Appendix "B".
5. The Promissory Note provides that:

THIS PROMISSORY NOTE is issued to evidence the principal amounts advanced, any repayments on account thereof and the unpaid balance of the principal amount outstanding from time to time. The Lender is hereby authorized to endorse on the schedule annexed hereto, or any continuation schedule which may at any time be attached hereto, the date and amount of each advance, and each payment of principal on account thereof, together with the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender. Each such endorsement shall be prima facie evidence of the amounts so advanced and repaid and, in the absence of manifest mathematical error, this promissory note shall be conclusive evidence of the amount of the Borrower's liability to the Lender for the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender.

6. The Promissory Note includes a schedule of advances, which is populated by 21 advances between the dates of March 16, 2016 and October 30, 2020, totaling \$24,101,776.47. There are no advances recorded after October 30, 2020, and therefore no advances recorded during the relevant period over which the Mahal Security Motion asserts a secured debt.
7. The Promissory Note provides for interest to be paid “from time to time at the rate as is agreed between the Borrower and the Lender until payment in full”. The Receiver notes that no interest is being claimed by Mr. Mahal in the Mahal Security Motion.
8. The Receiver is not aware of any repayments ever being made on account of the indebtedness under the Promissory Note, and the grid on the Promissory Note records only advances, and no repayments.
9. There are no repayment obligations in the Promissory Note other than upon insolvency: there is no maturity date, no schedule of payments, and no provision for the Lender to make demand for payment. The Promissory Note only provides that “in the event of non-payment when due, whether by acceleration or otherwise, of all or any part of the principal, or in the event of the bankruptcy or insolvency of the Borrower, or the institution by or against the Borrower of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act* or otherwise, the entire unpaid balance of the principal and accrued interest shall, at the option of the Lender, become immediately due and payable”.
10. The Promissory Note is structured as a grid note, and designed for future advances to be recorded by simple line entries on Schedule A thereto. Notwithstanding this, there is not a dollar of debt recorded over the relevant period for the Mahal Security Motion.

b. Advances Made by Third Parties

11. The Receiver understands that it is Mr. Mahal’s position that notwithstanding that no Golden Miles indebtedness was recorded for the relevant period in the document that is ostensibly “conclusive evidence of the amount of the Borrower’s liability to the Lender for the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender”, the advances made by Mr. Mahal and his related companies that are set out in his December 17, 2021 affidavit were intended to be debt.
12. Even if it is accepted that advances, in the absence of evidence of debt, could be characterized as debt if they are intended to be debt (which the Receiver does not accept), the Receiver notes that all but \$281,600 of the \$2,182,914 of advances in the December 17, 2021 affidavit were advanced by parties other than Mr. Mahal, namely CanadaFresh Corporation, J.T. International Inc. and King MSP.
13. CanadaFresh Corporation, J.T. International Inc. and King MSP are not parties to the Mahal GSA, they are not beneficiaries of the Promissory Note, and they do not have PPSA registrations against Golden Miles.
14. The Receiver does not accept that advances made by third parties at the undocumented direction of a related secured party constitute secured debt under that secured party’s pledge. Accordingly, even if the subjective, undocumented intention to create a debt between related parties is sufficient to do so, then Mr. Mahal’s secured claim must be limited to \$281,600.

c. Inconsistencies with Financial Statements

15. The indebtedness set out in the Promissory Note is materially contradicted by two different Golden Miles financial statements for the period before December 2020, and no Golden Miles financial statements have been provided to the Receiver for the period after December 2020, which is the period relevant to the Mahal Security Motion.
16. The Receiver's struggles to obtain books and records, and other disclosure, from the Mahals and their advisors in these proceedings are well documented, including in the First Report of the Receiver dated October 20, 2021 (the "First Report"). A copy of the First Report is attached hereto (without appendices) as Appendix "C".

2020 Audited Financials

17. In an affidavit sworn July 5, 2021 in these proceedings, Mr. Mahal put into evidence "audited financial statements for Golden Miles for the period ending October 30, 2020", which were prepared by Chartered Accountant Perry Singh "on the basis of information provided by management" effective as of November 30, 2020, dated December 7, 2020 (the "2020 Audited Financials"). A copy of the 2020 Audited Financials is attached as Appendix "D".
18. The 2020 Audited Financials do not record any shareholder indebtedness.

2020 Unaudited Financials

19. After a series of unsuccessful attempts to obtain records consensually, the Receiver brought a motion on October 21, 2021 seeking, among other things, a direction to the Companies' accountants requiring them to provide documents and records in their possession. The Receiver ultimately declined to proceed with this relief as against the accountants, after what the Receiver understands to be all of the records in their possession were produced shortly before the return of the motion.
20. As a result of the Receiver's efforts to obtain books and records, the most recent financial statements for Golden Miles that have been provided by third parties are a review engagement report dated as of June 30, 2020 (the "2020 Unaudited Financials"). A copy of the 2020 Unaudited Financials is attached hereto as Appendix "E".
21. The 2020 Unaudited Financials have been signed by Golden Miles' accountants, Gill & Co., as of September 21, 2021, subject to the assumptions and qualifications included therein. Notably, the 2020 Unaudited Financials are subject to the caveat: "Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for private enterprises, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error".

Issues with Financial Statements

22. The 2020 Unaudited Financials, 2020 Audited Financials and the grid of indebtedness attached to the Promissory Note are fundamentally and significantly inconsistent. The Promissory Note grid and the balance sheet in the 2020 Financials reflect the following:

	Per 2020 Financials	Per 2020 Audited Financials	Per Promissory Note grid
June 30, 2019 "Due to Shareholder"	\$8,453,255	Not reported	\$22,703,836.27
June 30, 2020 "Due to Shareholder"	\$7,186,603	\$0	\$23,028,276.47

23. The 2020 Unaudited Financials and 2020 Audited Financials include other notable issues and/or errors:

- a. Note 6 of the 2020 Unaudited Financials states that "the amount due to shareholder is secured, non-interest bearing and due on demand. The shareholder has agreed not to demand repayment within the next twelve months." The Receiver notes that as of the date of this statement, Mr. Mahal did not have security from Golden Miles, nor was the Promissory Note executed.
- b. Note 4 of the 2020 Unaudited Financials indicates that Golden Miles has long term loan indebtedness of \$27,328,674, in the following amounts: (a) \$9,600,000 demand operating loan, (b) \$6,400,000 demand operating loan, (c) \$4,000,000 demand operating loan, and (d) \$8,481,950 demand operating loan. The amounts listed in (a), (b) and (c) correspond exactly with the mortgage obligations of Mahal VC, not Golden Miles.
- c. The 2020 Audited Financials indicate that Golden Miles owes \$17,496,180 in non-current liabilities on account of "mortgages". In fact, Golden Miles has granted no mortgages and owns no real property. The Receiver assumes this \$17 million debt is an incorrect reference to Mahal VC debt owing to Skymark and others.

24. In the Receiver's view, little can be discerned from the 2020 Unaudited Financials and 2020 Audited Financials, due to the significant and obvious errors contained in them. However, it is noteworthy that even these financial statements, based on information provided by "management" (ie: Mr. Mahal), do not list the shareholder debt that Mr. Mahal claims was owing under the Promissory Note at the relevant times.

d. Credibility Issues with Mr. Mahal

25. Given the concerns about an absence of evidence of debt, and advances made by parties other than Mr. Mahal, the Receiver and this Court are being asked to accept Mr. Mahal at his word that advances made by him and companies he controls constitute not only indebtedness, but indebtedness secured by the Mahal GSA.

26. Mr. Mahal presumably could have recorded post-December 2020 debt advances under the Promissory Note, but did not. He presumably could have caused Golden Miles to grant security to J.T. International, CanadaFresh or King MSP, but he did not. Mr. Mahal presumably could have caused J.T. International, CanadaFresh or King MSP to advance a loan to himself, and then advanced those funds to Golden Miles personally, but he did not. These kinds of formalities may often be overlooked or not observed by individuals in private companies, but in the Receiver's view, when dealing with the technicalities of the PPSA and competing creditor claims, the formalities are critical.
27. The formalities are particularly important in this case, given the numerous concerns about Mr. Mahal's credibility and ability to act in good faith that have marked these proceedings. The Receiver's concerns about Mr. Mahal are well documented in the Court record of these Receivership Proceedings, and in the bankruptcy proceedings of the Companies. They include:
- a. Pre-Appointment Debt Claims: In Skymark's application to appoint the Receiver dated June 29, 2021, it claimed an indebtedness owing to Skymark from Mahal VC in the amount of \$19,045,486 (the "Mahal VC Loan") and an indebtedness owing to Skymark by Golden Miles of \$9,972,437 (the "Golden Miles Loan"),¹ a total indebtedness of \$29,017,923.

Mr. Mahal filed a responding affidavit, dated July 5, 2021 (the "July Mahal Affidavit") stating that the aggregate Mahal VC Loan as at July 2, 2021 was \$17,859,772 and the aggregate Golden Miles Loan as at April, 2021, was \$1,139,433, or a total indebtedness of \$18,999,205.²

Given the significant difference between the amounts of the alleged debt, KSV undertook a detailed analysis of the books and records of the Companies and Skymark, which were provided to it for the purposes of analyzing the amounts of the Mahal VC Loan and the Golden Miles Loan. KSV concluded, in a confidential report provided to Skymark and the Companies, that as of August 23, 2021, the actual amount of the Mahal VC Loan was \$19,673,870 and the actual amount of the Golden Miles Loan was \$9,560,517, or a total indebtedness of \$29,233,387. This conclusion has been reported to the Court in the First Report.

Even accounting for the timing differences (the July Mahal Affidavit stated Mr. Mahal's position on the debt as of July 2, 2021 and the KSV Report stated the debt as of August 23, 2021), Mr. Mahal appears, in a sworn affidavit, to have understated the Companies' indebtedness to Skymark by approximately \$10,000,000.

¹ Affidavit of Paul Millar, sworn June 24, 2021, at Para. 6.

² July Mahal Affidavit, at Para. 58.

- b. Failure to Cooperate with the Receiver: As outlined in detail in the First Report, upon being appointed, the Receiver faced considerable opposition and a lack of responsiveness and cooperation from Mr. Mahal with respect to document and information requests. The Receiver was forced to bring a motion for disclosure and compliance with the Receivership Order on October 21, 2021, which was granted and costs were awarded to the Receiver.
- c. False or Misleading Statements to the Receiver: Also as outlined in the First Report, the Receiver encountered a number of concerning issues during its initial visits to the Flour Mill following its appointment, including (i) missing equipment and computer hardware, (ii) tampering with the Flour Mill's access gates, and (iii) the presence of material quantities of raw tobacco at the Flour Mill, without any apparent justification or regulatory authorization. The explanations for these issues from Mr. Mahal and the Companies were inconsistent, misleading and/or strained credibility.
- d. Condominium Motion: As outlined in the First Report to Court of KSV Restructuring Inc., as licenced Trustee of Mahal Venture Capital Inc., dated February 22, 2022 (the "Trustee's Report"), Mr. Mahal brought a motion for a declaration that the agreement of purchase and sale executed by Mahal VC for the purchase of a luxury condominium (the "Condominium") was in fact held in trust by Mahal VC for Mr. Mahal (the "Trust Motion"). In the course of undertaking investigations to respond to this Trust Motion, the Trustee discovered a number of significant anomalies, including:
 - i. The Trust Agreement (as defined in the Trustee's Report) contained numerous substantive abnormalities that called into question its authenticity.
 - ii. A forensic document examiner retained by the Trustee determined that "there is conclusive evidence" that Mr. Mahal's purported signature on the Trust Agreement was not made by the same person who made numerous sample signatures from Mr. Mahal obtained by the Trustee.
 - iii. An invoice from counsel included in the evidence filed by Mr. Mahal (the "Boyko Invoice"), ostensibly provided to support the authenticity of the Trust Agreement and the date of its execution, contained a number of abnormalities, including that the narratives were inconsistent with and/or contradicted by correspondence obtained by the Trustee from the vendor of the Condominium.
 - iv. The Trustee's repeated requests for original or digital copies of the Trust Agreement and the Boyko Invoice were ignored.
 - v. Correspondence and documentation obtained by the Trustee from the vendor of the Condominium was inconsistent with, or contradicted, the existence of the trust arrangement claimed by Mr. Mahal.
 - vi. The payments of deposits for the Condominium, based on records obtained from the vendor of the Condominium, were inconsistent with the trust arrangement claimed by Mr. Mahal, and the disclosure of payment information by Mr. Mahal in his motion materials was misleadingly selective and omitted information that was inconsistent with the trust claim.

On the basis of the foregoing, the Trustee concluded in the Trustee's Report that the alleged trust was a sham. Mr. Mahal withdrew the Trust Motion shortly after the filing of the Trustee's Report. A copy of the Trustee's Report is attached hereto (without appendices) as Appendix "F".

28. While none of the foregoing is conclusive evidence that Mr. Mahal is not being forthright about his claims that the advances to Golden Miles were intended to be debt, in the aggregate it raises concerns about the veracity of Mr. Mahal's self-serving claims that the undocumented debt is, in fact, secured indebtedness.

3.2 Other Personal Property Secured Parties

- As reported in the Third Report, as of April 4, 2022, there were 6 parties with financing statements registered against Golden Miles in Ontario: Mr. Mahal, Skymark, the Bank of Nova Scotia ("BNS"), Caterpillar Financial Services Limited ("Caterpillar"), Fluid Construction & Project Management Inc. ("Fluid") and Buhler Inc. ("Buhler").
- The Receiver and Blakes have worked with each of these secured creditors over the course of these proceedings, and the Receiver can now report that only Mr. Mahal and Skymark are remaining as secured creditors with an interest in the proceeds of sale of Golden Miles' personal property. The other secured claims were resolved or disallowed as follows:

	Secured Creditor	Resolution
1	BNS	BNS is secured against one vehicle, which Jesse Mahal reported stolen prior to the Receiver's appointment. The Receiver is currently finalizing terms with BNS, the relevant insurer and the Purchaser, which would provide for BNS to be paid in full.
2	Caterpillar	Single piece of collateral returned to Caterpillar before closing the Transaction; small unsecured residual claim against Golden Miles remains after Caterpillar liquidated collateral.
3	Fluid	Fluid counsel has confirmed that Fluid's financing statement was registered in advance of an anticipated granting of security, however that granting did not occur. Fluid is accordingly not a personal property secured creditor.
4	Buhler	Buhler's financing statement was registered after the Golden Miles bankruptcy was commenced, and is accordingly ineffective against the Trustee.

- Blakes has concluded that the Skymark security is valid, enforceable and properly perfected against the personal property to which it attaches (the "Skymark Collateral"). However, the Skymark Collateral appears to have been substantially affixed to the real property at the Flour Mill, and therefore is subject to the applicable mortgages and real property charges, and/or of limited value. In any event, given the limited scope of the Skymark Collateral compared to all of Golden Miles' personal property, Skymark's secured claim to the Personal Property Proceeds is less than the full amount of such proceeds.

4. Accordingly, if Mr. Mahal is not entitled to the Refund, then at least some of the Personal Property Proceeds are unencumbered assets, which would be distributed to Golden Miles' unsecured creditors (by the Trustee). Mr. Mahal may have a substantial unsecured claim against the Golden Mile estate that has not yet been made by Mr. Mahal or determined by the Trustee, however based on the Promissory Note alone, it would be at least \$24 million. Skymark is expected to have an unsecured claim against Golden Miles for at least \$9.5 million, and the Receiver is aware of several other unsecured claims against Golden Miles that should exceed \$1 million each.
5. As the dispute in the Mahal Security Motion is between Mr. Mahal, on the one hand, and all of the unsecured creditors of Golden Miles, on the other hand, KSV believes that it is incumbent on it, both as Receiver and as Trustee, to raise the issues set out in this Report with the Court and with all other stakeholders.

