



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

March 26, 2024

And

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

RESPONDENTS

SIXTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

AND

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

MARCH 26, 2024

1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager ("Receiver") of the assets, undertakings and properties of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles", and together with Mahal VC, the "Companies") owned or used in connection with the flour mill (the "Flour Mill") located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the "Real Property" and together with the Flour Mill, the "Property"), and in its capacity as licensed insolvency trustee of the Companies (the "Trustee").
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 (with each bankruptcy being the “Mahal VC Bankruptcy” and “Golden Miles Bankruptcy”, and together being the “Bankruptcies”). KSV was appointed Trustee of the Companies by the Office of the Superintendent of Bankruptcy (Canada).
4. The principal purpose of the Receivership Proceedings was to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies’ creditors.
5. On April 11, 2022, the Court granted an order in the Receivership Proceedings approving the sale of substantially all of the Property to 12175622 Canada Inc. (the “Purchaser”) pursuant to an agreement of purchase and sale dated March 18, 2022, as amended (the “APA”).
6. The Purchaser is owned and controlled by Santokh Mahal (“Santokh”), the owner and sole officer and director of Golden Miles, and the father of Jesse Mahal (“Jesse”, and together with Santokh, the “Mahals”), the owner and sole officer and director of Mahal VC.
7. The sale transaction contemplated by the APA (the “Transaction”) closed on May 18, 2022. The aggregate net proceeds received were \$18.47 million (the “Sale Proceeds”). Of the Sale Proceeds, \$16 million was allocated to the real property (the “Real Property”) owned by Mahal VC (the “Real Property Proceeds”) and \$2.47 million was allocated to the personal property (the “Personal Property”) owned by Golden Miles (the “Personal Property Proceeds”).
8. The Receiver filed a motion on August 15, 2023, seeking, among other things, an Order authorizing and directing the Receiver to make certain distributions from the Real Property Proceeds and other recoveries associated with Mahal VC (the “Mahal VC Proceeds”) and the Personal Property Proceeds, as applicable, to Vicano Construction Limited (“Vicano”), Skymark Finance Corporation (“Skymark”), KLN Holdings Inc. (“KLN”) and Santokh, and maintain certain holdbacks (the “First Interim Distribution Motion”). In connection with the First Interim Distribution Motion, the Receiver filed its Fifth Report to the Court dated August 15, 2023 (the “Fifth Report”) and the Receiver’s supplement to the Fifth Report dated August 22, 2023 (the “Fifth Report Supplement”). Copies of the Fifth Report and the Fifth Report Supplement, both without appendices, are included as Appendices “A” and “B”, respectively.
9. The Court issued its decision dated August 23, 2023 in respect of the First Interim Distribution Motion (the “First Interim Distribution Order”), which, among other things, authorized the Receiver to:
 - a) distribute from the Personal Property Proceeds, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver: (i) \$314,755 to Santokh, subject to set-off referred to in 9(b) below; and (ii) \$247,000 to Skymark;

- b) set off the amount of \$95,000 (the “Set-Off Amount”) from the distribution to Santokh referenced in 9(a) above, resulting in a net distribution to Santokh of \$219,755, and from the Set-Off Amount: (i) applying \$75,000 against the costs of the Receiver and the Receiver’s counsel, Blake, Cassels and Graydon LLP (“Blakes”) incurred in these proceedings; and (ii) distributing \$20,000 to Skymark, in each case in full satisfaction of Santokh’s obligations in respect of the cost award made pursuant to an Endorsement of Justice McEwen dated May 10, 2023 in these Receivership Proceedings;
 - c) distribute from the Mahal VC Proceeds, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver: (i) \$1,659,413 to Vicano; (ii) \$5,097,556 to Skymark; (iii) \$1,399,340 to KLN; (iv) in addition to the distribution set out in subparagraph (iii), up to \$1,047,826 to KLN, with such amount and payment of distribution being subject to further Order of the Court (the “Disputed Transfer”); and
 - d) maintain the following holdbacks from the Mahal VC Proceeds pending further Order of the Court: (i) \$600,000 (the “Mahal VC Cost Reserve”); (ii) \$3,650,000 (the “Orr Holdback”); and (iii) \$1,500,000 (the “Omit Tax Reserve”).
10. A copy of the First Interim Distribution Order is attached hereto as Appendix “C”.

1.1 Purposes of this Report

- 1. The purposes of this Report are to:
 - a) provide an update on the Receivership Proceedings;
 - b) summarize the Receiver’s interim statement of receipts and disbursements for the period ending March 21, 2024 (the “R&D”);
 - c) summarize the Receiver’s position regarding the Disputed Transfer, Omit Tax Claims, Orr Plaintiffs Dispute, Vicano Disputed Amount and the Mahal VC Cost Reserve (each as defined herein);
 - d) provide an update on the Outstanding Litigation (as defined below);
 - e) summarize the Receiver’s proposed second interim distribution from the Mahal VC Proceeds to certain of the Companies’ secured creditors (the “Second Interim Distribution”); and
 - f) request that the Court issue an Order (the “Distribution and Discharge Order”):
 - i. authorizing and directing the Receiver to make the Second Interim Distribution;
 - ii. approving the R&D;
 - iii. approving the fees of the Receiver and Blakes for the period of August 1, 2023 to February 29, 2024 plus an accrual of \$200,000 (plus disbursements and HST) until the Completion Certificate is filed (as defined below) (the “Fee Period”);
 - iv. approving this Report and the Receiver’s activities described herein;

- v. releasing the Receiver and its counsel from claims arising prior to the date of the Distribution and Discharge Order; and
- vi. discharging the Receiver and releasing the Receiver and its counsel from claims arising after the date of the order, effective upon the filing of the Completion Certificate (defined below).

1.2 Currency

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

1.3 Restrictions

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

2.0 Executive Summary

1. Substantially all of the Companies' assets have been sold, which resulted in gross proceeds of approximately \$18.9 million (excluding sales taxes and Receiver's borrowings). The First Interim Distribution Order authorized the Receiver to distribute the proceeds of the Transaction, subject to certain holdbacks and reserves, each as summarized in paragraph 1.0(9), above.
2. The Receiver currently holds approximately \$6.97 million after accrued costs, all of which is allocated to Mahal VC (being the remaining Mahal VC Proceeds).
3. All distributions of Personal Property Proceeds to secured creditors of Golden Miles have been completed in accordance with the First Interim Distribution Order, and the remaining \$1,277,182 of Personal Property Proceeds is being held by the Trustee, subject to unsecured creditor distributions to be made in the Golden Miles Bankruptcy proceedings. No relief in respect of these remaining Personal Property Proceeds is being sought by the Receiver or the Trustee at this time.
4. The Receiver seeks the following relief from the Court to address the remaining Mahal VC Proceeds:
 - a) **Disputed Transfer.** The Receiver seeks an order authorizing the Receiver to distribute the \$1,047,826 Disputed Transfer (defined above), which was held back from the interim distribution made to KLN pending the resolution of a dispute between KLN and the Skymark Receiver, which dispute has now been resolved.

- b) **Omit Tax Claims:** The Receiver seeks an order: (i) that the Receiver is not liable to pay the Omit Tax Claims; and (ii) authorizing the Receiver to distribute the Omit Tax Reserve to Skymark and KLN, in accordance with their relative entitlements.
 - c) **Orr Holdback:** The Receiver seeks an order authorizing the Receiver to distribute the Orr Holdback to Skymark and the Orr Plaintiffs (as defined below) in accordance with the terms of a confidential settlement agreement between the parties that was approved by this Court on February 22, 2024.
 - d) **Vicano Disputed Amount.** The Receiver seeks an order authorizing it to distribute up to \$71,096 to Vicano, Skymark or KLN, with the prior written consent of each party, subject to the resolution of an ongoing dispute with Vicano about such amount.
 - e) **Mahal VC Cost Reserve:** The Receiver seeks an order authorizing it to distribute \$260,709 of the remaining Mahal VC Cost Reserve to Skymark and KLN in accordance with their relative entitlements.
5. In addition, the Receiver seeks Court approval of the R&D, this Report, the Receiver's activities as set out in this Report, its fees and disbursements and the fees and disbursements of its counsel, as outlined in the Fee Affidavits (as defined below).

3.0 Background

1. Detailed information regarding the Companies, their stakeholders, the Transaction, the First Interim Distribution Motion and these proceedings more generally is included in the prior reports of the Receiver and Trustee, including the Fifth Report, which is attached hereto as Appendix "A", without appendices. All reports and other materials filed with the Court in these proceedings can be accessed on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc.>

3.1 Secured Creditors

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

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

3. In addition to Skymark, certain other creditors had registered secured interests in either the Personal Property or the Real Property. All secured creditors registered against the Personal Property Proceeds have been paid in full. Taking into account the amounts of the valid secured claims against the Mahal VC Proceeds, and the amount of the remaining Mahal VC Proceeds, the only remaining creditors with valid secured claims against the Mahal VC Proceeds who are expected to receive a distribution are Skymark, KLN and, potentially, Vicano.

4.0 Receipts and Disbursements

1. Attached as Appendix “D” is the R&D, which reflects that there is approximately \$6,972,886 in the Receiver’s estate account after accrued costs, all of which is allocated to Mahal VC.
2. The proceeds allocated to Golden Miles that were subject to the interest of secured creditors have been distributed, and the unencumbered proceeds are now held by the Trustee of Golden Miles’ Bankruptcy estate.

5.0 Status of Mahal VC Proceeds Matters

5.1 Disputed Transfer

1. The Receiver currently holds \$1,047,826 in connection with the Disputed Transfer between KLN and Skymark. The Disputed Transfer was summarized in Section 3 of the Fifth Report Supplement.
2. Based on the relative priorities of all stakeholders with a claim against Mahal VC, the amount withheld on account of the Disputed Transfer is either payable to KLN or the Skymark Receiver. It is a binary issue: no other creditor or stakeholder has a claim to the funds, in the Receiver’s view.
3. On March 15, 2024, the Receiver was advised by counsel to the Skymark Receiver and counsel to KLN that the issues underlying the Disputed Transfer had been resolved consensually, and that the Skymark Receiver expected to bring a motion in the Skymark receivership proceedings seeking Court approval of the settlement agreement².
4. The Receiver understands that the Skymark Receiver and KLN have agreed that each of them will receive 50% of the \$1,047,826 held back on account of the Disputed Transfer. The Receiver is accordingly seeking an Order, subject to this Court approving the KLN settlement in the Skymark receivership proceedings, authorizing it to distribute \$523,913 to each of Skymark and KLN.
5. The Receiver has consulted with counsel to the Skymark Receiver and KLN, and has advised them that all subsequent distributions to KLN shall be calculated in accordance with the same principle as underlies the KLN settlement, as discussed below in connection with the proposed distributions.

² The Receiver understands that the Skymark Receiver intends to bring a motion for approval of the KLN settlement in the Skymark receivership proceedings at the same time as the Receiver’s motion seeking the Distribution and Discharge Order.

5.2 Omit Tax Claims

1. The Receiver currently holds the Omit Tax Reserve, being \$1,500,000 of the Mahal VC Proceeds. The Receiver held this back pursuant to the First Interim Distribution Order.
2. The following summarizes the Omit Tax Claims and Omit Tax Reserve, which is also set out in the Fifth Report:
 - a) On February 24, 2023, counsel to the Purchaser in the Transaction notified the Receiver that the City of Brantford was seeking property tax in arrears on the Real Property and provided the Receiver with three “omit” tax bills for 2020, 2021 and 2022, totalling \$1,091,423 (such tax claims being the “Omit Tax Claims”). Copies of the Purchaser’s letter and the three omit tax bills are attached hereto as Appendix “E”.
 - b) The Purchaser has taken the position that the Mahal VC estate (ie: the Receiver) is liable for the Omit Tax Claims.
 - c) The Receiver does not agree that the Mahal VC estate, the Receiver or the Trustee are liable for the Omit Tax Claims, for the following reasons:
 - i. the Receiver understands that the omit tax bills were issued by the Municipal Property Assessment Corporation because of a reassessment related to the Flour Mill that was built on the Real Property, and not historically taxed;
 - ii. on the closing of the Transaction on May 18, 2022, the Receiver: (i) paid all known outstanding municipal property taxes up to the date of the closing, in the amount of \$167,402; and (ii) gave the Purchaser an undertaking to re-adjust any amounts in the statement of adjustments for up to 45 days (ie: July 4, 2022);³
 - iii. pursuant to the APA, the Purchaser assumed “all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date”;⁴
 - iv. the omit tax bills were issued on November 25, 2022, over 6 months after the Transaction closed and over 4 months after the Receiver’s undertaking to adjust for municipal property taxes expired;
 - v. the Approval and Vesting Order dated April 11, 2022, which approved the Transaction (the “AVO”),⁵ provides that the following are not vested out of the purchased property (emphasis added): “Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested”;

³ A copy of the Receiver’s undertaking to adjust is attached hereto as Appendix “F”.

⁴ A copy of the APA is attached hereto as Appendix “G”.