4.0 Conclusion

1. The Receiver has determined that Mr. Mahal's security over the personal property assets of Golden Miles is valid, enforceable and properly perfected, however it does not accept the evidence that any amounts are validly owing and secured by the Mahal GSA as debt by Golden Miles to Mr. Mahal post-December 14, 2020, beyond the \$281,600 advanced by Mr. Mahal personally.
2. The Refund is only payable up to the amount of valid secured debt. If Mr. Mahal's valid secured debt is limited to \$281,600, a material portion of the Personal Property Proceeds will be unencumbered assets for the benefit of Golden Miles' unsecured creditors.
3. The Receiver respectfully requests the Court's advice and direction regarding the amounts validly secured by the Mahal GSA, in order that the Receiver can determine what, if any, amount of the Refund is payable to Mr. Mahal.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “A”



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trade-mark Agents
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October 17, 2022

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

Attention: Noah Goldstein and Mitch Vininsky

RE: Review of Security Interests Registered against Golden Miles Food Corporation
Re: Ontario Law Opinion – Personal Property

Dear Mr. Goldstein and Mr. Vininsky:

We act as counsel to KSV Restructuring Inc., in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of Mahal Venture Capital Inc. (“**Mahal VC**”) and Golden Miles Food Corporation (“**Golden Miles**”), and in its capacity as licenced insolvency trustee in the bankruptcy of Mahal VC and Golden Miles.

You have asked for our opinion regarding the validity, perfection, enforceability and priority under the laws of Ontario of certain security interests registered against Golden Miles pursuant to the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 (the “**PPSA**”) by the following parties:

1. Bank of Nova Scotia (“**BNS**”);
2. Caterpillar Financial Services Limited (“**Caterpillar**”);
3. Skymark Finance Corporation (“**Skymark**”);
4. Santokh Mahal (“**Santokh**”);
5. Fluid Construction & Project Management Inc. (“**Fluid**”); and
6. Buhler Inc. (“**Buhler**”).

Documentation and Scope of Review

We have reviewed executed photostatic copies, electronically transmitted copies and/or facsimiles of each of the following documents (collectively, the “**Documents**”):

Affidavit of Santokh Mahal, sworn November 21, 2021 and Affidavit of Santokh Mahal, sworn December 17, 2021 including:

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- Promissory Note dated December 14, 2020 granted by Golden Miles in favour of Santokh Mahal (the “**Mahal Promissory Note**”)
- General Security Agreement dated December 14, 2020 granted by Golden Miles in favour of Santokh Mahal (the “**Mahal GSA**”)

Affidavit of Paul Millar sworn June 24, 2021, Affidavit of Paul Millar, sworn June 29, 2021, and Further Supplementary Affidavit of Paul Millar, sworn July 13, 2021, including:

- Home Improvement Credit Application and Agreement between Skymark and Golden Miles, dated November 25, 2017 re Notice of Security Interest 1 (“**HICA 1**”)
- Home Improvement Credit Application and Agreement between Skymark and Golden Miles, dated December 6, 2017 re Notice of Security Interest 2 (“**HICA 2**”)
- Home Improvement Credit Application and Agreement between Skymark and Golden Miles (undated; first payment date September 15, 2018) re Notice of Security Interest 3 (“**HICA 3**”)
- Home Improvement Credit Application and Agreement between Skymark and Golden Miles dated January 22, 2019 re Notice of Security Interest 4 (“**HICA 4**”)
- Home Improvement Credit Application and Agreement (undated; first payment date June 1, 2019) re Notice of Security Interest 5 (“**HICA 5**”, together with HICA 1, HICA 2, HICA 3 and HICA 4, the “**HICA Agreements**”);
- Forbearance Agreement dated March 12, 2020 among Skymark, Mahal Venture Capital Inc. and Golden Miles (the “**Skymark Forbearance Agreement**”)

Proof of Claim filed by BNS dated November 5, 2021, including:

- Credit Agreement dated July 25, 2020 among Golden Miles Good Corporation and Aarbjit Mahal, as co-borrowers, Erinwood Ford Sales Inc., as seller, and Bank of Nova Scotia as assignee (the “**BNS Credit Agreement**”).

Proof of Claim filed by Caterpillar dated April 1, 2022, including:

- Lease Agreement between Caterpillar and Golden Miles dated September 10, 2020 (“**Caterpillar Lease Agreement**”)

We have also:

- (a) examined such statutes, regulations, public records and certificates of government officials,

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- (b) made such further examinations, investigations and searches; and
- (c) considered such questions of law

that we have deemed relevant and necessary as the basis for the opinions herein expressed.

We did not participate in the negotiation, preparation, execution, delivery or registration of the Documents. Our involvement with the Documents arises solely in our capacity as counsel to the Receiver.

Applicable Law

The opinions expressed herein relate only to the laws of Ontario and the federal laws of Canada applicable therein in effect on the date hereof, and no opinions are expressed as to the laws of any other jurisdiction. In particular, no opinion is expressed with respect to the laws of any other jurisdiction to the extent that such laws may govern the validity, perfection, effect of perfection or non-perfection or enforcement of the security interests expressed to be created by or under the Documents as a result of the application of the conflict of laws rules in Ontario, without limitation, sections 5 to 8, inclusive, of the PPSA. In addition, we express no opinion whether, pursuant to those conflict of laws rules, the laws of the Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of those security interests.

Searches

We have reviewed the personal property searches identified in Schedule A hereto (the “**Searches**”), which Searches are current as of the dates indicated in Schedule A. The Searches were conducted in respect of the current and former legal names of Golden Miles. The only registrations, filings or recordings against Golden Miles disclosed by such searches are set forth in Schedule A.

Assumptions and Reliances

For the purposes of the opinions expressed herein, we have assumed:

- (a) that the Documents are legal, valid and binding obligations of Golden Miles, enforceable against Golden Miles by each other party thereto in accordance with its terms, provided that we have not assumed that the Mahal GSA is a valid and binding obligation of Golden Miles in respect of any indebtedness owing prior to December 14, 2020, as discussed further below;
- (b) the validity and enforceability of the indebtedness, obligations and other liabilities of Golden Miles which are secured by the security interests and charges granted by Golden Miles pursuant to the Documents and that such indebtedness, obligations and other liabilities have not been repaid or otherwise satisfied, provided that we have not assumed the validity and enforceability of the indebtedness, obligations and other liabilities of Golden Miles owing to Santokh, if any, from and

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after December 14, 2020, which matter is currently before the Court pursuant to a motion brought by Santokh on November 21, 2021, as discussed further below;

- (c) that Golden Miles was at the time of execution of the Documents and at all times thereafter a corporation existing under the laws of Ontario;
- (d) that Golden Miles had and has all requisite corporate power and capacity to execute and deliver the Documents, to perform its obligations thereunder, and to own its property and assets and carry on its business;
- (e) there are no resolutions of the shareholders or directors of Golden Miles, or any agreement of the shareholders binding on the directors of Golden Miles, that limited or restricted Golden Miles' ability to enter into, execute or perform its obligations under the Documents, to borrow money or grant security as contemplated by the Documents;
- (f) that Golden Miles duly executed and delivered the Documents;
- (g) that Golden Miles took all necessary corporate action to authorize the execution and delivery of the Documents and the performance of its obligations thereunder;
- (h) that the execution and delivery by Golden Miles of the Documents and the performance by Golden Miles of its rights and obligations thereunder do not breach, violate, contravene, constitute a default under or conflict with the provisions of its constating documents, bylaws or any law, statute or regulation applicable to Golden Miles or any other agreement, document or instrument to which it is a party or is subject or is bound;
- (i) that (A) the parties to the Documents have not agreed orally or in any written agreement to postpone the time for attachment of the security interests created by the Documents; and (B) that value has been given to the parties under the Documents;
- (j) that no consent, licence, permit, approval, authorization, declaration, registration, order or exemption of any federal or provincial governmental body or regulatory authority is required for or in connection with the execution or delivery by Golden Miles of the Documents or the performance by it of any of its rights and obligations thereunder;
- (k) the identity and capacity of all individuals acting or purporting to act as public officials, the accuracy, currency and completeness of the records maintained by offices of public record where searches have been conducted, the information and advice provided to us by appropriate government, regulatory or other like officials with respect to those matters referred to herein, all representations, statements and other matters of fact set out or referred to in such searches and



documents, the reliability of all search results obtained by electronic transmission, and the accuracy of the results of any printed or computer search of offices of public record;

- (l) that the Documents remain in full force and effect, and have not been further amended;
- (m) that none of the property subjected to a security interest pursuant to the Documents constitutes consumer goods (as defined in the PPSA); and
- (n) the conformity to originals of all documents submitted to us as notarial, certified, conformed, photostatic, electronic or facsimile copies thereof and the authenticity of the originals of such certified, photostatic or electronically transmitted copies or facsimiles.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that includes the subject matter of the specific assumption, limitation or qualification.

Opinions

BNS

The BNS Credit Agreement creates a valid security interest in favour of BNS with respect to the 2019 Ford F150, VIN 1FTFW1RGXKFD03365 (the “**Ford F150**”) and is sufficient to secure payment and performance of the obligations described therein as being secured thereby.

The BNS security interest has been perfected by registration in all public offices in Ontario where such registration is necessary to preserve, protect or perfect the security interests created by the BNS Credit Agreement in favour of BNS in the Ford F150 and has priority over any other security interest in the Ford F150 to which the PPSA applies.

We have been advised by Jesse Mahal that prior to the appointment of the Receiver, the Ford F150 was stolen, and a claim for loss was filed with Golden Miles’ insurer. The Receiver is currently engaged with the insurer and BNS in respect of the payment of the insurance proceeds.

We are of the opinion that BNS’s secured claim is limited to the insurance proceeds, which may or may not be paid by the insurer at a future date.

Caterpillar

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The Caterpillar Lease Agreement creates a valid security interest in favour of Caterpillar with respect to the 2020 Caterpillar 259D3 VIN CAT0259DVCW906863 (the “**CAT Equipment**”) and is sufficient to secure payment and performance of the obligations described therein as being secured thereby.

The Caterpillar security interest has been perfected by registration in all public offices in Ontario where such registration is necessary to preserve, protect or perfect the security interests created by the Caterpillar Lease Agreement in favour of Caterpillar in the CAT Equipment and has priority over any other security interest in the CAT Equipment to which the PPSA applies.

The CAT Equipment was released to Caterpillar on April 12, 2022, and subsequently sold by Caterpillar. We have been advised that the proceeds of sale were insufficient to fully pay out Caterpillar’s claim against Golden Miles, which deficiency claim is an unsecured claim against Golden Miles.

Caterpillar’s financing statement against Golden Miles has been discharged.

Santokh

The Mahal GSA creates a valid security interest in favour of Santokh in any collateral that is personal property to which the PPSAs apply owned by Golden Miles at the date of the Mahal GSA or acquired after the date of the Mahal GSA by or on behalf of Golden Miles, except as qualified below in this section.

The Mahal GSA purports to secure Golden Miles’ obligations to Santokh in respect of all obligations, indebtedness and liabilities, direct or indirect, at any time owing by Golden Miles to Santokh. As evidence of the obligations, indebtedness and liabilities of Golden Miles to Santokh, Santokh has provided the Receiver with a copy of the Mahal Promissory Note. The Mahal Promissory Note provides evidence of Golden Miles’ promise to pay Santokh on demand certain amounts reflected on the schedule annexed to the Mahal Promissory Note (the “**Schedule of Advances**”).

The Schedule of Advances reflects advances made by Santokh to Golden Miles between March 18, 2016 and October 30, 2020. The Mahal Promissory Note was entered into subsequent to these advances, on December 14, 2020, less than one year prior to the appointment of the Receiver on October 1, 2021 and the bankruptcy of Golden Miles on November 15, 2021. Under the *Bankruptcy and Insolvency Act* (the “**BIA**”), Golden Miles and Santokh are “related persons. Pursuant to the BIA, the making of a charge on property in favour of a creditor who is not dealing at arm’s length with the insolvent party (which includes “related parties”) during the period that is 12 months before the date of the initial bankruptcy event and ending on the date of bankruptcy constitutes a preference and is void as against the trustee. Accordingly, we are of the opinion that the Mahal GSA does not secure payment of any indebtedness owing by Golden



Miles to Santokh prior to the December 14, 2020 date on which the security was granted, as such security would be void as a preference.

Santokh has brought a motion for a declaration that the Mahal GSA secures certain advances made after December 14, 2020, which is currently before the Court. This opinion does not address the quantum of indebtedness secured by the Mahal GSA, if any.

Skymark

Skymark's security interest was created pursuant to a series of HICA Agreements entered into by Golden Miles and Skymark in respect of financed equipment, to secure Golden Miles' obligations to Skymark in respect of financed equipment. Each HICA Agreement references an attached Schedule "A" for a description of the financed equipment. The HICA Agreements put into evidence in the Affidavit of Paul Millar, dated June 24, 2021 do not attach a Schedule "A" and therefore do not include a description of the financed equipment. This was clarified by the Affidavit of Paul Millar sworn June 29, 2021, which provides invoices that are purported by Mr. Millar to make up the collateral secured by each HICA Agreement. We understand that the connection between the invoices in Mr. Millar's affidavit and the HICA Agreements is contested by Santokh.

Each HICA Agreement attaches terms and conditions which contain a grant of security in favour of Skymark over "Goods". The definition of Goods in the terms and conditions does not reference Schedule "A" to the HICA Agreements. Presuming that Schedule "A" to the NOSIs formed part of the HICA Agreements at the time of their execution, such that the HICA Agreements contained a description of the collateral sufficient to enable it to be identified, the HICA Agreements create a valid security interest in favour of Skymark with respect to the financed equipment listed on each Schedule "A" to the NOSIs.

Further investigation is required to determine which assets, if any, are subject to Skymark's valid and enforceable security.

Fluid

In the course of corresponding with Fluid's counsel to obtain the relevant security documentation to support Fluid's registration, we were advised on June 24, 2022 that Golden Miles and Fluid intended to enter into a general security agreement, and on the basis of that intention Fluid filed a financing statement



against Golden Miles. However, no general security agreement, nor any other grant of security, were ultimately entered into.

Accordingly, we are of the opinion that Fluid has no valid and enforceable security interest in the property of Golden Miles.

Buhler

Buhler registered its security interest on December 3, 2021, after of the Receiver filed an assignment in bankruptcy in respect of Golden Miles on November 15, 2021.

Under the PPSA, the relevant date to assess perfection of security interests is the date of bankruptcy. Accordingly, Buhler's security interest was not perfected on the date of the bankruptcy and does not have any priority.