⁵ A copy of the AVO is attached hereto as Appendix “H”.

- vi. the Omit Tax Claims had not been made as of the date of the AVO being issued, let alone becoming due or in arrears; and
 - vii. taking the foregoing points (i) through (vi) together, the Receiver has concluded that: a) the Omit Tax Claims fall outside of the Receiver's obligation to readjust; b) the Omit Tax Claims are an assumed liability of the Purchaser under the APA; and c) the Omit Tax Claims were not vested out of the purchased property and therefore do not attach to the proceeds of the Transaction.
- d) The Receiver held back \$1,500,000 of the Mahal VC Proceeds, representing the Omit Tax Claims totaling \$1,091,423, plus an estimate for interest (which accrues monthly at 1.25%) accrued thereon until the eventual resolution date. The First Interim Distribution Order authorized the Receiver to take this holdback.
3. The Receiver contacted the Purchaser's counsel, Dickinson Wright LLP ("Dickinson Wright"), by email on September 25, 2023, and suggested that if the Purchaser believed that such amounts were the Receiver's liability, Dickinson Wright bring a motion before the Court for an order directing the Receiver to pay the Omit Tax Claims. The Receiver reiterated its position in its email correspondence to Dickinson Wright dated October 18, 2023. As of the date of this Report, no motion has been scheduled by the Purchaser to address the Omit Tax Claims and the Receiver has since been advised by Dickinson Wright by email correspondence dated December 19, 2023 that it no longer represents Santokh (which the Receiver understood to include, by extension, the Purchaser, which is owned and controlled by Santokh).
4. The Receiver is now seeking an order that the Receiver is not liable to pay the Omit Tax Claims and authorizing it to make a distribution of the Omit Tax Reserve to Mahal VC creditors in accordance with their relative entitlements.
5. The Receiver notes that the analysis and conclusions set out in section 5.2(2) above were included in the Fifth Report, and that the Purchaser has therefore been on notice of the Receiver's position regarding the Omit Tax Claims, and its rationale for such position, since at least August 15, 2023 (the date of the Fifth Report). The Receiver's counsel also notified counsel to the Purchaser, and the principal of the Purchaser (Santokh), by email on March 8 and 19, 2024 that the relief in respect of the Omit Tax Claims would be sought on April 5, 2024.

5.3 Orr Plaintiffs Dispute

1. The Receiver currently holds the Orr Holdback, being \$3,650,000 of the Mahal VC Proceeds that were held back from distribution by the Receiver pursuant to the First Interim Distribution Order pending further Order of the Court. Such further Order was intended to address the trust claim made by certain third parties against Skymark and related entities (the "Orr Plaintiff Dispute").

2. The following summarizes the Orr Plaintiff Dispute, which is also discussed in greater detail in Section 8.0 of the Fifth Report:
 - a) On November 7, 2022, the Receiver and Blakes received a letter from counsel to 198 Co. and 7539088 Canada Inc. (“753 Co.”), corporations under the common control of Michael Orr (198 Co. and 753 Co. referred to together as the “Orr Plaintiffs”), which advised that 198 Co. advanced principal amounts to Skymark and Merk. The Orr Plaintiffs claimed that these amounts were used by Skymark and Merk to fund mortgage loans, including loans made to Mahal VC and secured by a mortgage in favour of Merk (defined as the “Merk Charge” in the Fifth Report).
 - b) 198 Co. claimed: a) a \$3,000,000 interest in the Merk Charge; b) that the Merk Charge ranked in priority to other charges in favour of Skymark; and c) that no distributions ought to be made to any creditors prior to the Orr Plaintiffs’ entitlement and priority being determined by the Court.
 - c) The Receiver determined that since the Orr Plaintiffs’ claims were not against the Companies directly, but rather trust claims against the Mahal VC Proceeds, resolution of the claims was not appropriately dealt with by the Receiver. The Receiver therefore proposed to establish the Orr Holdback to hold back a portion of any distributions to Skymark (or Merk) from the Mahal VC Proceeds, pending final resolution of the Orr Plaintiff Dispute.
 - d) The Orr Plaintiffs and the Skymark Receiver consented to the Receiver holding back \$3,650,000 from distributions to Skymark, which includes \$3,000,000 of principal in respect of which a trust is claimed, plus an estimate for interest that has accrued and will continue to accrue until the resolution of the Orr Plaintiffs’ claims.⁶ The First Interim Distribution Order provided for the Orr Holdback to be taken.
3. The Receiver has been advised by counsel to the Skymark Receiver and the Orr Plaintiffs that a formal settlement has been agreed to, and that such settlement was approved by an Order of Justice Steele dated February 22, 2024. The terms of the settlement are confidential and are subject to a sealing order by Justice Steele. The Receiver is not privy to the terms of the settlement.
4. The Orr Holdback was taken from the Skymark interim distribution and is therefore payable to the Skymark Receiver, or as the Skymark Receiver directs. The Receiver is willing to make distributions as directed by the Skymark Receiver and Orr Plaintiffs in accordance with the terms of their settlement agreement (about which the Receiver takes no position), up to the full amount of the Orr Holdback.

⁶ The Receiver held back this amount from the Skymark interim distribution (as opposed to taking it ratably from the interim distributions to all creditors) because only Skymark and Merk are defendants in the Orr Plaintiffs’ action, and such a limited holdback would not prejudice the Orr Plaintiffs.

5. As contemplated in the Fifth Report, the Receiver held the Orr Holdback in an interest-bearing account. Since the First Interim Distribution on August 23, 2023, the Orr Holdback has accrued approximately \$121,095 of interest (the "Holdback Interest"). As (a) the Orr Holdback was taken exclusively out of the Skymark First Interim Distribution amount, subject to it being allocated between the Orr Plaintiffs and Skymark, and (b) the Orr Plaintiff settlement specifically allocates the full amount of the \$3,650,000 Orr Holdback between the Orr Plaintiffs and Skymark (and no more), the Receiver considers Skymark to be entitled to all of the Holdback Interest, as if the Orr Holdback had been paid to Skymark on August 23, 2023.
6. The Receiver therefore now seeks an Order of this Court authorizing it to make distributions to the Skymark Receiver and/or the Orr Plaintiffs, in such amounts as the Skymark Receiver and the Orr Plaintiffs may direct, up to the full amount of the Orr Holdback, and a distribution of the Holdback Interest to the Skymark Receiver.

5.4 Vicano Lien Claim Disputed Amount

1. As discussed in Section 2.0 of the Fifth Report Supplement, there is a dispute between the Receiver and Vicano regarding the quantum of Vicano's total claim. The Receiver recommended a reduction of Vicano's claim in the amounts of: a) \$620,405, on account of duplicate or incorrect invoices, overbilled amounts, invoices related to deficiency rectification and invoices in connection with improvements performed on real property other than the Flour Mill; and b) \$90,554, on account of certain missing third-party invoices. Vicano objects to these reductions.
2. As discussed in Section 6.4 of the Fifth Report, the Receiver determined that Vicano has a priority claim against the Mahal VC Proceeds for 10% of its total claim, representing the statutory holdback that Mahal VC was required to take in respect of Vicano's construction contract.
3. As part of the first interim distribution, Vicano was paid \$1,659,413, representing 10% of the amount of its total claim that is not disputed. The disputed amount for distribution purposes, being at most \$71,096 (the "Vicano Disputed Amount"), or 10% of the total disputed amount of \$710,959, remains unresolved.
4. The Vicano Disputed Amount is payable to either: a) Vicano, if the Vicano Disputed Amount is properly owing in priority to Vicano; or b) to Skymark and KLN, in accordance with their relative priorities under the "2017 Skymark Charge" (as defined and discussed in the Fifth Report).
5. The Receiver will continue to work with Vicano to resolve this dispute. In order to avoid the Receiver having to come back to Court to seek a distribution order for a relatively small amount, the Receiver is seeking the Court's authorization to make a distribution up to the aggregate of \$71,096 to one or more of Vicano, Skymark and/or KLN with the prior written consent of the Skymark Receiver, KLN and Vicano.
6. If the order sought is granted, it will enable the Receiver to make a distribution of the Vicano Disputed Amount, without reattendance at Court, upon the satisfactory resolution of the Receiver's dispute with Vicano.

5.5 Mahal VC Cost Reserve

1. The Receiver currently holds the Mahal VC Cost Reserve, which was originally in the amount of \$600,000, as a reserve for the professional costs to resolve the matters described in subsections 5.1 to 5.4 of this Report and to complete the administration of the Receivership Proceedings.
2. As of the date of this Report, the Receiver continues to hold \$460,709 of the Mahal VC Cost Reserve.
3. If the Court grants the Orders requested by the Receiver in respect of the Omit Tax Reserve and the Orr Plaintiff Dispute, two material open issues in these proceedings will be resolved, and a portion of the Mahal VC Cost Reserve can be distributed to Mahal VC creditors in accordance with their respective priorities.
4. The Receiver is of the view that the Mahal VC Cost Reserve can be reduced to \$200,000 to fund the Remaining Activities (defined below) in these proceedings.
5. The Receiver therefore seeks an Order authorizing it to distribute up to \$260,709 of the Mahal VC Cost Reserve to creditors, as set out in Section 6 below.

6.0 Second Interim Distribution of Mahal VC Proceeds & Final Distribution

1. As discussed above, and as set out in the R&D, the Receiver is holding approximately \$8,229,681 of Mahal VC Proceeds, which includes the \$1,047,826 held back on account of the Disputed Transfer, the Orr Holdback, the Omit Tax Holdback and the Mahal VC Cost Reserve.
2. The Receiver's analysis of the claims of Mahal VC creditors and their respective priorities is set out in detail in Section 7 and Section 10 of the Fifth Report. This analysis substantially supports the Receiver's proposed distributions in this Report, which are set out below.

Distribution of \$1,047,826 Heldback on Account of Disputed Transfer

3. As discussed above, the Receiver has been advised that the Skymark Receiver and KLN have reached a settlement in respect of the Disputed Transfer, resulting in each party receiving 50% of the \$1,047,826 held back from KLN's first interim distribution.
4. Accordingly, provided the settlement of the KLN dispute is approved by the Court in the Skymark receivership proceedings, the Receiver proposes to make a distribution of the \$1,047,826 holdback as follows:

Creditor/Payee	Amount of Second Interim Distribution
Skymark	\$523,913
KLN	\$523,913

Distribution of Orr Holdback

5. As discussed above and in Section 10 of the Fifth Report, the \$3,650,000 Orr Holdback has been determined by the Receiver to be payable to Skymark, subject to the claims of the Orr Plaintiffs. The Skymark Receiver and the Orr Plaintiffs have settled their intercreditor dispute, including with respect to the Orr Holdback.
6. The terms of such settlement are confidential, but the Receiver has been advised that it provides for the distribution to Skymark and 1989474 Ontario Inc. (one of the Orr Plaintiffs) of the full Orr Holdback. On the basis of the consent of the Skymark Receiver and the Orr Plaintiffs to the distribution of the Orr Holdback, the Receiver proposes to make a distribution of the Orr Holdback and the Holdback Interest as follows:

Creditor/Payee	Amount of Second Interim Distribution
Skymark	Up to \$3,650,000, in such amount as is agreed by the Skymark Receiver and the Orr Plaintiffs
1989474 Ontario Inc.	Up to \$3,650,000, in such amount as is agreed by the Skymark Receiver and the Orr Plaintiffs
Skymark	\$121,095, being the Holdback Interest

7. The Receiver will credit the distribution of the Orr Holdback against Skymark's debt claim secured by the "2017 Skymark Charge" (as defined and discussed in the Fifth Report), because the Orr Holdback was taken out of Skymark's first interim distribution.
8. Skymark's debt secured by the 2017 Skymark Charge was calculated by the Receiver to be \$16,577,004 as of August 23, 2023. That amount (\$16,577,004), less Skymark's first interim distribution (\$5,097,556) and less the Orr Holdback (\$3,650,000), results in Skymark's claim secured by the 2017 Skymark Charge being \$7,829,448 (as of August 23, 2023).

Distribution of Omit Tax Reserve

9. Provided the Court grants the Order requested by the Receiver that the Omit Tax Claims are solely the liability of the Purchaser, the Omit Tax Reserve should be distributed to Skymark and KLN, on account of their respective 78.14% and 21.86%⁷ interests in the 2017 Skymark Charge, which 2017 Skymark Charge is a priority encumbrance over the Omit Tax Reserve funds.

⁷ In consultation with counsel to the Skymark Receiver and KLN, the Receiver proposes to make a distribution on account of the disputed 9.36% of KLN's registered 21.86% interest in the 2017 Skymark Charge to KLN and Skymark on a 50/50 basis. This is consistent with the settlement reached by the Skymark Receiver and KLN in respect of the Disputed Transfer.