Assumptions, Limitations and Qualifications

The foregoing opinions are subject to the following assumptions, limitations and qualifications:

- (a) the enforceability of the Documents may be limited by any applicable bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium, law of equity or other laws affecting creditors' rights generally;
- (b) this opinion does not address the quantum of the indebtedness secured by such security interests;
- (c) notwithstanding that, subject to attachment, registration under the PPSA will generally perfect a security interest in all forms of personal property to the extent that the PPSA apply to such personal property, perfection by possession or control of certain types of personal property (such as share certificates or uncertificated securities) may provide additional rights to a secured party);
- (d) a security interest in motor vehicles (as defined in the PPSA) which are classified as equipment or proceeds may be ineffective as against certain third parties, unless the vehicle identification number of such vehicles was set out in a financing statement or financing change statement;
- (e) the PPSA imposes certain obligations on secured creditors which cannot be varied by contract; the PPSA may also affect the enforcement of certain rights and remedies contained in the Documents

to the extent that those rights and remedies are inconsistent with or contrary to the PPSA including, without limitation, sections 16, 17 and 39 and Part V of the PPSA;

- (f) the security interests of a secured party in goods (as defined in the PPSA) will be defeated by certain claimants to which Golden Miles sells or leases such goods in the ordinary course of business in the circumstances described in the PPSA;
- (g) no opinion is expressed regarding the creation, validity, enforceability or perfection of any security interest or other interest in any of the following property or any interest therein:
 - (i) any real property, fixtures, crops or mineral claims;
 - (ii) any policy of insurance or contract of annuity;
 - (iii) any permits, quotas, licences or other similar property which is not personal property;
 - (iv) any property which is an interest in coal, mineral, placer, mining or petroleum and natural gas leases, claims or rights;
 - (v) any contractual right (other than an account or chattel paper subject to section 40(4) of the PPSA), which by its terms or by the nature of the contract, or any permits, quotas, licences or other similar property, which by their terms, their nature or by the nature of the business of Golden Miles, cannot be the subject of a security interest or other interest, without the consent, authorization or approval of a third party; and
 - (vi) any debt owing to Golden Miles by the Crown in right of Canada, any province or any agent thereof including, without limitation, to any Crown corporation or in respect of any "corporation debt" (as defined in the *Financial Administration Act* (Alberta));
- (h) an assignment of an account or chattel paper will not be binding on the obligor to the extent that such account or chattel paper is paid or otherwise discharged before notice of the assignment is given to the obligor, together with a direction to pay the secured party;
- (i) Section 7(1) of the PPSA provides that the validity, the perfection, the effect of perfection or non-perfection, and the priority, of a security interest in (a) an intangible, (b) goods that are of a kind that are normally used in more than one jurisdiction, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and (c) a non-possessory security interest in chattel paper, a negotiable document of title, an instrument or money, must be governed by the law, including the conflicts of laws rules, of the jurisdiction where the debtor is located, at the time the security interest attached; for the purposes of Section 7(1) of the PPSA, a debtor that is a corporation that is incorporated, continued, amalgamated or otherwise organized under a law of a



province or territory of Canada that requires the incorporation, continuance, amalgamation or organization to be disclosed in a public record, is deemed to be located in that province or territory;

- (j) to the extent that the security interests created by the Documents attach to investment property (as defined in the PPSA), the validity of such security interest is governed by the law, at the time the security interest attaches, of:
- (i) the jurisdiction where the certificate is located in the case of certificated securities (as defined in the PPSA);
 - (ii) the issuer's jurisdiction in the case of uncertificated securities (as defined in the PPSA);
 - (iii) the security intermediary's jurisdiction in the case of a security entitlement or a securities account (as such terms are defined in the PPSA); or
 - (iv) the futures intermediary's jurisdiction in the case of a futures contract or a futures account (as such terms are defined in the PPSA),
- in each case determined at the time the security interests attaches; and
- (k) we give no opinion as to:
- (i) the existence of, or the right, title or interest of Golden Miles to, any property;
 - (ii) the creation, enforceability, validity or perfection of any security interest or other interest expressed to be created by or under the Documents with respect to any property of Golden Miles or any proceeds of such property that are not identifiable or traceable; or
 - (iii) any licences, permits or approvals that may be required in connection with the enforcement of the Documents, or the perfection of security granted in the Documents, by any secured party or other person or by a person on any of their behalf, whether, in the case of the enforcement of the Documents, such enforcement involves the operation of the business of Golden Miles or a sale, transfer or disposition of its property and assets.

Limitation

This opinion letter is limited to the matters stated herein and is addressed to you solely for your own use and benefit and may not be relied upon by any other person or for any other purpose without our prior written consent.

Very truly yours,

24526377.1

Blakes

Blake, Cassels & Graydon LLP

24526377.1

SCHEDULE "A"
PERSONAL PROPERTY SEARCHES

KSV / GOLDEN MILES
SEARCH OVERVIEW

CORPORATE SEARCHES

Current Name	Incorporating Jurisdiction	Registered Office Address	Former/Predecessors (last 10 years)	Officers/Directors	
				Name	Title
1. Golden Miles Food Corporation	Ontario	800 Swinbourne Drive Mississauga, ON L5V 1J6	Incorporated on April 12, 2010 as Golden Miles Bread & Bagel Corporation Name change on December 12, 2017, to Golden Miles Food Corporation	Santokh Mahal	Director

Prepared for Chris Burr by Nancy Thompson of Blake, Cassels & Graydon LLP for use by KSV Restructuring Inc.
This summary has been prepared solely for internal use and for the benefit of our client and may not be relied upon by or disclosed to anyone else without our prior written consent. This summary is a compilation of data taken from search results obtained from applicable governmental registries. Blake, Cassels & Graydon LLP accepts no liability for the accuracy of the data or for the information contained herein; please refer to and rely on the original search results.
24526377.1

SECURITY SEARCHESPPSA means *Personal Property Security Act*N/A means Not Applicable, **N/S** means Not Searched

Province	Lien Searches		Other Searches		
	PPSA	Bank Act	Bankruptcy	Executions	Litigation
Ontario					
Golden Miles Food Corporation	See Appendix A	N/S	N/S	See Appendix B	N/S
Golden Miles Bread & Bagel Corporation	<u>Clear</u> , as at October 16, 2022	N/S	N/S	N/S	N/S

Appendix A

Personal Property Security Act (Ontario)

C means Consumer Goods, **I** means Inventory, **E** means Equipment, **A** means Accounts, **O** means Other, **M** means Motor Vehicle Included
Collateral Description intends to be an abridgement; see search printout for full collateral description (including serial numbers and itemized collateral)
VIN means one or more specific motor vehicles have been set out in the Motor Vehicle Section – see search printout for vehicle identification numbers
Other Comments intends to capture amendments, partial discharges, etc.

The order of registration set out below is not necessarily indicative of the priority of registration
The first eight digits of the Registration Number denote the year, month and day of registration

Current to October 16, 2022

GOLDEN MILES FOOD CORPORATION

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	VIN	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M					
1. The Bank of Nova Scotia 10 Wright Boulevard Stratford, ON N5A 7X9	764560125	i) 20200810 1021 1219 7326			X		X	X	2019 Ford F150 Our security interest is limited to the motor vehicles listed above and the proceeds of those vehicles.	X	4	Golden Miles Food Corporation Sarbjit Mahal	Amount: \$78,891
2. Santokh S. Mahal 800 Swinborne Drive Mississauga, ON L5V 1J6	768615228	i) 20201216 1519 1590 9409		X	X	X	X	X			10	Golden Miles Food Corporation	No Fixed Maturity Date
3. Skymark Finance Corporation 46 Village Centre Place, Suite 300 Mississauga, ON L4Z 1V9	772965018	i) 20210531 1235 1590 3402			X	X					2	Golden Miles Food Corporation	

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	VIN	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M					
4. Fluid Construction & Project Management Inc. 2800 John Street, Suite 23 Markham, ON L3R 0E2 and 8787 Woodbine Avenue, Unit 215 Markham, ON L3R 9S2	773951661	i) 20210629 1216 1590 6229		X	X	X	X	X			5	Golden Miles Food Corporation	
5. Buhler Inc. 13105 12 th Avenue North Plymouth, MN 55441	778766058	i) 20211203 1213 1590 7556			X			X		X	6	Golden Miles Food Corporation Golden Miles Foods Inc. Mahal Venture Capital	

APPENDIX B
EXECUTION SEARCHES¹

Writ Details Report - Toronto

(l)	Execution No.:	21-0003822
	Issue Date:	2021-SEP-14
	Expiry Date:	2027-SEP-14
	Effective Date:	2021-SEP-15
	Court File or Reference:	CV-20-00642848-0000 (Toronto)
	Creditor:	Garage Living Inc.
	Debtors:	Golden Miles Food Corporation formerly known as Golden Miles Bagel & Bread Corporation and Mahal Venture Capital Inc.
	Judgment:	\$61,452.05
	Costs:	\$1,146.00
	Interest Rate / Start Date:	2.0 % / 2021-FEB-03
	Against Debtors:	All Debtors

Writ Details Report - Brant

(m)	Execution No.:	21-0000209
	Issue Date:	2021-SEP-14
	Expiry Date:	2027-SEP-14
	Effective Date:	2021-SEP-15
	Court File or Reference:	CV-20-00642848-0000 (Toronto)
	Creditor:	Garage Living Inc.
	Debtors:	Golden Miles Food Corporation formerly known as Golden Miles Bagel & Bread Corporation and Mahal Venture Capital Inc.
	Judgment:	\$61,452.05
	Costs:	\$1,146.00
	Interest Rate / Start Date:	2.0 % / 2021-FEB-03
	Against Debtors:	All Debtors

¹ Same execution filed in each of Toronto, Brant (Brantford) and Peel (Mississauga). See #6 in Litigation Search Results.

Writ Details Report - Peel

(n)	Execution No.:	21-0002193
	Issue Date:	2021-SEP-14
	Expiry Date:	2027-SEP-14
	Effective Date:	2021-SEP-15
	Court File or Reference:	CV-20-00642848-0000 (Toronto)
	Creditor:	Garage Living Inc.
	Debtors:	Golden Miles Food Corporation formerly known as Golden Miles Bagel & Bread Corporation and Mahal Venture Capital Inc.
	Judgment:	\$61,452.05
	Costs:	\$1,146.00
	Interest Rate / Start Date:	2.0 % / 2021-FEB-03
	Against Debtors:	All Debtors

Appendix “B”

PROMISSORY NOTE

FOR VALUE RECEIVED, GOLDEN MILES FOOD CORPORATION (the “**Borrower**”) promises to pay on demand to or to the order of SANTOKH SINGH MAHAL (the “**Lender**”), the principal amount as may be advanced and outstanding from time to time, between the Borrower and the Lender, as shown on the schedule annexed hereto or any continuation schedule which may at any time be attached hereto.

THIS PROMISSORY NOTE is issued to evidence the principal amounts advanced, any repayments on account thereof and the unpaid balance of the principal amount outstanding from time to time. The Lender is hereby authorized to endorse on the schedule annexed hereto, or any continuation schedule which may at any time be attached hereto, the date and amount of each advance, and each payment of principal on account thereof, together with the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender. Each such endorsement shall be prima facie evidence of the amounts so advanced and repaid and, in the absence of manifest mathematical error, this promissory note shall be conclusive evidence of the amount of the Borrower’s liability to the Lender for the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender.

THE BORROWER shall pay interest on the amount the principal outstanding from time to time at the rate as is agreed between the Borrower and the Lender until payment in full.

IN THE EVENT of the non-payment when due, whether by acceleration or otherwise, of all or any part of the principal, or in the event of the bankruptcy or insolvency of the Borrower, or the institution by or against the Borrower of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act* or otherwise, the entire unpaid balance of the principal and accrued interest shall, at the option of the Lender, become immediately due and payable.

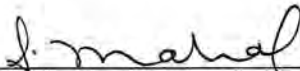
THE BORROWER shall have the privilege of repaying the whole or any part of the principal sum at any time or from time to time without notice, bonus, premium or penalty.

THE BORROWER hereby waives presentment, notice of dishonour, protest and notice of protest.

THIS PROMISSORY NOTE shall be governed and construed by the laws of the Province of Ontario and the laws of Canada applicable therein.

DATED at Windsor, Ontario this 14 day of December, 2020.

GOLDEN MILES FOOD CORPORATION

Per: 
Santokh Singh Mahal, President

I have the authority to bind the corporation.

SCHEDULE OF ADVANCES AND REDUCTIONS OF PRINCIPAL

<u>Date</u>	<u>Amount of Principal Advanced</u>	<u>Amount of Reduction</u>	<u>Unpaid Principal Balance</u>	<u>Endorsement Made by</u>
3/18/2016	\$4,103,385.47		\$4,103,385.47	SM
11/30/2016	\$643,836.19		\$4,747,221.66	SM
1/9/2017	\$526,923.83		\$5,274,145.49	SM
2/27/2017	\$932,522.78		\$6,206,668.27	SM
3/15/2017	\$1,748,309.21		\$7,954,977.48	SM
4/26/2017	\$1,083,482.63		\$9,038,460.11	SM
7/31/2017	\$3,488,218.44		\$12,526,678.55	SM
8/16/2017	\$1,055,664.77		\$13,582,343.32	SM
1/25/2018	\$197,604.81		\$13,779,948.13	SM
2/23/2018	\$37,326.57		\$13,817,274.70	SM
2/23/2018	\$62,937.44		\$13,880,212.14	SM
9/17/2018	\$933,801.50		\$14,814,013.64	SM
10/1/2018	\$286,382.25		\$15,100,395.89	SM
10/4/2018	\$4,459.90		\$15,104,855.79	SM
10/15/2018	\$7,332,066.36		\$22,436,922.15	SM
10/20/2018	\$34,862.76		\$22,471,784.91	SM
11/5/2018	\$110,175.00		\$22,581,959.91	SM
12/10/2018	\$113,148.24		\$22,695,108.15	SM
6/14/2019	\$8,728.12		\$22,703,836.27	SM
6/1/2020	\$324,440.20		\$23,028,276.47	SM
10/30/2020	\$1,073,500.00		\$24,101,776.47	SM

Appendix “C”



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

October 20, 2021

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

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

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

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

RESPONDENTS

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

OCTOBER 20, 2021

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager ("Receiver") of the assets, undertakings and properties of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles", and together with Mahal VC, the "Companies") owned or used in connection with the flour mill (the "Flour Mill") located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the "Real Property" and together with the Flour Mill, the "Property").
2. KSV was appointed Receiver of the Companies pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on October 1, 2021 (the "Receivership Order"). A copy of the Receivership Order is provided as Appendix "A".
3. The principal purpose of the receivership proceedings is to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies' creditors and other stakeholders.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) summarize the Receiver's activities since the date of its appointment;
 - c) outline the Receiver's attempts to obtain information and Property from the Companies' principals, Santokh Mahal ("Santokh") and Jesse Mahal ("Jesse", and together with Santokh, the "Mahals"); and
 - d) request that the Court issue an Order:
 - i. directing each of Santokh and Jesse to comply with their obligations under the Receivership Order, including to, among other things, immediately provide to the Receiver all Property and records (physical and electronic) in their possession, power and control;
 - ii. directing each of Santokh and Jesse to return to the Receiver, no later than 5 p.m. (Toronto Time) on October 22, 2021, the PLC (as defined below), or, if not in their possession, to provide to the Receiver the complete contact information of the party in possession of the PLC, including all correspondence regarding the chain of custody of the PLC from the Companies to such party;
 - iii. directing Santokh to return, no later than 5 p.m. (Toronto Time) on October 22, 2021, \$21,500 that was transferred from the bank account of Golden Miles to his personal account on October 4, 2021, after the date of the Receivership Order;
 - iv. directing the Companies' accountants, Gill & Co. ("Gill"), to provide no later than 5 p.m. (Toronto Time) on October 28, 2021 certain Records (as defined in the Receivership Order) and supporting documentation for the payment it received from Golden Miles on October 4, 2021;
 - v. making certain declarations and orders commensurate with the foregoing, as further set out in the draft order attached to the Receiver's motion record; and
 - vi. directing the Mahals, on a joint and severally basis, to pay the costs of the Receiver and its counsel incurred in preparing this Report and seeking the relief herein .