10. Should the requested Order with respect to the Omit Tax Claims be made, the Receiver proposes to make distribution of the Omit Tax Reserve in the amount of \$1,500,000 to Skymark and KLN as follows:

Creditor	Amount of Second Interim Distribution	
Skymark	\$1,242,300	\$1,172,100 on account of the 2017 Skymark Charge, being 78.14% of the \$1,500,000 Omit Tax Reserve
		\$70,200 on account of the 2017 Skymark Charge, being half of KLN's disputed 9.36% of the \$1,500,000 Omit Tax Reserve
KLN	\$257,700	\$187,500 on account of the 2017 Skymark Charge, being KLN's undisputed 12.5% of the \$1,500,000 Omit Tax Reserve
		\$70,200 on account of the 2017 Skymark Charge, being half of KLN's disputed 9.36% of the \$1,500,000 Omit Tax Reserve

11. If the Court should decline to grant the order requested by the Receiver that the Omit Tax Claims are solely the liability of the Purchaser, the Receiver will either: a) continue to hold the Omit Tax Reserve until the Omit Tax Claims are finally adjudicated; or b) distribute the Omit Tax Reserve in accordance with such Order as the Court determines in respect of liability for the Omit Tax Claims.

Distribution of a Portion of the Mahal VC Cost Reserve

12. As discussed in Section 5.5, if the Court grants the Orders requested by the Receiver in respect of the Omit Tax Claims and the Orr Plaintiff Dispute, the Receiver recommends that the \$600,000 Mahal VC Cost Reserve (the balance of which is presently \$460,709) be reduced to \$200,000, leaving \$260,709 in amounts to be distributed to Skymark and KLN on account of their respective 78.14% and 21.86%⁷ interests in the 2017 Skymark Charge, which 2017 Skymark Charge has priority to the Mahal VC Cost Reserve funds.
13. Should the requested Order regarding the Omit Tax Claims and Orr Plaintiff Dispute be made, the Receiver proposes to make distributions of \$260,709 of the Mahal VC Cost Reserve, plus any surplus in the remaining \$200,000 Mahal VC Cost Reserve, to Skymark and KLN as follows:

Creditor	Amount of Second Interim Distribution	
Skymark	\$215,919	\$203,718 on account of the 2017 Skymark Charge, being 78.14% of the distributed Mahal VC Cost Reserve
		\$12,201 on account of the 2017 Skymark Charge, being half of KLN's disputed 9.36% of the distributed Mahal VC Cost Reserve

KLN	\$44,790	\$32,589 on account of the 2017 Skymark Charge, being KLN's undisputed 12.5% of the distributed Mahal VC Cost Reserve
		\$12,201 on account of the 2017 Skymark Charge, being half of KLN's disputed 9.36% of the distributed Mahal VC Cost Reserve

14. If the Order regarding the Omit Tax Claims and Orr Plaintiff Dispute is not made, the Receiver will continue to hold the Mahal VC Cost Reserve, to be applied against the future costs of the Receiver and its counsel.

Distribution of Vicano Disputed Amount

15. As discussed above, the entitlement to the \$71,096 Vicano Disputed Amount remains unresolved. These funds are either payable to Vicano, or Skymark and KLN (or some combination of the three).
16. In order to avoid having to seek a subsequent distribution order solely for this purpose, the Receiver is seeking the Court's authorization to make a distribution of the Vicano Disputed Amount, subject to the prior written consent of Vicano, the Skymark Receiver and KLN, in the following amounts (not to exceed \$71,096 in the aggregate):

Creditor	Amount of Second Interim Distribution	
Vicano	Up to \$71,096	
Skymark	Up to \$58,881.50	Up to \$55,554 on account of the 2017 Skymark Charge, being 78.14% of the total Vicano Disputed Amount
		Up to \$3,327.50 on account of the 2017 Skymark Charge, being half of KLN's disputed 9.36% of the total Vicano Disputed Amount
KLN	Up to \$12,214.50	Up to \$8,887 on account of the 2017 Skymark Charge, being 12.5% of the total Vicano Disputed Amount
		Up to \$3,327.50 on account of the 2017 Skymark Charge, being half of KLN's disputed 9.36% of the total Vicano Disputed Amount

Final Distribution

17. If the Distribution and Discharge Order is granted in the form sought by the Receiver, the second interim distributions above will total \$6,650,725 (the "Aggregate Second Interim Distribution"). As discussed above, the Receiver is currently holding \$6,972,886 of Mahal VC Proceeds. After deducting the amount of the Aggregate Second Interim Distribution, the Receiver will be left with \$322,161 plus accrued interest (the "Residual Funds").

18. The Receiver proposes to use the Residual Funds to pay the costs of the Second Interim Distribution Motion and the Remaining Activities (defined below), which are estimated not to exceed \$200,000 (plus disbursements and HST), and is seeking the Court's authorization to distribute the remainder to Skymark and KLN (the "Final Distribution"), in accordance with their priorities immediately prior to giving notice of the Receiver's intention to serve the Completion Certificate (defined below).

7.0 Status of Outstanding Litigation

7.1 Background

1. No relief is being sought from the Court in respect of the numerous litigation matters involving the Companies; however, the Receiver and the Trustee (together, the "Court Officer") are providing an update on their views on such litigation, for the benefit of stakeholders.
2. The Court Officer is aware of the following outstanding actions to which the Companies are a party (collectively, the "Outstanding Litigation"):
 - a) *Vicano Construction Limited v. Golden Miles Food Corporation, Mahal Venture Capital Inc., Skymark Finance Corporation and KLN Holdings Inc.*, Court File No. CV-19-113 (the "Vicano Action");
 - b) *Golden Miles v. Vicano Construction Limited, Lanhack Consultants Inc., Peter Vicano aka Peter Joseph Vicano, Peter J. Vicano and David Hacking*, Court File No. CV-19-121 (the "Vicano Counterclaim", together with the Vicano Action, the "Consolidated Vicano Action")⁸;
 - c) *Golden Miles v. The Corporation of the City of Brantford, Michael Neves, and Andrew McMahon*, Court File No. CV-21-86 (the "Brantford Action");
 - d) *Golden Miles Food Corporation v. Talib et al*, Court File No. CV-18-0000-5169-0000 (the "Talib Action");
 - e) *Amex Bank of Canada v. Mahal et al*, Court File No. CV-19-0014-2165-0000 (the "Amex Action");
 - f) *Ford Credit Canada Company v. Mahal Venture Capital Inc.*, Court File No. CV-19-0002-8227-0000 (the "Ford Action");
 - g) *Canadafresh Corporation et. al. v. Bridging Finance Inc. et al*, Court File No. CV-19-0063-1456-0000 (the "Canadafresh Action");
 - h) *Garage Living Inc. v. Golden Miles Food Corporation et al*, Court File No. CV-20-0064-2848-0000 ("Garage Living Action");

⁸ The Vicano Action and the Vicano Counterclaim have been procedurally consolidated by the Brantford Superior Court of Justice, and are referred to together as the "Consolidated Vicano Action".