1.2 Currency

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

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon certain of the Companies' unaudited financial statements, limited books and records obtained from Jesse (as discussed below) and discussions with the Mahals and a former advisor to the Companies.

2. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2.0 Background

1. Mahal VC was incorporated in 2014 under the *Business Corporation Act* (Canada) and is a single purpose corporation that owns the Real Property. The Receiver understands that Jesse is the sole officer, director and shareholder of Mahal VC.
2. Golden Miles was incorporated in 2010 as Golden Miles Bread & Bagel Corporation under the *Business Corporations Act* (Ontario) and changed its name to Golden Miles Food Corporation in 2017. The Receiver understands that Santokh, Jesse’s father, is the sole officer, director and shareholder of Golden Miles.
3. The Mahals have advised the Receiver that Mahal VC owns the Real Property and that Golden Miles owns the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operates from the Real Property and describes itself in its unaudited financial statements as at June 30, 2020 as being “engaged in the sale of cookies, crackers, and dried plant material”.
4. Construction of the Flour Mill appears to be substantially complete; however, it has not been issued the permits, licenses and approvals necessary to operate from the relevant authorities, including the City of Brantford and various health and safety regulators.
5. The Receiver understands that the Companies had no employees as of the date of the Receivership Order. As discussed further below, the Mahals have not provided the Receiver with any information regarding the Companies’ obligations, including any amounts owing to its former employees.
6. Skymark Financial Corporation (“Skymark”) is the Companies’ largest creditor. As of the date of the Receivership Order, and for the reasons described below, KSV determined that the Companies were indebted to Skymark in the amount of approximately \$29.2 million¹. The Skymark debt relates to various loans to Mahal VC in connection with mortgages granted by Mahal VC on the Real Property (the “Mahal Loans”) and to Golden Miles in connection with equipment financing (the “GM Loans”, and together with the Mahal Loans, the “Loans”). The Receiver understands that the primary purpose of the Loans was to construct a Flour Mill on the Real Property.
7. The Skymark receivership application materials and related documentation provide details concerning the defaults under the Loans and subsequent events resulting in these proceedings. These materials include the Minutes of Settlement dated July 26, 2021 between Skymark and the Companies (the “Minutes”) pursuant to which, among other things, KSV was engaged to determine the amount owing under the Loans.

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

8. The Receiver has been provided with a copy of a promissory note allegedly issued by Golden Miles to Santokh in the approximate amount of \$24.1 million, together with a general security agreement dated December 14, 2020. Santokh filed a financing statement in the *Personal Property Security Act* (Ontario) (the “PPSA”) registry against Golden Miles on December 16, 2020.
9. Several other parties have also made registrations against Golden Miles under the PPSA and/or filed charges or liens against the Real Property, including (i) a construction lien in 2019 by Vicano Construction Limited (“Vicano”), one of the Companies’ former general contractors, in the approximate amount of \$5.8 million; (ii) a number of transfers of charges by parties that funded Skymark so that Skymark could make the Loans; and (iii) a mortgage in 2021 by Santokh, in the approximate amount of \$35 million.
10. As set out in Section 3 below, the Receiver has located virtually no books and records of the Companies and therefore has been unable to compile creditor lists, which were required for the Receiver’s statutory report to the Office of Superintendent of Bankruptcy which was due ten days after the granting of the Receivership Order. Accordingly, all indebtedness referred to in this Report should be considered preliminary.
11. The Receiver’s counsel, Blake, Cassels & Graydon LLP (“Blakes”), is currently reviewing the validity and priority of the security interests claimed or registered against the Property. The limited records provided by the Companies have forced the Receiver and Blakes to rely on records provided by the respective secured creditors, which has delayed the process. The Receiver will report on the results of this security review when it is complete.

3.0 Receiver’s Activities

1. The Mahals have provided minimal cooperation and information to the Receiver since its appointment. The Receiver’s dealings with the Mahals are set out in Section 3.1 and 3.2 below.
2. Notwithstanding the minimal cooperation, the Receiver has taken steps to secure the Property and gather information relating to the Companies as expeditiously and cost-effectively as possible. Among other things, the Receiver has:
 - a) secured the Flour Mill by changing the locks, installing exterior security cameras, disabling the exterior gates (the “Gates”) and arranging periodic security patrols at the Real Property;
 - b) reviewed records provided by Skymark and its counsel;
 - c) met with certain of the Companies’ vendors, including:
 - i. Buhler Canada Inc., an international milling equipment supplier;
 - ii. Fluid Construction Inc., the most recent general contractor of the Flour Mill;
 - iii. Vicano, the former general contractor and current construction lien claimant, as described above;

- iv. Pelican Woodcliff Inc., a cost consultant engaged by Golden Miles to review its construction budget; and
- v. several vendors that maintained the Flour Mill's alarms, sprinklers and equipment;
- d) met with Richard Rossetti, an engineer involved in the design and construction of the Flour Mill. Mr. Rossetti accompanied the Receiver on a tour of the Flour Mill, identified deficiencies that, in his view, need to be addressed, and provided the Receiver with extensive electronic data regarding the Property;
- e) met with the Companies' insurance agent and representatives of one of the Companies' insurers in order to maintain insurance for the Property;
- f) corresponded with financial institutions where the Companies hold accounts²;
- g) held discussions and corresponded with certain judgment creditors or counterparties to litigation, such as Garage Living Inc. (which has a \$61,000 judgment against the Companies) and Vivian Group Inc. (which has advanced a \$750,000 trust claim, among other claims, against the Companies); and
- h) corresponded with Gill, the Companies' accountants.

3.1 Attendances at the Flour Mill and Missing Records and Property

First Attendance – July 30, 2021

1. Pursuant to the Minutes, the Companies agreed that KSV would be entitled to “attend at the [Flour Mill] to make an inventory of and inspect the condition of the collateral secured under the [Loans] and report its findings to Skymark.” The Companies agreed in the Minutes to “provide all reasonable assistance to KSV or its representatives to enable the inspection provided for in [the Minutes] to take place, including without limitation, providing physical access to the [Flour Mill] and promptly responding to any questions or requests from KSV or its representatives”.
2. On July 30, 2021, KSV engaged an agent to visit the Flour Mill (the “July Inspection”). KSV's agent was initially refused access by Santokh, and ultimately only permitted by Santokh to enter the Flour Mill on the basis that no photographs, notes or other recordings be taken. KSV's records of the July Inspection are accordingly based on a recount by its agent immediately following the July Inspection.

Second Attendance – October 1, 2021

3. On October 1, 2021, representatives of the Receiver attended outside the Flour Mill, awaiting the granting of the Receivership Order which was being taken out on consent that day pursuant to the terms of the Minutes.

² Based on banking information the Receiver obtained from Skymark related to the Companies. The Mahals have not provided the Receiver with any of the Companies' bank account details.

4. Pending the granting of the Receivership Order, the Receiver observed both Jesse and Santokh removing bags and boxes from the office entrance of the Flour Mill into their respective vehicles. The Receiver did not review the contents of these bags and boxes as the removal was completed prior to the Receiver's appointment. The Receiver has requested that the contents of these bags and boxes be provided to the Receiver; however, this request has been ignored.
5. Immediately upon issuance of the Receivership Order, the Receiver entered the Flour Mill, accompanied by the Mahals, to undertake its duties and exercise the powers granted by the Receivership Order. The Receiver's observations on October 1, 2021 included:
 - a) numerous empty racks with loose/disconnected wiring inside the server room – only one server remained;
 - b) office furniture, including desks, chairs, monitors, keyboards and wires, but no CPUs or laptop computers;
 - c) no physical records, financial or otherwise, stored on the site;
 - d) no security camera monitoring equipment, despite numerous security cameras installed both inside and outside the Flour Mill; and
 - e) large bags and boxes of raw tobacco located inside and outside the premises (the "Tobacco").
6. The Receiver questioned the Mahals regarding the above, including the absence of records inside the office area. The Mahals advised the Receiver that no Property or records had been removed, yet neither of them identified where any records were located.
7. At the July Inspection, KSV's agent observed equipment, including servers, security monitoring equipment and CPUs, in the Flour Mill that were no longer there on October 1, 2021. The Receiver inquired about the location of these specific assets, and the Mahals again advised, without explanation, that no Property had been removed.
8. As part of securing of the Flour Mill, the Receiver attempted to change the passcode on the Gates which secure the premises from vehicle access. The Receiver was unable to reprogram the Gates and therefore disabled them by disconnecting the Gate-opening mechanism from the power source. This would ensure that no vehicles could access the Flour Mill over the weekend of October 2 and 3, 2021.
9. On Monday, October 4, 2021, the Receiver re-attended at the Property and observed that the Gates were open and the power supply physically reconnected. The Receiver requested an explanation from the Mahals. The Mahals' counsel at the time, Kirwin Partners LLP ("Kirwin"), advised that "the gate to the plant has a malfunction which causes it to open spontaneously in damp weather." An explanation was not provided as to how the weather could cause cables to be physically reconnected. Kirwin advised that the Mahals did not attend at the Property on October 2 or 3, 2021.

3.2 Written Requests for Information From the Companies and Mahals

1. Due to the issues described above, the Receiver and Blakes made numerous written requests to the Mahals and their counsel.
2. On October 1, 2021, Blakes advised Kirwin, the Companies' counsel at the time, (the "October 1st Correspondence") that the Receiver's representatives did not locate any digital or physical records and required that Jesse and Santokh "advise of the existence of all physical and digital records, and to provide access to and copies of same." In a follow up email on the same date, Blakes requested details regarding the Companies' insurance as soon as possible. Neither Kirwin nor the Companies responded to these requests. A copy of the October 1st Correspondence is attached as Appendix "B".
3. Blakes sent a letter dated October 4, 2021 (the "October 4th Letter") to Kirwin and requested, among other things, that:
 - a) Jesse and Santokh return the Property that was found to be missing from the Flour Mill and disclose the location of any and all other Property of the Companies that is subject to the Receivership Order;
 - b) Jesse and Santokh disclose the location of the Companies' books and records and permit the Receiver to make, retain and take copies of these records; and
 - c) all information and records specifically identified in Schedule "A" to the October 4th Letter be provided to the Receiver by noon on October 5, 2021. The Receiver also requested that the computers and other electronic devices of the Mahals (the "Devices") be provided to the Receiver so that they could be imaged.

A copy of the October 4th Letter is provided as Appendix "C".

4. Kirwin responded by email on October 5, 2021 to the October 4th Letter (the "October 5th Email") and indicated that "Santosh takes his obligations under the order seriously. I will assist in coordinating a meaningful response to the information requested in schedule A to your letter without further delay." The response from Kirwin, among other things, requested that the Receiver provide further specifics regarding the missing Property and the books and records. The October 5th Email is provided, without attachments, as Appendix "D".
5. Along with the October 5th Email, the Receiver was provided with a one-page document that listed six vendor accounts and court file links to ongoing litigation between the Companies and Vicano. In addition to the response from Kirwin, Santokh emailed to Blakes a copy of a recent electricity bill. The electricity bill was addressed to Santokh's personal residence.
6. Following the October 5th Email, Blakes sent a follow-up letter dated October 5, 2021 (the "October 5th Letter") to Kirwin which responded to questions from Kirwin. A copy of the October 5th Letter is attached as Appendix "E".
7. The Receiver was advised by Jesse on October 6, 2021 that the Mahals had retained Dickinson Wright LLP ("Dickinson"). A notice of change of lawyer was filed by Dickinson in these proceedings on October 6, 2021, which advised that Kirwin had been replaced by Dickinson as lawyers of record for the Companies.

8. On October 6, 2021, Blakes prepared an email (the “October 6th Email”) to Dickinson regarding the complete lack of cooperation from the Mahals and their breaches of and disregard for the Receivership Order. The October 6th Email, which included the October 4th Letter and the October 5th Letter, is provided, without attachments, as Appendix “F”.
9. On October 7, 2021, on a call with the Receiver, Blakes, Dickinson and Jesse (the “October 7th Phone Call”), Jesse advised that he would upload the information requested by the Receiver to a data room. While Jesse provided numerous documents, he did not do so in a manner that was responsive to the Receiver’s information requests. He provided a “data dump” of what appear to be selective and outdated engineering files, site-drawings, floor plans, old invoices, budgets, old statements of account from Vicano and Fluid and certain property assessment documents. The documents uploaded in the data room did not include any of the financial books and records, bank or Canada Revenue agency (“CRA”) account numbers, permit related documents, and certain other documents which the Receiver had requested on a priority basis. The Mahals also ignored the Receiver’s requirement that they provide the Devices.
10. Following its review of the data upload, the Receiver advised Jesse on October 12, 2021 that the information it received was deficient and summarized, yet again, its requirements, including the Devices. No response was provided.
11. Later on October 12, 2021, the Receiver requested that Jesse provide the Receiver with the key to the mailbox at the Real Property and the “PCL (*sic*) Controller unit which has all the software programs to run the mill” as Jesse had previously advised the Receiver that the programmable logic controller (the “PLC”), an industrial computer adapted for the control of manufacturing processes which contains the essential software and source code required to operate the Flour Mill, was moved to the basement of the Flour Mill.
12. It is the Receiver’s understanding, based on its consultations with third party experts, that without the PLC, the Flour Mill is inoperable.
13. On October 13, 2021, Jesse advised the Receiver:
 - a) “Still acquiring remaining information requested”; and
 - b) “PLC control is with supplier in Europe for further coding. They require payment and need to come over to install and commission all machines.”
14. Copies of the October 12 and 13, 2021 emails (the “October 12th and 13th Emails”) are attached as Appendix “G”.
15. On the morning of October 20, 2021, Jesse attended at the Flour Mill with a representative of the Receiver in order to recover certain property that is not subject to the Receivership Order. Jesse produced a laptop and agreed to let the Receiver copy it; however, he advised that he was not willing to leave the laptop with the Receiver and requested to be present when the device is being imaged. This is acceptable to the Receiver, and the Receiver is prepared to coordinate a technician to undertake such imaging forthwith with Jesse present.

3.3 Gill & Co.

1. During the October 7th Phone Call, Jesse advised the Receiver that hard copies of the Companies' books and records had recently been sent to Gill.
2. Based on the Receiver's review of bank account information obtained directly from the Companies' banks (described below in section 3.4), the Receiver identified a \$15,750 cheque from Golden Miles to Gill that cleared on October 4, 2021, three days after the Receiver was appointed.
3. On October 14, 2021, representatives of the Receiver contacted Pardeep Gill of Gill ("Ms. Gill") by telephone to request access to the accounting and tax records of the Companies. On this call, the Receiver specifically requested the Companies' financial statements and tax returns. On October 14, 2021, the Receiver followed up with an email, attaching the Receivership Order and requesting a call the next day (October 15, 2021).
4. Ms. Gill responded by email on October 18, 2021 proposing a call on Wednesday, October 20, 2021. The Receiver responded by requesting a call that day (October 18, 2021) due to urgency. Receiving no response, the Receiver followed up by email again on October 18, 2021 reiterating its request for the Companies' financial statements and tax returns. No response was received.
5. On October 19, 2021, the Receiver emailed Ms. Gill again, asking for a response and specifically requesting (a) all trial balances and financial statements of the Companies, in draft or final form, (b) all draft and filed tax returns of the Companies, (c) details of any and all funds that Gill currently holds on behalf of the Companies or the Mahals, and (d) a copy of the invoice related to the \$15,750 cheque that cleared on October 4, 2021. This email requested a response by noon the next day (October 20, 2021).
6. At 12:56 p.m. on October 20, 2021, the Receiver was contacted by Navjot Mahant of Gill who advised "I see a meeting scheduled with you today in Pardeep's calendar for 1 o'clock. However, Pardeep is out of the office and has been sick for the last two days. I will find a new time for you and schedule a meeting". Copies of the emails between the Receiver and Gill are provided in Appendix "H".
7. The Receiver has not been provided with any of the Records it has requested from Gill. Gill is in receipt of funds that may be Property (as defined in the Receivership Order) and the Receiver has been advised by Jesse that material Records (as defined in the Receivership Order) have been transferred to Gill. Accordingly, the Receiver is seeking an order specifically directing Gill to make the disclosure required by the Receivership Order.