- i) *Mahal et al v. Skymark Finance Corporation et al*, Court File No. CV-21-0003-0348-0000 (“Skymark Action 1”);
 - j) *Mahal et al v. Skymark Holdings Limited et al*, Court File No. CV-21-0000-1817-0000 (“Skymark Action 2”);
 - k) *Skymark Finance Corporation v. Mahal Venture Capital Inc. et al*, Court File No. CV-21-0066-4778-00CL (“Skymark Action 3”);
 - l) *Skymark Finance Corporation v. Mahal et al*; Court File No. CV-22-0067-5228-0000 (“Skymark Action 4”, and together with the Skymark Action 1, Skymark Action 2, and Skymark Action 3, the “Skymark Actions”); and
 - m) *Vivian Group Inc. v. Mahal Venture Capital Inc.*; Court File No. CV-18-00001205-000 (together with the Mahal VC counterclaim and third-party claim in connection thereto, the “Vivian Action”)
3. The Court Officer provided a summary in Section 11 of the Fifth Report with respect to the Outstanding Litigation, and more specifically, in connection with: i) the Consolidated Vicano Action; (ii) the Brantford Action; and (iii) the Vivian Action. That summary is not repeated herein, however, Sections 7.2, 7.3 and Appendix “I” of this Report provide an update on the Outstanding Litigation, and the rationale for the Court Officer’s decision not to proceed with any of the Outstanding Litigation.

7.2 Consolidated Vicano Action, Brantford Action and Vivian Action

- 1. In October 2023, the Court Officer retained Glaholt LLP (“Glaholt”), as independent construction counsel, to review the pleadings and merits of the Consolidated Vicano Action. Based on Glaholt’s analysis, the Court Officer concluded that it would not be prudent or cost-effective for the Court Officer to pursue the Consolidated Vicano Action.
- 2. The Court Officer consulted with the Skymark Receiver and counsel to KLN (being the two largest secured creditors of Mahal VC) in October 2023 regarding the Consolidated Vicano Action, Brantford Action, and Vivian Action, and advised of its decision not to proceed with any of them.
- 3. The Trustee also held a meeting on December 11, 2023 with the inspectors in the Golden Miles Bankruptcy. The inspectors made a resolution directing the Trustee not to pursue the Consolidated Vicano Action and the Brantford Action (Golden Miles is not a party to the Vicano Action).
- 4. No inspectors’ meeting was held in the Mahal VC estate regarding the three actions as: a) one of the two inspectors in the Mahal VC estate is also an inspector of the Golden Miles estate, and the other inspector is counsel to KLN; b) the primary Mahal VC secured creditors (being the Skymark Receiver and KLN) were consulted about the Court Officer’s decision not to proceed with the Consolidated Vicano Action, Brantford Action, and Vivian Action; and c) the Trustee is not required by the BIA to obtain inspector approval to discontinue litigation.

5. On December 18, 2023, the Court Officer notified counsel to the co-defendants that the Court Officer had decided not to pursue the Consolidated Vicano Action, Brantford Action, and Vivian Action. The Court Officer additionally sent Dickinson Wright a letter advising that it was not proceeding with this litigation and requested that the Court Officer be kept apprised by Santokh if he intended to bring a motion under Section 38 of the BIA (a “Section 38 Motion”) seeking an assignment of the Trustee’s right, title and interest in any of this litigation (the “December 18 Letter”). A copy of the December 18 Letter is provided as Appendix “J”.
6. In response to the December 18 Letter, Dickinson Wright advised that it no longer represented Santokh and to correspond with Santokh directly in relation to this matter. The Court Officer corresponded with Santokh on December 19, 2023 and requested that Santokh advise if he intended to bring a Section 38 Motion. Santokh did not respond. The Court Officer’s counsel was subsequently contacted by two different lawyers indicating that they were working with Santokh to proceed with the Section 38 Motion. Both lawyers, and Santokh personally, will be provided by email with this Report contemporaneously with the service list.
7. Based on the foregoing correspondence, the Court Officer understands that Santokh may bring a Section 38 Motion in respect of one or more of the Consolidated Vicano Action, Brantford Action, and Vivian Action, the timing of which has not been confirmed.
8. If the Court grants the Orders recommended by the Receiver in respect of the Omit Tax Reserve and the Orr Plaintiff Dispute, the two most material open issues in the Receivership Proceedings will be resolved. The remaining issue to be dealt with in the Golden Miles Bankruptcy will be the determination of unsecured claims and distributions to unsecured creditors.
9. Accordingly, provided the Distribution and Discharge Order is granted in the form sought by the Receiver, Santokh will have until the date that the Trustee brings a motion seeking the Trustee’s discharge to bring his Section 38 Motion. Once the Trustee has been discharged and the Mahal VC and Golden Miles bankruptcy proceedings have been concluded, the time for bringing a Section 38 Motion will have passed. The Trustee will give Santokh notice of its intention to seek its discharge in the Mahal VC and Golden Miles bankruptcy proceedings.

7.3 Remaining Outstanding Litigation

1. Other litigation involving the Companies is summarized in Appendix “I”. As set out in the summary, the Court Officer does not intend to pursue any of the claims.

8.0 Receiver's Activities

1. The Receiver's activities since the date of the Fifth Report are summarized in this Report and have also included, among other things, the following:
 - a) preparing the Fifth Report Supplement;
 - b) corresponding with the Skymark Receiver and its counsel regarding all aspects of the receivership, including providing periodic status updates;
 - c) working with Glaholt regarding its review of the Consolidated Vicano Action and providing documentation to Glaholt to facilitate the review;
 - d) corresponding with parties to the Outstanding Litigation regarding the Court Officer's intentions with respect to same;
 - e) corresponding with Santokh and his counsel regarding the proposed Section 38 Motion;
 - f) corresponding with Bennett Jones regarding the trust claim asserted by the Orr Plaintiffs;
 - g) preparing periodic statements of receipts and disbursements, including the R&D;
 - h) responding to creditor inquiries; and
 - i) preparing this Report.

9.0 Professional Fees

1. The fees of the Receiver during the Fee Period (from August 1, 2023 to February 29, 2024) total \$28,682.50, excluding disbursements and HST. Blakes' fees for the Fee Period total \$105,708.00, excluding disbursements and HST. Fee affidavits and accompanying invoices in respect of the fees and disbursements of the Receiver and Blakes for these periods are attached as Appendices "K" and "L", respectively, to this Report (the "Fee Affidavits").
2. The average hourly rate for the Receiver and Blakes for the referenced billing period was \$545 and \$799.61, respectively.
3. The Receiver believes that the fee accrual, being \$200,000 (plus disbursements and HST) of the Mahal VC Cost Reserve that is proposed to continue to be held, is sufficient and necessary to cover its fees and the fees of Blakes to the completion of these proceedings. Without the fee accrual, there will be no assets from which to cover these fees and costs.
4. The Receiver is of the view that Blakes' hourly rates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.