3.4 Bank Accounts

1. As referenced above, the Mahals have not provided the Receiver with any of the Companies' banking information.

2. Based on information provided by Skymark (including cheque copies), the Receiver has been able to identify a bank account held by Mahal VC at Royal Bank of Canada (“RBC”) and accounts held by Golden Miles at Toronto-Dominion Bank (“TD”). Based on this information, the Receiver advised RBC and TD of the Receivership Order and requested account details. Their responses are summarized below:
 - a) RBC advised that Mahal VC’s account has been set to deposits only per the Receiver’s request. The Receiver has requested account balance details and an account history for the last 12 months; and
 - b) TD advised that Golden Miles maintained three accounts and provided to the Receiver account histories for the last 12 months. The Receiver notes that:
 - i. two of these accounts were closed on July 26, 2021 and the remaining active account had a balance of \$41,074 on the date of the Receivership Order;
 - ii. the address of the bank statements is Jesse’s personal residence; and
 - iii. a transfer was made on October 4, 2021 from account 5325309 in the amount of \$21,500. Following an inquiry with TD, the Receiver was advised that this transfer was made to Santokh. An extract of the TD statement for account 5325309 and confirmation from TD regarding the transfer is provided as Appendix “I”.

3.5 The Tobacco

1. Blakes and the Receiver requested documentation from the Mahals related to the Tobacco that was discovered at the Property, described above.
2. The response to this request in the October 5th Email was that “the Tobacco leaf product at the mill is not Property as defined in the receivership order. In any event, it is damaged and is at the mill waiting to be discarded.” In a subsequent phone call on October 5, 2021 between Blakes and Kirwin, Blakes was advised that the Tobacco was imported from India and sold to local indigenous communities.
3. During the October 7th Phone Call, Jesse advised that certain unknown parties dumped tobacco near the Companies’ garbage bin for disposal, without the Companies’ knowledge or consent. The Receiver asked Jesse to explain how several large unopened boxes of tobacco were also located inside the warehouse of the Flour Mill. Jesse responded that they were “moving stuff around” and so some of the Tobacco was moved into the warehouse.
4. Having been provided with no permits, licences, stamps or other documentation with respect to the Tobacco, and having received inconsistent explanations for the existence of a material volume of a controlled substance at the Flour Mill, the Receiver contacted Health Canada and the City of Brantford for guidance and direction on the disposal of the Tobacco. The Receiver anticipates that the Tobacco will be disposed of in the short term, in accordance with directions from Health Canada and the City of Brantford.

4.0 Summary of Deficiencies

1. As of the date of this Report, the Receiver has not been provided with most of the items requested in its original information request list or in the October 12th and 13th Emails, including without limitation:
 - a) the financial accounting records of the Companies, digital or physical;
 - b) information regarding the Companies' bank accounts;
 - c) copies of all permits, certifications, licenses, patents, and approvals obtained or pending in connection with the Property;
 - d) the Devices for Jesse and Santokh;
 - e) the location of the Property that was identified as missing from the Flour Mill;
 - f) accounts payable listings with addresses and contact information for the Companies;
 - g) access to all email accounts associated with Mahal VC and Golden Miles;
 - h) any permits, stamps or registrations connected to the Tobacco identified at the Property; and
 - i) notices and account statements from CRA.
2. The Receiver has also not been provided with any information regarding the location of the PLC, despite it being one of the most important components of the Flour Mill.
3. Santokh furthermore appears to have transferred \$21,500 from Golden Miles to himself after the Receiver was appointed, without the Receiver's authorization or knowledge. The absence of books and records has prevented the Receiver from reviewing this transfer. Unless and until those funds have been determined by the Receiver to be outside of the scope of the Receivership Order, they should be returned.
4. The virtual absence of cooperation and disclosure by the Mahals and their apparent attempts to frustrate the process is preventing the Receiver from undertaking its duties under the Receivership Order. The realizable value of the Property may be materially impaired if the Mahals do not provide the Receiver with the information and Property it has requested.

5.0 Conclusion and Recommendation

1. Overall, the Receiver is of the view that the Mahals have demonstrated an intent to delay, hinder and defeat the Receiver in its ability to perform its duties as set out in the Receivership Order. The majority of the Receiver's requests have been ignored, and in the limited circumstances where information has been provided, the Mahals' responses have been implausible (for example that rain re-connected the disconnected power source for the Gates) or inconsistent (for example with respect to the Tobacco).

2. The Receiver and its counsel have made numerous and repeated requests and demands for Records and Property since being appointed, each in accordance with the Receiver's powers and entitlements under the Receivership Order. As outlined above, these requests and demands have had very little effect and have largely been ignored by the Mahals. This has left the Receiver with no choice but to bring the within motion, incur the costs of preparing this Report and attend at Court. These costs could have been avoided had the Mahals cooperated and fulfilled their obligations under the Receivership Order. In the Receiver's view, it is unfair and inappropriate for the creditors of the Companies to bear these costs. The Mahals ought to be personally liable for the costs that their behaviour has caused.
3. The Receiver respectfully requests the Court's assistance to fulfil its mandate. The Receiver is not, at this time, seeking an expansion of the powers granted to it in the Receivership Order, but rather directions to the Mahals and Gill to comply with the Receiver's existing powers. It is apparent to the Receiver that without such directions, the Receiver will continue to be ignored.
4. Accordingly, the Receiver respectfully requests that the Court make an Order:
 - a) directing each of Santokh and Jesse to comply with their obligations under the Receivership Order, including to, among other things, immediately provide to the Receiver all Property and records (physical and electronic) in their possession, power and control;
 - b) directing each of Santokh and Jesse to return to the Receiver, no later than 5 p.m. (Toronto Time) on October 22, 2021, the PLC, or, if not in their possession, to provide to the Receiver the complete contact information of the party in possession of the PLC, including all correspondence regarding the chain of custody of the PLC to such party;
 - c) directing Santokh to return, no later than 5 p.m. (Toronto Time) on October 22, 2021, \$21,500 that was transferred from the bank account of Golden Miles to his personal account on October 4, 2021, after the date of the Receivership Order;
 - d) directing Gill to provide, no later than 5 p.m. (Toronto Time) on October 28, 2021, certain Records (as defined in the Receivership Order) and supporting documentation for the payment it received from Golden Miles on October 4, 2021;
 - e) declaring that the Mahals are personally liable, on a joint and several basis, for the reasonable costs of the Receiver and its counsel incurred in connection with the preparation of this Report and their attendance at the motion seeking the within relief; and
 - f) making certain declarations and orders commensurate with the foregoing, as further set out in the draft order attached to the Receiver's motion record.
5. The Receiver is also seeking that the Mahals pay personally and forthwith the Receiver's costs of preparing this Report, costs thrown away due to Mahals' refusal to comply with the terms of the Receivership Order which was granted three weeks ago.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “D”

GOLDEN MILES FOOD CORPORATION

FINANCIAL STATEMENTS
October 30, 2020
(AUDITED - SEE NOTICE TO READER)

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Notice to Reader	Page 1
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Statement of Income	Page 3
A/R Aging Summary	Page 4

Perry Singh

Chartered Professional Accountant

19 Nomad Crescent

Toronto, Ontario M3B 1S5

Telephone: (416) 447-9399 Fax: (416) 447-3076

Notice to Reader

On the basis of information provided by management, I have compiled the balance sheet of Golden Miles Food Corporation as at November 30, 2020 and the statements of income for the year then ended.

I have performed an audit and a review engagement in respect of these financial statements and, accordingly, I express all statements are accurate in regards to all information provided to me by Golden Miles Food Corporation.

Readers are cautioned that these statements may not be appropriate for their purposes.



Perry Singh
Chartered Professional Accountant

Toronto, Ontario December 7, 2020

Golden Miles Food Corporation
Balance Sheet
As of November 30, 2020
(Audited - See Notice to Reader)

	Total
Assets	
Current Assets	
Cash and Cash Equivalent	
Chequing	2,507,286.61
USD Chequing	0.00
Total Cash and Cash Equivalent	\$ 2,507,286.61
Accounts Receivable (A/R)	
Accounts Receivable (A/R)	1,331,365.57
Total Accounts Receivable (A/R)	\$ 1,331,365.57
Inventory Asset	915,628.53
Total Current Assets	\$ 4,754,280.71
Non-current Assets	
Property, plant and equipment	
Accumulated Depreciation Building	-854,334.07
Accumulated Depreciation Furniture & Fixtures	-1,036.82
Accumulated Depreciation Machinery and Equipment	-3,452,388.97
Buildings	22,124,725.17
Furniture and Fixtures	15,593.81
Machinery and equipment	19,141,663.92
Total Property, plant and equipment	\$ 36,974,223.04
Total Non Current Assets	\$ 36,974,223.04
Total Assets	\$ 41,728,503.75
Liabilities and Equity	
Liabilities	
Current Liabilities	
Accounts Payable (A/P)	
Accounts Payable (A/P)	5,293,413.26
Accounts Payable (A/P) - EUR	0.00
Accounts Payable (A/P) - USD	1,540,000.00
Total Accounts Payable (A/P)	\$ 6,833,413.26
Corporation Taxes Payable	-44,919.42
GST/HST Payable	-3,169,686.54
Payroll liabilities	2,346.00
Total Current Liabilities	\$ 3,621,153.30
Non-current Liabilities	
Bank loans	40,000.00
Mortgages	17,496,180.00
Obligations under finance leases	8,784,889.45
Total Non-current Liabilities	\$ 26,321,069.45
Total Liabilities	\$ 29,942,222.75
Equity	
Opening Balance Equity	191,354.51
Owner's Equity	2,689,429.76
Share capital	0.00
Retained Earnings	1,742,524.75
Profit for the year	7,162,971.98
Total Equity	\$ 11,786,281.00
Total Liabilities and Equity	\$ 41,728,503.75

Golden Miles Food Corporation
Income Statement
November 30, 2019 - November 30, 2020
(Audited - See Notice to Reader)

	Total
INCOME	
Sales of Product Income	11,964,113.09
Total Income	\$ 11,964,113.09
COST OF GOODS SOLD	
Cost of Goods Sold	2,076,039.45
Shipping, Freight and Delivery - COS	36,697.56
Total Cost of Goods Sold	\$ 2,112,737.01
Total Cost of Goods Sold	\$ 2,112,737.01
GROSS PROFIT	\$ 9,851,376.08
EXPENSES	
Auto	7,455.05
Bank charges	2,460.00
Dues and Subscriptions	2,970.04
Import Duties Taxes Paid	11,034.64
Insurance	211,733.63
Interest Expense	1,518,237.92
Legal and professional fees	84,346.69
Purchases	55,835.27
Rent or Lease of Buildings	334,968.84
Repair and maintenance	2,251.13
Shipping, Freight, and Delivery	68,468.38
Supplies	24,542.36
Travel	10,835.87
Travel meals	677.45
Utilities	352,586.83
Total Expenses	\$ 2,688,404.10
OTHER EXPENSES	
Import Clearing	0.00
Total Other Expenses	\$ 0.00
PROFIT	\$ 7,162,971.98

Golden Miles Food Corporation
A/R Aging Summary
As of November 30, 2020
(Audited - See Notice to Reader)

	Current	1 - 30	31 - 60	61 - 90	91 and over	Total
2581150 Ontario Inc					72,854.30	72,854.30
Dollar Tree Stores Canada Inc.	6,982.56	21,142.77				28,125.33
M One MFG			1,161,600.00			1,161,600.00
Warehouse Trading Inc.					1,780.55	1,780.55
William Dunne & Associates	67,005.39					67,005.39
TOTAL	\$ 73,987.95	\$ 21,142.77	\$ 1,161,600.00	\$ 0.00	\$ 74,634.85	\$ 1,331,365.57

Appendix “E”

Financial Statements of

Golden Miles Food Corporation

June 30, 2020

Golden Miles Food Corporation
Table of Contents
June 30, 2020

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Review Engagement Report

To the Board of Directors of Golden Miles Food Corporation:

We have reviewed the accompanying financial statements of Golden Miles Food Corporation which comprise the Balance Sheet as at June 30, 2020 and the income statement, statement of retained earnings and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for private enterprises, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Practitioner's Responsibility

Our responsibility is to express a conclusion on the accompanying financial statements based on our review. We conducted our review in accordance with Canadian generally accepted standards for review engagements, which require us to comply with relevant ethical requirements.

A review of financial statements in accordance with Canadian generally accepted standards for review engagements is a limited assurance engagement. The practitioner performs procedures, primarily consisting of making inquiries of management and other within the entity, as appropriate, and applying analytical procedures, and evaluates the evidence obtained.

The procedures performed in a review are substantially less in extent than, and vary in nature from, those performed in an audit conducted in accordance with Canadian generally accepted auditing standards. Accordingly, we do not express an audit opinion on these financial statements.

Conclusion

Based on our review, nothing has come to our attention that causes us to believe that the financial statements do not present fairly, in all material respects, the balance sheet of Golden Miles Food Corporation as at June 30, 2020 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises.

Gill & Co. Chartered Accountants

Chartered Public Accountants
CPA, CA, Licensed Public Accountants
September 21, 2021
Mississauga, Ontario



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Golden Miles Food Corporation
Balance Sheet
(Unaudited)

As At June 30	2020	2019
ASSETS		
CURRENT		
Cash	\$ 164,657	\$ 62,328
Accounts Receivable	166,089	97,752
Due from Related Party (Note 2)	57,563	57,563
Taxes Receivable	1,336,905	3,899,015
Inventory	3,787,022	3,657,467
Prepaid Assets	-	37,770
TOTAL CURRENT ASSETS	<u>5,512,236</u>	<u>7,811,896</u>
CAPITAL ASSETS (Notes 1d, 3)	<u>47,108,137</u>	<u>41,527,293</u>
TOTAL ASSETS	<u>\$ 52,620,373</u>	<u>\$ 49,339,189</u>
LIABILITIES		
CURRENT		
Accounts Payable and Accrued Liabilities (Note 5)	\$ 6,158,830	\$ 6,760,749
Current Portion of Lease	194,448	-
Taxes Payable	1,480,093	1,050,923
	<u>7,833,372</u>	<u>7,811,672</u>
LONG TERM LIABILITIES		
Long Term Loan (Note 4)	27,328,674	25,158,412
Long Term Portion of Lease	16,204	-
Due to Shareholder	7,186,603	8,453,255
TOTAL LONG TERM LIABILITIES	<u>34,531,481</u>	<u>33,611,667</u>
TOTAL LIABILITIES	42,364,853	41,423,339
SHAREHOLDERS' EQUITY		
Capital Stock (Note 7)	100	100
Retained Earnings	10,255,420	7,915,750
TOTAL SHAREHOLDERS' EQUITY	<u>10,255,520</u>	<u>7,915,850</u>
TOTAL CURRENT LIABILITIES & NET ASSETS	<u>\$ 52,620,373</u>	<u>\$ 49,339,189</u>

APPROVED BY THE BOARD:

_____ Director

_____ Director

Golden Miles Food Corporation
Statement of Operations
(Unaudited)

For the year ended June 30

	2020	2019
Income		
Sales (Notes 1c, 10)	\$ 5,409,006	\$ 10,039,643
Cost of Goods Sold	1,615,273	939,237
Gross Profit/Loss	<u>3,793,733</u>	<u>9,100,406</u>
Expenses		
Advertising and Promotion	-	140
Automobile	8,080	-
Dues and Subscriptions	2,216	1,876
Bad Debts	-	361,996
Bank charges and Interest	2,467	-
Duties and Taxes	12,035	-
Delivery Costs	88,381	159,130
Insurance	257,169	106,639
Occupancy Costs	334,969	396,678
Office and General	-	3,540
Professional Fees	123,468	29,807
Repairs & Maintenance	12,299	597
Salaries and Benefits	46,129	78,900
Supplies	92,153	-
Telephone and Utilities	119,429	56,696
Travel	12,858	28,915
Depreciation	3,217	2,962
Total Expenses	<u>1,114,869</u>	<u>1,227,875</u>
Other Expenses		
Foreign Exchange Gain/Loss (Notes 1h,8)	<u>(89,977)</u>	<u>194,835</u>
Net Income Before Taxes	2,768,840	7,677,697
Corporate Tax Expense (Note 1f)	<u>429,170</u>	<u>1,050,923</u>
Net Income (Loss)	<u><u>\$ 2,339,670</u></u>	<u><u>\$ 6,626,774</u></u>

The accompanying notes are an integral part of these financial statements.

Golden Miles Food Corporation
Statement of Retained Earnings
(Unaudited)

For the year ended June 30	2020	2019
Retained Earnings, Opening	\$ 7,915,750	\$ 1,288,976
Dividends Paid	-	-
Net Income (Loss)	2,339,670	6,626,774
Retained Earnings, end of year	\$ 10,255,420	\$ 7,915,750

The accompanying notes are an integral part of these financial statements.

Golden Miles Food Corporation
Statement of Cash Flows
(Unaudited)

For the year ended June 30

	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES		
Net Income (Loss)	\$ 2,339,670	\$ 6,626,774
Adjustments for non-cash items - Depreciation	<u>3,217</u>	<u>2,962</u>
	2,342,887	6,629,736
Changes in non-cash working capital		
Accounts receivable	(68,336)	325,037
Due from Related Party	-	(57,563)
Taxes Receivable	2,562,110	(1,737,102)
Prepaid Assets	37,770	(37,770)
Inventory	(129,555)	(2,141,596)
Accounts payable and accrued liabilities	(601,918)	5,190,286
Taxes Payable	<u>429,170</u>	<u>1,050,923</u>
NET CASH PROVIDED BY OPERATING ACTIVITIES	4,572,128	9,221,950
CASH FLOWS FROM INVESTING ACTIVITIES		
Additions to capital assets	<u>(5,584,061)</u>	<u>(23,718,440)</u>
NET CASH PROVIDED BY INVESTING ACTIVITIES	(5,584,061)	(23,718,440)
CASH FLOWS FROM FINANCING ACTIVITIES		
Long Term Loan	2,170,262	13,840,855
Leased Equipment	210,652	-
Due to Shareholder	<u>(1,266,652)</u>	<u>30,375</u>
NET CASH PROVIDED BY FINANCING ACTIVITIES	1,114,262	13,871,230
NET INCREASE/(DECREASE) IN CASH	\$ 102,329	\$ (625,260)
CASH - beginning of year	<u>62,328</u>	<u>687,589</u>
CASH - end of year	<u>\$ 164,657</u>	<u>\$ 62,328</u>

The accompanying notes are an integral part of these financial statements.

Golden Miles Food Corporation

Notes to the Financial Statements

For the year ended June 30, 2020

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- a. Nature of Business** Golden Miles Food Corporation (the "Company") is incorporated under the business Corporations Act (Ontario). The Company is engaged in the sale of cookies, crackers, and dried plant material.
- b. Basis of Accounting** The Company has prepared its financial statements in accordance with Canadian accounting standards for private enterprises ("ASPE").
- c. Revenue Recognition** The Company generates revenues by importing cookies, crackers, and dried plant material and reselling these goods to their customers. Revenue is only recognized when ultimate collection is reasonably assured upon completion of delivery of the goods.
- d. Capital Assets** Capital assets are carried at cost less accumulated amortization. Amortization based on the estimated useful life of the asset is as follows:
- | | | |
|-------------------------|---|-----------------------|
| Machinery and equipment | - | 20% declining balance |
| Furniture and fixtures | - | 20% declining balance |
| Building | - | 4% declining balance |
- One-half of the regular rate is applied in the year of acquisition.
- e. Impairment of Long-Lived Assets** The Company monitors its use of capital assets and when the capital asset no longer has any long-term service potential to the organization, the excess of its net carrying amount over any residual value is recognized as an expense in the statement of operations.
- f. Income Taxes** The Company follows the current income taxes method in accounting for income taxes.
- g. Financial Instruments** Financial instruments are recorded at fair value when acquired or issued and subsequently measured at cost or amortized cost less impairment, if applicable. Financial assets are tested for impairment when changes in circumstances indicate the asset could be impaired. Transaction costs on the acquisition, sale or issue of financial instruments are charged to the financial instrument for those measured at amortized cost.
- h. Foreign Currency Translation** Foreign currency accounts are translated to Canadian dollars as follows:
- At the transaction date, each asset, liability, revenue, and expense are translated into Canadian dollars by the use of the exchange rate in effect at that date. At the year-end date, monetary assets and liabilities are translated into Canadian dollars by using the exchange rate in effect at that date. The resulting foreign exchange gains and losses are included in income in the current period.

2. RELATED PARTY BALANCE AND TRANSACTIONS

	<u>2020</u>	<u>2019</u>
Due from Mahal Venture Capital Inc., unsecured, non-interest bearing and repayable on demand. The Company has agreed not to demand repayment within the next twelve months	\$ 57,563	\$ 57,563

During the year, transactions with this related company was as follows:

	<u>2020</u>	<u>2019</u>
Reimbursement of Expenses	\$ -	\$ 57,563

These transactions are in the normal course of operations and are measured at the exchange value (the amount of consideration established and agreed to by the related parties).

3. CAPITAL ASSETS

	<u>2020</u>		<u>2019</u>	
	Cost	Accumulated Amortization	Cost	Accumulated Amortization
Buildings	\$ 33,620,808	\$ 854,334	\$ 29,685,742	\$ 854,334
Machinery & Equipment	17,784,691	3,452,389	16,136,679	3,452,389
Furniture & Fixtures	16,577	7,216	15,594	3,999
	<u>\$ 51,422,076</u>	<u>\$ 4,313,939</u>	<u>\$ 45,838,015</u>	<u>\$ 4,310,722</u>
Net Book Value		<u>\$ 47,108,137</u>		<u>\$ 41,527,293</u>

Assets under construction are included in buildings and machinery & equipment.

4. LONG TERM LOANS

The Company has the following facilities available:

- i) \$9,600,000 CAD (2019 - \$9,600,000) demand operating loan bearing interest at the bank's prime rate plus 11.3% per annum.
- ii)
- iii) \$6,400,000 CAD (2019 - \$6,400,000) demand operating loan bearing interest at the bank's prime rate plus 11.3% per annum.
- iv) \$4,000,000 CAD (2019 - \$4,000,000) demand operating loan bearing interest at the rate of 10% per annum.
- v) \$8,481,950 CAD (2019 - \$8,481,950) demand operating loan bearing interest at the rate of 9.95% per annum.

The above facilities are secured by a general security agreement providing a first charge over all present and after acquired personal property and a floating charge over all present and after acquired property, unlimited guarantee by a company under common management supported by a first collateral land mortgage over the related company's land and premises.

5. GOVERNMENT REMITTANCES

Included in accounts payable and accrued liabilities are government remittances including payroll withholdings and related taxes of \$16,675 (2019 - \$3,017).

6. DUE TO SHAREHOLDER

The amount due to shareholder is secured, non-interest bearing and due on demand. The shareholder has agreed not to demand repayment within the next twelve months.

7. SHARE CAPITAL

	<u>2020</u>	<u>2019</u>
Issued		
100 Common Shares	\$ 100	\$ 100

8. FINANCIAL INSTRUMENTS

Credit Risk

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. The Company provides credit to its customers in the normal course of its operations. The Company limits its exposure to this risk by closely monitoring outstanding accounts receivables.

The Company's cash is also subject to credit risk and the Company mitigates this risk by maintaining its cash with major financial institutions.

Liquidity Risk

Liquidity risk is the risk that the Company encounters difficulty in meeting its obligations associated with financial liabilities. Liquidity risk includes the risk that, as a result of operational liquidity requirements, the Company will not have sufficient funds to settle a transaction on the due date; will be forced to sell financial assets at a value that is less than its worth; or may be unable to settle or recover a financial asset. Liquidity risk arises from accounts payable and accrued liabilities, long term loan, amounts due to shareholder and commitments. The Company limits its exposure to this risk by closely monitoring its cash flow requirements.

Interest Rate Risk

Interest rate risk is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in the market interest rates. The Company is exposed to interest rate risk in relation to interest expense on its loans since the loans bear interest at a floating interest rate.

Foreign Currency Risk

Currency risk is the risk that the fair value of future cash flow of a financial instrument will fluctuate because of changes in foreign exchange rates. The Company enters into foreign currency purchase transactions and has assets and liabilities that are denominated in foreign currencies and thus is exposed to the financial risk of earnings fluctuations arising from changes in foreign exchange rates and the

degree of volatility of these rates. The Company does not currently use derivative instruments to reduce its exposure to foreign currency risk.

Balances denominated in U.S. dollars expressed in Canadian dollars that are considered financial instruments are approximately as follows:

	<u>2020</u>	<u>2019</u>
Cash	\$44,635	\$1,628
Accounts payable and accrued liabilities	\$0	\$314,422
Year-end exchange rate U.S. dollars/CDN. dollars	1.3628	1.3087

9. COMMITMENTS

The Company also has a premises lease with a related party under common management commencing approximately March 2022 and ending on July 1, 2036 with aggregate minimum annual payments approximately as follows:

Year	Amount
2021	\$ -
2022	200,000
2023	600,000
2024	600,000
2025	600,000
	<u>\$ 2,000,000</u>

The Company also has a premises lease with an unrelated party that commenced on February 1, 2016 and ending on January 31, 2021 with aggregate minimum annual payments approximately as follows:

Year	Amount
2021	223,313
2022	-
2023	-
2024	-
2025	-
	<u>\$ 223,313</u>

10. SIGNIFICANT CUSTOMERS

Sales to one (2019- one) customer represents approximately 94% (2019 - 97%) of total sales.

11. PLANT CLOSURE

The plant was closed for approximately six months due to major construction that was under taken during the fiscal year.

12. LEGAL MATTERS

The Corporation has been named in a legal action by Vicano Construction Limited for an alleged breach of contract in the amount of \$5,079,998. This matter is ongoing and as of the date of the audit report, the outcome is unknown.

The Corporation filed legal action against Vicano Construction Limited for an alleged breach of contract and negligent building design for damages in the amount of \$79,200,000 plus reimbursements of \$1,500,000. This matter is ongoing and as of the date of the audit report, the outcome is unknown.

The Corporation filed legal action against The City of Brantford for alleged breach of duty of care and performance of a negligent inspection for damages in the amount of \$79,200,000. This matter is ongoing and as of the date of the audit report, the outcome is unknown.

The Corporation filed legal action against Skylark Holding Limited et al. for an alleged breach of the mortgage commitment for damages in the estimated amount of \$148,000,000. This matter is ongoing and as of the date of the audit report, the outcome is unknown.

13. COMPARATIVE FIGURES

Certain comparative figures have been restated where necessary to conform with current period presentation.

14. COVID-19

In March 2020, the World Health Organization classified the COVID-19 outbreak as a pandemic (the "COVID-19 pandemic"), based on the rapid increase in exposure globally. Various government agencies-imposed travel restrictions, social distancing measures and closures of non-essential workplaces. These implications did not have an adverse effect on the Company's overall operations and performance. The Company is continuing to monitor the impact of COVID-19 on its operations and cash flows.

Appendix “F”



**First Report to Court of
KSV Restructuring Inc.
as Licensed Insolvency Trustee of
Mahal Venture Capital Inc.**

February 22, 2022

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ESTATE FILE NO. 32-2782563

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

**IN THE MATTER OF THE BANKRUPTCY OF MAHAL VENTURE CAPITAL INC.,
OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO**

**FIRST REPORT OF KSV RESTRUCTURING INC. AS LICENSED INSOLVENCY TRUSTEE
OF MAHAL VENTURE CAPITAL INC.**

FEBRUARY 22, 2022

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on October 1, 2021 (the “Receivership Order”), KSV Restructuring Inc. (“KSV”) was appointed as receiver and manager (“Receiver”) of the assets, undertakings and properties of Mahal Venture Capital Inc. (“Mahal VC”) and Golden Miles Food Corporation (“Golden Miles”, and together with Mahal VC, the “Companies”) owned or used in connection with the flour mill (the “Flour Mill”) located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the “Real Property” and together with the Flour Mill, the “Property”). These proceedings are referred to herein as the “Receivership Proceedings”.
2. On November 15, 2021, the Receiver filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) on behalf of the Companies pursuant to Paragraph 3(r) of the Receivership Order. KSV was appointed the licensed insolvency trustee (the “Trustee”) of the Companies by the Office of the Superintendent of Bankruptcy (Canada) (the “OSB”).
3. The First Meeting of Creditors for Mahal VC was convened on December 6, 2021. A copy of the Trustee’s Preliminary Report to Creditors dated December 6, 2021 (the “Preliminary Report”) is provided as Appendix “A”. The Trustee’s appointment was affirmed by creditor vote and Howard Dale and Robert Winterstein were appointed as inspectors (jointly, the “Inspectors”).
4. The Preliminary Report summarizes the status of, among other things, an agreement of purchase and sale dated August 3, 2018 (the “APS”) pursuant to which Mahal VC purchased a pre-construction penthouse condominium unit from Aquabella Bayside Toronto Inc. (“Aquabella”) municipally described as Suite GPH1, 118 Merchant’s Wharf, Toronto (the “Condominium”).

5. On January 20, 2022, Santokh Mahal (“Santokh”), the father of Jesse Mahal (“Jesse”, and together with Santokh, the “Mahals”), sole officer, director and shareholder of Mahal VC, brought a motion seeking an order declaring that the Condominium is held in trust for Santokh and is not divisible among creditors of Mahal VC (the “Trust Motion”).
6. On February 16, 2022, the Inspectors unanimously passed a resolution authorizing the Trustee to respond to the Trust Motion.

1.1 Purposes of this Report

1. The purposes of this report (“Report”) are to:
 - a) provide background information about this proceeding and the Condominium;
 - b) respond to the Trust Motion; and
 - c) request that the Court issue an Order:
 - dismissing the Trust Motion;
 - declaring that the APS and the Condominium are property of Mahal VC; and
 - awarding costs to the Trustee as against Santokh.

1.2 Restrictions

1. In conducting its review and preparing this Report, the Trustee has relied upon certain of the Companies’ unaudited financial statements, limited books and records obtained from the Mahals, materials obtained from Aquabella and legal counsel to Aquabella and discussions with the Mahals.
2. The Trustee has also relied on expert evidence provided by Graham P. Ospreay of G.P. Ospreay & Associates (“Mr. Ospreay”) in conducting its review and preparing this Report. Where such expert evidence is relied on, the Trustee has disclosed such reliance and the source of the evidence in the Report.
3. The Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
4. All references to dollar amounts in this report are to Canadian dollars, unless otherwise stated.