10.0 Remaining Matters and Discharge

1. Provided that the Distribution and Discharge Order is granted in the form requested by the Receiver, and given that the Receiver has elected not to pursue the Consolidated Vicano Action, the Brantford Action, the Vivian Action or any of the other litigation discussed above, there are no remaining assets to realize in the Mahal VC or Golden Miles estates. The only remaining tasks to be completed before the Receiver is discharged (the “Remaining Activities”) are:
 - a. Making the Second Interim Distribution;
 - b. Undertaking certain administrative matters related to the wind-up of these Receivership Proceedings;
 - c. Preparing the final report of the Receiver pursuant to section 246(3) of the BIA;
 - d. Making the Final Distribution; and
 - e. Filing the certificate of completion substantially in the form attached as a schedule to the Distribution and Discharge Order sought by the Receiver (the “Completion Certificate”).
2. The Receiver is of the view that it is appropriate at this time to seek an Order discharging the Receiver, subject to the Receiver filing the Completion Certificate.
3. The Receiver is further of the view that the releases sought for the Receiver and its counsel (collectively, the “Releases”) are reasonable and appropriate in the circumstances, and consistent with releases that have been granted in connection with the discharge of court appointed receivers in comparable proceedings. In this regard, the Receiver notes:
 - a. Only the Receiver and its counsel are the beneficiaries of the Releases – no other parties are proposed to be released, whether such parties have participated in these proceedings, or are third parties;
 - b. The Releases effective upon the date of the granting of the Distribution and Discharge Order are retrospective, and limited to claims arising prior to the granting of that order;
 - c. The Releases that will become effective after the granting of the Distribution and Discharge Order are time limited to the period between the date of the granting of the Distribution and Discharge Order and the date of the filing of the Completion Certificate, and are subject to the service list being given (i) notice of such effectiveness, and (ii) an opportunity to object; and
 - d. The Releases do not release any claim or liability arising out of any gross negligence or willful misconduct on the part of the released parties.

11.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the Distribution and Discharge Order.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “A”



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

August 15, 2023

And

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

RESPONDENTS

FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

AND

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

AUGUST 15, 2023

1.0 Introduction

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

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

1.1 Purposes of this Report

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

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

1.2 Currency

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

1.3 Restrictions

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

2.0 Executive Summary

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

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

Mahal VC

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

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

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

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

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

Notes

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

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

Golden Miles

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

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

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

Notes

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

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

Bankruptcy Funding and Litigation Claims

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

3.0 Background

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

3.1 Secured Creditors

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

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

3.1.1 Personal Property Security

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

3.1.2 Real Property Security

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

3.1.3 Interim Lender

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

4.0 Receipts and Disbursements

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

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

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

5.0 Golden Miles and Personal Property Security Distribution

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

The Mahal Security Motion

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

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

Skymark Security

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

Remaining Golden Miles Proceeds

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

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

5.1 Interim Distribution

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

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

6.0 Real Property Secured Creditors of Mahal VC

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

6.1 Summary of Charges

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

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

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

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

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

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

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

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

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

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

6.2 Claims and Entitlements of Mortgage Holders

Merk

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

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

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

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

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

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

Skymark

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

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

2017 Skymark Charge

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

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

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

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

2018 Skymark Charge

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

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

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

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

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

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

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

KLN Holdings Inc.

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

Andrew Thompson

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

2620509 Ontario Inc.

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

2580165 Ontario Inc.

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

Janodee Investments Ltd.

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

Raymond Renaud

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

Cameron Renaud

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

1061307 Ontario Inc.

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

Seagrave

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

Golden Miles

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

6.3 Priorities of Mortgages

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

6.4 Vicano's Lien Claim

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

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

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

6.4.1 Extension of Deadline to Set Down Matter for Trial

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

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

6.4.2 Receiver's Views on Quantum of Vicano Lien Claim

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

The Project Report

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

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

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

The Class D Report

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

Conclusions on Quantum of Vicano Claim

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

6.4.3 Lien Priority Analysis

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

6.4.4 Vicano Lien Priority to Merk Charge

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

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

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

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

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

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

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

Building Mortgage - Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvements have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.
3. Based on the application of Section 78(2) to the prevailing facts, the Receiver has concluded that the Vicano Lien has priority over the 2017 Skymark Charge and the 2018 Skymark Charge to the extent of unpaid holdback.

6.4.6 The Colliers Payment

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

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

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

6.4.7 Vicano Lien Priority to Golden Miles Charge

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

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

2. Section 78(6) of the *Construction Act* provides:

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

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

7.0 Real Property Charge Priority Analysis

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

Priority	Charge/Claim	Beneficiary	Total Amount Secured as of August 23, 2023
First	Vicano Construction Lien, to the extent of the unpaid holdback	Vicano	\$1,659,413.00
Second	2017 Skymark Charge	Skymark	\$16,577,003.94
		KLN	\$4,637,487.92
Third	2018 Skymark Charge	Skymark	\$2,035,713.05
		KLN	\$442,644.84
		Thompson	\$177,133.47
		262 Co.	\$88,377.89
		258 Co.	\$177,133.47
		Janodee	\$147,674.17
		C. Renaud	\$91,777.04
		106 Co.	\$442,644.84
		Seagrave	\$177,133.47
Fourth	Merk Charge	Merk	\$1,758,327.65
Fifth	Golden Miles Charge	Golden Miles	Undetermined

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

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

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

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

8.0 Claims by 198 Co.

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

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

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

9.0 Omit Property Tax Invoices

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

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

10.0 Mahal VC Proceeds, Interim Distribution and Reserve

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

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

11.0 Outstanding Litigation By and Against the Companies

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

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

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

The Consolidated Vicano Action and Brantford Action

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

The Vivian Action

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

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

12.0 Lakeshore Condominium

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

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

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

13.0 Receiver's Activities

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

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

14.0 Professional Fees

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

15.0 Conclusion

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “B”



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

August 22, 2023

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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

SUPPLEMENT TO THE FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

AUGUST 23, 2023

1.0 Introduction

1. This report (the "Supplemental Report") supplements the Receiver's Fifth Report to Court dated August 15, 2023 (the "Fifth Report").
2. Unless otherwise stated, capitalized terms used in this report have the meanings provided to them in the Fifth Report.