2.0 Background

1. Mahal VC was incorporated in 2014 under the Canada *Business Corporations Act*. The Trustee understands that Jesse is the sole officer, director and shareholder of Mahal VC. Jesse is Santokh's son, and accordingly, Santokh and Mahal VC are "related persons" within the meaning of the BIA.
2. Golden Miles was incorporated in 2010 as Golden Miles Bread & Bagel Corporation under the *Business Corporations Act* (Ontario) and changed its name to Golden Miles Food Corporation in 2017. The Trustee understands that Santokh, Jesse's father, is the sole officer, director and shareholder of Golden Miles.
3. Upon its appointment, the Trustee understood that the Real Property was the only substantial asset of Mahal VC. The Mahals had previously advised the Receiver that Mahal VC owns the Real Property and that Golden Miles owns the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operates from the Real Property and describes itself in its unaudited financial statements as at June 30, 2020 as being "engaged in the sale of cookies, crackers, and dried plant material".
4. The Receiver is currently running a sale process for the Property (which does not include the Condominium or the APS). The bid deadline in the sale process was originally January 31, 2022; however, the Receiver, as authorized under the Court order approving the sale process, has extended the bid deadline to March 7, 2022.
5. As described in detail below, on November 30, 2021, the Condominium and the APS were disclosed to the Trustee for the first time. The purchase price for the Condominium, in a pre-construction state in 2017, was \$6,618,000. Aquabella has advised that deposits totaling \$1,323,600 have been paid to date (the "Deposits").
6. Aquabella has advised the Mahals and the Trustee that on March 29, 2022, it will be seeking to close on the Condominium. The dispute regarding ownership of the Condominium must therefore be resolved before that date.
7. Further information concerning the Receivership Proceedings is available on KSV's website at <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc>.

3.0 Trustee's Conclusions and Recommendations

1. The Trustee is of the view that the Condominium, the purchaser's rights under the APS and any interest in the Deposits are not held in trust by Mahal VC for Santokh, for the following reasons, which will be further supported in the Trustee's factum:
 - a) the alleged trust is a sham that is characterized by several judicially recognized "badges of fraud", including:
 - i. the authenticity of the Trust Agreement (as defined further below) is sufficiently uncertain that the Trust Agreement should, on a balance of probabilities, be disregarded; and

- ii. the actions of the Mahals both before and after the appointment of the Trustee are inconsistent with the existence of the alleged trust;
 - b) even if the trust is not a sham and the Trust Agreement is legitimate, which the Trustee denies, the Trust Agreement is ineffective on its terms to create a trust, including because it purports to create a trust for future property (being title to the Condominium) that did not exist on the date it was allegedly signed and does not exist as of the date of this Report; and
 - c) there are no equitable grounds for the Court to recognize a trust or to order a trust as a remedy, and indeed the equities militate against such an order.
2. The Trustee respectfully recommends that the Court: a) dismiss the Trust Motion; b) issue a declaration that all the purchaser's rights under the APS, including the Condominium and the Deposits, are property of Mahal VC which vested in the Trustee and constitute property divisible among Mahal VC's creditors; and c) order costs against Santokh.

4.0 The Condominium and the Trust Agreement

1. The Mahals' interest in the Condominium was first brought to the Trustee's attention on November 30, 2021 in a letter from the Mahals' counsel (the "November 30 Letter"). The November 30 Letter was sent in response to a written request from the Trustee for disclosure of Mahal VC's assets sent on November 23, 2021, which was itself a follow-up to a written request for disclosure sent on November 17, 2021 to which no response was provided. A copy of the November 30 Letter is attached hereto as Appendix "B".
2. The November 30 Letter disclosed that Mahal VC was party to the APS, attached a copy of it, and advised that Mahal VC "entered into the APS, a [sic] trustee for the benefit of Jesse and Santokh". No trust agreement was provided or mentioned. The APS contains no reference to Mahal VC as trustee.
3. The Trustee's counsel responded to the November 30 Letter on December 8, 2021 (the "December 8 Letter"), advising that the Trustee had reviewed the APS and all documentation provided in the November 30 Letter, and concluded that there was no evidence of the APS being held in trust. The December 8 Letter included a request that: "If there are records that establish a trust, please provide those records and the Trustee will consider them". A copy of the December 8 Letter is attached hereto as Appendix "C".
4. Counsel for the Mahals responded to the December 8 Letter by email on December 10, 2021 (the "December 10 Email"), indicating in relevant part:

"Our clients intend to seek a declaration that MVC holds all of its interest in the APS for the purchase of the condominium unit in trust for Jesse and Santokh Mahal. The APS provides that the purchaser will provide, prior to closing, an irrevocable direction to the vendor setting out how the purchaser wishes to take title. In accordance with that provision, it was always intended that the title to the condominium would be held in the name of Jesse Mahal. Our clients are gathering the relevant information and

documentation to support this motion and we will be delivering motion materials shortly.”

5. No trust agreement was provided or referenced. A copy of the December 10 Email is attached hereto (without attachments) as Appendix “D”.
6. Santokh served and filed the Trust Motion on January 20, 2022. Included in the Trust Motion, as Exhibit 2A to the Affidavit of Santokh sworn January 19, 2022 (the “January 19 Affidavit”), was a document titled “Trust Agreement”, dated July 7, 2017, purporting to be between Santokh and Mahal VC (the “Trust Agreement”). This was the first time the Trust Agreement had been referred to or disclosed to the Trustee. A copy of the Trust Agreement, taken from the January 19 Affidavit, is attached hereto as Appendix “E”.
7. The January 19 Affidavit also included, as Exhibit 2B, a document purporting to be an invoice from Neil L. Boyko (“Mr. Boyko”) issued to Jesse and Santokh, dated July 21, 2017 (the “Boyko Invoice”). The Boyko Invoice is not notarized or commissioned, but the Trustee understands it to be “a copy of a statement of account from Neil L. Boyko, my then counsel, dated July 31, 2017, in respect of, among other things, drafting the Trust Agreement” referred to in Paragraph 5 of the January 19 Affidavit. A copy of the Boyko Invoice, taken from the January 19 Affidavit, is attached hereto as Appendix “F”.


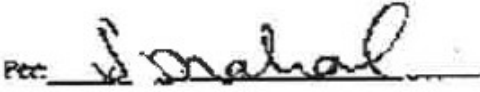
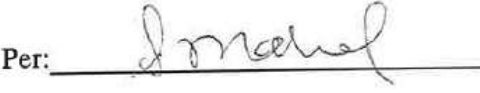
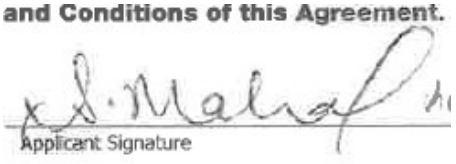
5.0 Irregularities in the Trust Agreement

1. Given the significance of the Trust Agreement to the Trust Motion and the fact that it was not produced (or even referred to) until almost two months after the Mahals first made the trust claim, the Trustee has attempted to authenticate the document. On February 10, 2022, the Trustee’s counsel sent an email to the Mahals’ counsel (the “February 10 Email”) requesting, among other things:
 - a) an originally signed, hard copy version of the Trust Agreement; and
 - b) any electronic version of the Trust Agreement (whether or not signed or in final form).
2. A copy of the February 10 Email is attached hereto as Appendix “G”.
3. As of the date of this Report, the Mahals have not responded to this request, which is consistent with non-responses or inadequate responses by the Mahals that have characterized the Receivership Proceedings and this bankruptcy proceeding. The Receiver’s First Report to Court dated October 20, 2021, attached hereto (without Appendices) as Appendix “H”, summarizes the Receiver’s attempts to obtain information, books and records from the Mahals and their lack of cooperation. Accordingly, the Trustee’s efforts to authenticate the Trust Agreement have been stymied.

4. As referenced above, the Trustee has been demanding disclosure of Mahal VC's books and records since November 17, 2021, two days after the Trustee's appointment, and only received an electronic version of the Trust Agreement on January 20, 2022 as part of the Trust Motion, which was more than two months after its original request. It is unclear to the Trustee why the purported Trust Agreement was not produced immediately after its appointment.
5. In addition to being unable to authenticate the Trust Agreement, either in original hard copy or digitally, the Trustee notes several irregularities in the Trust Agreement that cause the Trustee to question its authenticity.

5.1 Santokh's Signature

1. Santokh has executed numerous documents and affidavits in connection with this proceeding and the Receivership Proceedings. Samples of Santokh's signatures over a period of time beginning June 9, 2015 and ending January 20, 2022 are reproduced below, together with the signature purporting to be Santokh's on the Trust Agreement on July 7, 2017, as set out below:

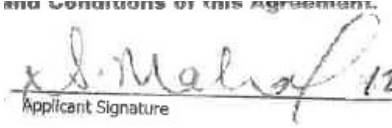



Document	Signature Sample	Purported Date
Trust Agreement ¹		July 7, 2017
Commitment Letter between Santosh Mahal and Skylark Holdings Limited ("Skylark"), dated June 8, 2015 ²		June 9, 2015
Commitment Letter between Mahal VC and Skylark, dated November 30, 2016 ³		Dec. 5, 2016
Home Improvement Credit Application and Agreement between Golden Miles Food Corporation and Skymark Finance, dated September 25, 2017 ⁴		Sept. 25, 2017

¹ Exhibit 2A, January 19 Affidavit, page 94 of Trust Motion

² Exhibit C, Affidavit of Paul Millar, sworn June 24, 2021 ("**June Millar Affidavit**"), page 38 of Application Record of Skymark Finance Corporation, dated June 29, 2021 ("**Application Record**")

³ Exhibit D, June Millar Affidavit, page 41 of Application Record

⁴ Exhibit H, June Millar Affidavit, page 50 of Application Record

Document	Signature Sample	Purported Date
Home Improvement Credit Application and Agreement between Golden Miles Food Corporation and Skymark Finance, dated December 6, 2017 ⁵		Dec. 6, 2017
Home Improvement Credit Application and Agreement between Golden Miles Food Corporation and Skymark Finance, dated January 22, 2019 ⁶		Jan 22, 2019
Affidavit of Santokh Mahal, sworn July 26, 2021 ⁷		July 26, 2021
Affidavit of Santokh Mahal, sworn January 19, 2022 ⁸		Jan. 19, 2022

2. Santokh's signatures on affidavits or verified documents are consistent over the seven-year period during which samples are available to the Trustee. The signature on the Trust Agreement is conspicuously different in the letter formations and patterning.

5.2 Substantive Irregularities

1. In addition to the issues with the authenticity of Santokh's signature on the Trust Agreement, the Trustee notes a number of other irregularities:
 - a) the Trust Agreement appears to be incomplete. For example, on the second page in the last paragraph, there is a "[Insert Address]" placeholder in the indemnity;
 - b) the signature page of the Trust Agreement contemplates that witnesses would sign for both the individual and corporate signatory, though none do so, and the format seems to suggest that Santokh and Mahal VC are the witnesses;

⁵ Exhibit H, June Millar Affidavit, page 53 of Application Record

⁶ Exhibit H, June Millar Affidavit, page 59 of Application Record

⁷ Tab 1, Responding Party's Supplementary Application Record, dated July 26, 2021

⁸ Tab B, page 12 of Motion Record of Santokh Mahal, dated January 20, 2022

- c) the Trust Agreement includes a “Schedule of Advances”. The advances do not match the deposits due under the APS, but rather exactly match the dates and amounts of the funds allegedly paid by Santokh to Mahal VC, as set out in the January 19 Affidavit. The dates of the advances are all after the date of the Trust Agreement; and
- d) the Trust Agreement itself does not refer to a schedule, contemplate that “advances” would be scheduled, nor does a trust agreement in principle require “advances” or “principal balances” to be tracked.

5.3 Forensic Review

1. Given the Trustee’s concerns about the authenticity of the Trust Agreement, and in particular the signature of Santokh on that document, the Trustee engaged Mr. Ospreay. Mr. Ospreay is a Forensic Document Examiner & Forgery Analyst accredited by the American College of Forensic Examiners, with considerable experience in document analysis. A copy of Mr. Ospreay’s *curriculum vitae* is attached hereto as Appendix “I”.
2. Mr. Ospreay undertook an analysis of the signature on the Trust Agreement and compared it to samples of Santokh’s signatures available to the Trustee, including those reproduced above. A full copy of Mr. Ospreay’s report (the “Forensic Report”) is attached hereto as Appendix “J”.
3. Mr. Ospreay observes that the signature on the Trust Agreement “contains many fundamental dissimilarities of handwriting identification characteristics, this when compared to the known signature specimens of Santokh Mahal”, and concludes that “there is conclusive evidence that the author of the known signature specimens... Santokh Mahal, did not write the questioned signature on the Trust agreement” (emphasis in original).
4. The Trustee notes that at paragraph 4 of the January 19 Affidavit, Santokh states: “The trust arrangement is evidenced by a trust agreement between me, as beneficial owner, and MCV, as trustee, dated July 7, 2017...”. There is no indication or acknowledgement by Santokh that he did not sign the agreement himself.

5.4 Irregularities in the Boyko Invoice

1. The Boyko Invoice has ostensibly been submitted to corroborate the date of the Trust Agreement.
2. The Trustee has identified several irregularities in the Boyko Invoice that call into question its authenticity, including:
 - a) the Boyko Invoice is dated July 31, 2017 and provides that “.05 hrs” was spent “to receiving closing documents from vendors solicitor and having you sign same” (emphasis added). The Trustee understands that “closing documents” refers to the APS and related documents, which were signed on August 3, 2017, three days after the Boyko Invoice was issued;

- b) the Boyko Invoice further refers to “1 hrs” being spent “to all calls with you and the solicitor for the vendor”, in addition to the reference to “vendors solicitor” referred to above (emphasis added). The Trustee has been provided with correspondence sent by Aquabella’s counsel to Mahal VC on October 18, 2017 and October 24, 2017 (the “October DelZotto Letters”) several months after Mr. Boyko was apparently corresponding with them, indicating that “we have been advised by the Vendor’s sales representative that you have not yet notified the Vendor as to the name of the solicitor that you have retained (or will be retaining) to represent you in connection with the completion of the above-captioned transaction, and accordingly we are sending this letter directly to you”. Copies of the October DelZotto Letters are attached hereto as Appendix “K”. In addition, the APS reflects that Mahal VC did not have any counsel in connection with the purchase of the Condominium⁹;
 - c) the Boyko Invoice does not include HST on the fees, as required, but does provide for HST on the disbursements;
 - d) there are several unusual typos in the Boyko Invoice, including in the email address in the letterhead (“lawckerk@neilboykolaw.com”) and Mr. Boyko’s name in the signature block (“NEIL L. BOYK”); and
 - e) the hours in the dockets of the Boyko Invoice total 5.1, but the Boyko Invoice bills the Mahals for 6 hours.
3. The Trustee has been provided by Paul Millar, principal of Skymark Finance Corporation. (“Skymark”), with invoices provided by Mr. Boyko to Santokh on July 11, 2017, several weeks prior to the date of the Boyko Invoice, and to Mahal VC on August 3, 2017, three days after the date of the Boyko Invoice, (collectively, the “Other Boyko Invoices”), copies of which are attached hereto as Appendix “L”.
 4. The Other Boyko Invoices are formatted differently than the Boyko Invoice, including that the Other Boyko Invoices do not provide a summary of time spent on each task and are not on Mr. Boyko’s office letterhead. Most significantly, the Other Boyko Invoices each (properly) charge HST on the professional fees.
 5. In the Receivership Proceedings, Santokh has attached to his affidavit sworn July 5, 2021 as Exhibit “B” a letter from Mr. Boyko to Skymark dated June 26, 2019 (the “Boyko Letter”). A copy of the Boyko Letter is attached hereto as Appendix “M.”. While the Boyko Letter is dated over 2 years after the Boyko Invoice, the Trustee notes that the letterhead on the Boyko Letter is different than the letterhead on the Boyko Invoice.
 6. Given the Trustee’s concerns about the authenticity of the Boyko Invoice, the Trustee instructed Mr. Ospreay to review it, together with the Boyko Letter and the Other Boyko Invoices.

⁹ Page 1 of the APS has a location to identify the purchaser’s solicitors which is filled out in the APS as “NIL”.

7. Mr. Ospreay's Forensic Report notes a number of anomalies, but ultimately concludes that he is unable to determine whether the Boyko Invoice is authentic, and advises, among other things, that he "will require the submission of the original questioned document and several (5-10) known Statement of Account documents that have been composed by the individual keyboard typist noted as (NLB/gr) in the questioned document, for further examination and comparison purposes."
8. The February 10 Email referred to above requested (a) an original hard copy of the Boyko Invoice, or if this invoice was emailed by Mr. Bokyo to the Mahals, a copy of the email, and (b) a copy of the cheque or excerpt from the relevant bank statement evidencing payment of the Boyko Invoice. As of the date of this Report, the Mahals have not responded to this request, rendering further authentication of the Boyko Invoice impossible.

5.5 Mr. Boyko Regulatory Suspensions & Professional Sanctions

1. In addition to the Trustee's concerns about the authenticity of the Boyko Invoice, the Trustee has learned that Mr. Boyko has a history of professional misconduct sanctions and suspensions, including in October 2018 when he was found by the Law Society of Ontario's Tribunal (the "Tribunal") to have engaged in five transactions in May 2014 where he "ought to have known that he was being used to facilitate fraud or dishonesty" and in November 2019 when he was found by the Tribunal to have practiced law while under suspension and credibly accused of participating in an improper and possibly fraudulent mortgage transaction. The Trustee is concerned by Mr. Boyko's history of misconduct to the extent that the Boyko Invoice is being proffered as validation of the Trust Agreement, including in particular his participation in questionable real estate transactions where he ought to have known he was being used to facilitate fraud or dishonesty.
2. Copies of the reasons of the Tribunal dated October 24, 2018, November 20, 2019 and December 18, 2020 are attached collectively hereto as Appendix "N".
3. The Trustee attempted to contact Mr. Boyko, who is currently listed on the Law Society of Ontario's directory as being suspended. The Trustee phoned the number listed on the Boyko Invoice and was informed by the party that answered that Mr. Boyko has retired and that any inbound calls were being referred to a new law firm. The Trustee's counsel contacted the Law Society of Ontario on February 11, 2022 requesting contact information, and has not received a response. Finally, the Trustee has been advised by Santokh's counsel that their attempts to locate Mr. Boyko dating back to early January 2022 have been unsuccessful.

6.0 Correspondence Between Mahal VC and Aquabella After Execution of APS

1. On December 7, 2021, the Trustee contacted Aquabella to notify it of the Mahal VC bankruptcy. The Trustee was referred to Aquabella's counsel, DelZotto Zorzi LLP ("DelZotto"). Pursuant to its powers under the BIA, the Trustee requested that DelZotto provide all documents and correspondence related to the Condominium. Given the volume of the documentation, the Trustee agreed to pay Aquabella \$150/hour, to a maximum of \$1,500 (plus HST) to defray its costs of assisting the Trustee.

2. The Trustee has learned the following from the correspondence provided by Aquabella:
- a) Jesse selected and approved over \$1,135,000 of upgrades to the Condominium in August 2020, as itemized in the Addendum Confirming Extras, Upgrades or Personal Selections, attached hereto as Appendix "O". There is no evidence that this Addendum was entered into under the instruction of Santokh and appears to be a unilateral action of Jesse, inconsistent with the role of Mahal VC as bare trustee for Santokh.
 - b) On October 18, 2017 and October 24, 2017, DelZotto sent the October DelZotto Letters to Mahal VC that requested, among other things, that Mahal VC advise as to the name of its counsel in connection with the transaction. This is inconsistent with the Boyko Invoice which reflects that Mr. Boyko was the purchaser's counsel in connection with the transaction.
 - c) Jesse personally guaranteed the obligations of Mahal VC under the APS, pursuant to a personal guarantee dated August 3, 2017 (the "Personal Guarantee"). A copy of the Personal Guarantee is attached hereto as Appendix "P". Jesse was examined by the OSB on December 21, 2021 pursuant to s. 158 of the BIA. A copy of the transcript is attached hereto as Appendix "Q". In Jesse's examination by the OSB, in response to the question "Have you personally guaranteed any of the debts of the corporation", Jesse answered "No."
 - d) Nowhere in any of the transaction documents, statutory disclosure, correspondence or other documentation among Mahal VC and Aquabella and DelZotto that has been provided to the Trustee is there any reference to the APS or the Condominium being held in trust by Mahal VC for Santokh.
 - e) Jesse attempted to change the name of the purchaser of the Condominium from Mahal VC to him personally on November 17, 2021, after the Trustee was appointed and before the existence of the APS was disclosed to the Trustee:

From: Jesse Mahal <jesse.mahal@gmail.com>
 Sent: November 18, 2021 4:13 PM
 To: Natalie Via <NVia@Tridel.com>
 Cc: Heather Daley <HDaley@dlaw.com>; Robert Calderwood <RCalderwood@dlaw.com>; Marc Sammons <MSammons@Tridel.com>; Aquabella Sales <Aquabella@Tridel.com>; Susan Shapiro <SShapiro@Tridel.com>
 Subject: Re: Aquabella Bayside Toronto Inc. sale to Mahal Venture Capital Inc. - 118 Merchants' Wharf, Suite GPH1

Hi Natalie

May you provide me with any documentation to arrange name change.

Kind Regards

Jesse Mahal
 905-781-1399

On Nov 18, 2021, at 3:57 PM, Susan Shapiro <SShapiro@Tridel.com> wrote:

Hi Jesse,
 Please contact Natalie Via at our Aquabella sales centre in order to arrange for the name change. She will advise you on what documents are required for this change.

In the meantime, we look forward to receiving your solicitor information.

Regards,

 **Susan Shapiro**
 Manager
 Sales Control
 4800 Dufferin Street, Toronto, ON M3H 5S9
 ☎ 416.736.2655, Ext. 1279
 📠 416.661.8923 tridel.com

COVID-19 Working Together, Differently to Ensure Workplace Health & Safety
 While we maintain normal office hours on premises, we continue to restrict open access to our workplace and are limiting the presence of outside visitors and guests, which are by appointment only. Visit Tridel.com for hours of operation and how we are Working Together, Differently to serve you better or call 416.661.9290 for general inquiries.

From: Jesse Mahal <jesse.mahal@gmail.com>
 Sent: Thursday, November 18, 2021 3:53 PM
 To: Jesse Mahal <jesse.mahal@gmail.com>
 Cc: Heather Daley <HDaley@dlaw.com>; Robert Calderwood <RCalderwood@dlaw.com>; Susan Shapiro <SShapiro@Tridel.com>; Marc Sammons <MSammons@Tridel.com>
 Subject: Re: Aquabella Bayside Toronto Inc. sale to Mahal Venture Capital Inc. - 118 Merchants' Wharf, Suite GPH1

I would like to change the documents from Mahal venture capital to my personal name, Jesse Mahal

Sent from my iPhone

- i. On November 23, 2021, Jesse emailed Aquabella again to repeat his request to change the name:

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: November 23, 2021 6:59 PM
To: Natalie Via
Cc: Susan Shapiro; Heather Daley
Subject: Re: Aquabella: GPH1

Hi Natalie

the new law firm has reached out and I believe in contact. May you please provide me with the name change forms for closing.

Kind Regards

Jesse Mahal

On Nov 11, 2021, at 12:04 PM, Natalie Via <NVia@Tridel.com> wrote:

Hi Jesse,

I hope that you are doing well.

Would you please provide us with your updated lawyers information as soon as possible as the lawyer that we have on file has informed us that they will not be representing you. It is my understanding that there will be an extension made to the closing date of your suite and our lawyers are currently drafting a letter in regards to this and they need to know where to send it.

Kind Regards,

Natalie Via <[image001.jpg](mailto:nvia@tridel.com)>
 Bayside Toronto Inc.
 Phone: 416.514.2710
 Fax: 416.603.9560
 Email: nvia@tridel.com
Tridel.com | [Facebook](#) | [Twitter](#) | [Tridel Talks](#)
 <<image002.jpg>>

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- ii. On November 28, 2021, representatives of Aquabella provided Jesse with a list of information that they would require to transfer the Condominium to his name personally, which included mortgage approval or a comfort letter from Jesse's bank. Jesse responded to this email with updated counsel information, but to the Trustee's knowledge did not provide the information requested. A copy of this email chain, and the email chain excerpted above, is attached hereto as Appendix "R".
- iii. The Trustee was appointed over Mahal VC on November 16, 2021, and Jesse was notified of same by the Trustee by email at 11:52 am on the same day, which email included a "Notice to Officer of Bankrupt Corporation of Duties". A copy of the Trustee's email, and the Notice to Officer of Bankrupt Corporation of Duties, is attached hereto as Appendix "S".

- iv. As discussed above, the Condominium was not disclosed to the Trustee until November 30, 2021, which was after at least three separate attempts by Jesse to have the name of the purchaser transferred from Mahal VC to him personally, and not Santokh per the alleged Trust Agreement.
3. In the Trustee's view, all of the foregoing is fundamentally inconsistent with a trust arrangement whereby Mahal VC is the bare trustee for an asset beneficially owned by Santokh. Rather, it is entirely consistent with Mahal VC being the beneficial purchaser of the Condominium, which may have been intended to be used by Jesse, Mahal VC's sole shareholder, director and officer.
4. The Trustee notes that none of the above information was disclosed to it by the Mahals or Mahal VC, notwithstanding numerous requests for all books and records relating to Mahal VC, and Jesse explicitly told the OSB that he had not provided a personal guarantee. The foregoing information appears to have been intentionally withheld from the Trustee and Mahal VC's creditors.

7.0 Funding of Deposit for Condominium

1. The January 19 Affidavit provides considerable detail about the source of funds paid to Aquabella on account of the deposits owing under the APS. What the affidavit does not disclose, or make any reference to, is that in the case of each payment, the funds advanced by Santokh were only paid *after* Jesse or Mahal VC attempted to make the payment, and the applicable cheques were dishonoured by the bank.
2. The Trustee has prepared the following summary of attempted and successful payments on account of the deposits owing under the APS, together with the source of the Trustee's information:

Date	Payment	Amount	Source of Funds	Source of Information ¹⁰
Aug. 21, 2017	Deposit 1	\$330,900	NSF cheque drawn on Mahal VC account	Sept. 25, 2017 letter from Aquabella to Mahal VC and copy of dishonoured cheque.
Oct. 12, 2017	Deposit 1	\$330,900	NSF cheque drawn on Mahal VC account	Oct. 18, 2017 letter from DelZotto to Mahal VC and copy of dishonoured cheque. Exhibit 7 to January 19 Affidavit shows that this cheque was issued when Mahal VC had insufficient funds in its account to cover the payment.
Oct. 26, 2017	Deposit 1	\$310,000	Mahal VC, funded by: - RJ International Corp to Mahal VC (\$158,251.39) on October 25, 2017 - Santokh (CIBC) to Mahal VC (\$152,000) on October 25, 2017	January 19 Affidavit Oct. 27, 2017 DelZotto Letter to Mahal VC
	Deposit 1	\$20,900	Mahal VC, funded by: - Santokh (TD) to Mahal VC on October 26, 2017	January 19 Affidavit
Dec. 6, 2017	Deposit 2	\$330,900	NSF cheque drawn on Mahal VC account	Copy of dishonoured cheque Exhibit 9 to the January 19 Affidavit shows that this payment was made by Mahal VC at a time

¹⁰ Documents referred to in this column are collectively attached as Appendix "T".

Date	Payment	Amount	Source of Funds	Source of Information ¹⁰
				when Mahal VC had insufficient funds in its account to cover the payment.
Dec. 20, 2017	Deposit 2	\$330,900	Mahal VC, funded by: - Santokh (TD) to Jesse to Mahal VC on October 18, 2017	January 19 Affidavit
April 30, 2018	Deposit 3	\$330,900	NSF cheque drawn on Mahal VC account	May 30, 2018 Email from Aquabella to Jesse and copy of dishonoured cheque.
June 5, 2018	Deposit 3	\$330,900	Mahal VC, funded by: - Santokh (TD) to Jesse to Mahal VC (\$104,512.65) on May 24, 2018 - Santokh (TD) to Mahal VC (\$94,562.57) on May 25, 2018 - Santokh (TD) to Mahal VC (\$20,000) on May 30, 2018 - Santokh (TD) to Mahal VC (\$120,319.17) on May 30, 2018	January 19 Affidavit
Aug. 3, 2018	Deposit 4	\$330,900	NSF cheque drawn on Mahal VC account	Sept. 7, 2018 letter from Aquabella to Mahal VC and copy of dishonoured cheque.
Oct. 2, 2018	Deposit 4	\$330,900	Mahal VC, funded by: - Santokh (TD) to Mahal VC (\$390,000) on October 2, 2018	January 19 Affidavit
Feb. 4, 2021	Addendum	\$283,874.31	NSF cheque drawn on Jesse's personal account, "Issued as agent for Mahal Venture Capital Inc."	June 2, 2021 letter from Aquabella to Mahal VC and copy of dishonoured cheque.

3. The foregoing summary illustrates a pattern where, in every case that a payment was due to Aquabella, Mahal VC issued a cheque that a cursory review of Mahal VC's bank records would have confirmed would never clear, and only subsequently did Santokh provide Mahal VC with funds to cover the costs. In most cases, these funds were provided only after Aquabella notified Mahal VC that it was in default of the APS and that the agreement would be terminated if payment was not urgently provided.
4. Contrary to the narrative in the January 19 Affidavit, the payment history, when taken together with the conduct of Jesse set out in Section 7 of this Report, does not illustrate the practice of a beneficial owner funding its obligations under a trust agreement to fund the payments due by the trustee to the vendor; rather, it illustrates Santokh repeatedly stepping in to prevent the APS from being terminated, the deposits forfeit, and his son losing the Condominium that he was attempting to purchase for himself through his holding company.
5. The Trustee furthermore notes that, like the information set out in Section 6.0 hereof, the Mahals and Mahal VC did not disclose to the Trustee the dishonoured cheques, and the January 19 Affidavit selectively discloses Mahal VC's payments in a manner that is misleading.

8.0 Conclusions and Recommendation

1. In the Trustee's view, for the reasons set out in this Report, the alleged Trust Agreement is a sham. Accordingly, the Trustee requests that the Court: a) dismiss Santokh's Trust Motion; b) issue a declaration that all purchaser's rights under the APS, including the Condominium and the Deposits, are property of Mahal VC which vested in the Trustee and constitute property divisible among Mahal VC's creditors; and c) order costs against Santokh.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS LICENSED INSOLVENCY TRUSTEE
OF THE ESTATE OF MAHAL VENTURE CAPITAL INC.,
AND NOT IN ITS PERSONAL CAPACITY**

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

RESPONDING MOTION RECORD
OF THE RECEIVER
(Mahal Security Motion)
Returnable November 4, 2022

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

Chris Burr, LSO #55172H
Tel: 416-863-3261
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Lawyers for the Receiver