1.1 Purpose

1. The purpose of this Supplemental Report is to provide the Court and the Companies' stakeholders with an update on the proposed distributions to Vicano and KLN based on correspondence received following service of the Fifth Report and the Receiver's motion record.

1.2 Restrictions

1. This Supplemental Report is subject to the restrictions in the Fifth Report.

2.0 Quantum of Vicano's Claim

1. Section 6.4 of the Fifth Report includes a discussion of Vicano's lien claim and Section 6.4.2 provides the Receiver's views on the quantum of such claim, based on analyses drawn in the Project Report and Class D Report prepared by Altus.

2. The Receiver has recommended a deduction from the Vicano claim in the amounts of a) \$620,405 on account of duplicate or incorrect invoices, overbilled amounts, invoices related to deficiency rectification and invoices in connection with improvements performed on real property that is not the Flour Mill, and b) \$90,554 on account of certain missing third-party invoices.
3. Based on these recommended deductions, the Receiver determined the quantum of Vicano's total claim to be \$16,595,413, which corresponds to a recommended distribution to Vicano of \$1,659,541 (being 10% of the total amount invoiced).
4. On August 15, 2023, the Receiver served its Fifth Report, which included the two Altus reports. While the Receiver has been in contact with Vicano's counsel throughout these proceedings, Vicano did not have an opportunity to review the Altus reports in full until receiving them on August 15, 2023 as part of the Fifth Report.
5. On August 17, 2023, Vicano's counsel contacted the Receiver to advise that it objects to certain of the deductions proposed by the Receiver. Vicano's objections are based on both legal interpretations of the *Construction Act* and on factual conclusions drawn by the Receiver about the quantum of its claim.
6. Vicano's objections will take some time to resolve, but if accepted by the Receiver in full would amount to an increase in Vicano's recommended distribution of approximately \$50,000.
7. The Receiver will work with Vicano to resolve its objections, and seek additional assistance from the Court if necessary. However, in the interim, the Receiver proposes to make a distribution to Vicano of the undisputed amount recommended in the Fifth Report, being \$1,659,541. As a result, the Receiver will not be seeking as part of the relief requested a declaration that the distribution to Vicano is in full satisfaction of its priority claim under the *Construction Act*.
8. Given that the size of Vicano's disputed distribution is only \$50,000, the Receiver does not propose to take any additional holdback from distributions proposed to Skymark or KLN.

3.0 KLN Distribution

1. The Receiver reported in Section 6.2(13) of the Fifth Report that Skymark transferred 21.86% of its interest in the 2017 Skymark Charge to KLN, pursuant to registered transfers dated August 9, 2017 (in the amount of \$500,000), December 1, 2017 (in the amount of \$200,000), April 3, 2018 (in the amount of \$500,000) and May 7, 2019 (in the amount of \$900,000).
2. The May 7, 2019 transfer in the amount of \$900,000 is referred to herein as the "May KLN Transfer".
3. On August 21, 2023, the Receiver was notified by the Skymark Receiver that it had been advised by representatives of Skymark that the \$900,000 represented by the May KLN Transfer had been repaid by Skymark to KLN, and that the May KLN Transfer should have been discharged from the Parcel Register. On August 22, 2023, the Skymark Receiver provided supporting documentation for its position, which it had just obtained from Skymark.

4. Also on August 22, 2023, counsel for Skymark, KLN and the Receiver convened a call to discuss Skymark's position. On this call, KLN's counsel objected to the position that any amount related to the May KLN Transfer was repaid and that the May KLN Transfer ought to have been discharged. Documentation was provided by KLN's counsel to support this objection.
5. The Receiver has not yet reviewed the documentation provided by counsel to the Skymark Receiver and KLN, but in any event considers this issue to be an intercreditor dispute.
6. As the May KLN Transfer issue was just raised, neither the Skymark Receiver nor KLN have had an opportunity to locate or exchange all necessary supporting documentation. As of the date of this Supplemental Report, the Receiver understands that counsel to KLN and the Skymark Receiver are working to resolve the dispute over the May KLN Transfer; however, the Receiver does not know if such a resolution will be achievable before the return of the Motion at 11 am on August 23, 2023.
7. The Skymark Receiver, KLN and the Receiver have agreed to a path forward that will minimize costs and delays, while giving the parties an opportunity to resolve the outstanding intercreditor issue without prejudice to their respective interests.
8. The \$900,000 principal amount of the May KLN Transfer represents approximately 9.36% of KLN's interest in the 2017 Skymark Charge. The remaining 12.5% (or \$1,200,000) of KLN's interest in the 2017 Skymark Charge is undisputed and not subject to the issues raised by the Skymark Receiver.
9. In consultation with counsel to the Skymark Receiver and KLN, the Receiver has agreed to amend the order sought in its Motion to authorize the Receiver to make a distribution to KLN in the amount of:
 - a. \$1,399,340, representing the undisputed 12.5% interest of KLN in the 2017 Skymark Charge (less the Vicano distribution, holdbacks and reserves), and
 - b. up to \$1,047,826, representing the disputed 9.36% interest of KLN in the 2017 Skymark Charge (less the Vicano distribution, holdbacks and reserves), subject to Skymark giving the Receiver written consent to the amount of this further KLN distribution.
10. This proposed resolution will avoid the need to adjourn the Receiver's distribution motion, which will create unnecessary costs and delays, and will avoid the need for the Receiver to return to Court for a subsequent distribution order in the event that KLN and the Skymark Receiver consensually resolve their dispute over the May KLN Transfer.
11. The aggregate authorized maximum amount of the KLN distribution sought by the Receiver is unchanged from the amount proposed in the Fifth Report, being \$2,447,166.

12. In the event that the dispute over the May KLN Transfer cannot be resolved consensually, the assistance of the Court may be required at a future date.

* * *

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 “C”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 23RD
JUSTICE CAVANAGH) DAY OF AUGUST, 2023

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

**ORDER
(Distribution and Fee & Activity Approval)**

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of Mahal Venture Capital Inc. (“**Mahal VC**”) and Golden Miles Food Corporation (“**Golden Miles**” and, together with Mahal VC, the “**Companies**”) owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario for an order, (i) authorizing and directing the Receiver to make certain distributions to Vicano Construction Limited (“**Vicano**”), Skymark Finance Corporation, acting by its receiver Alvarez & Marsal Canada Inc. (“**Skymark**”), KLN Holdings Inc. (“**KLN**”) and Santokh Mahal (“**Mr. Mahal**”), (ii) approving the fees and disbursements of

the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”) for the period March 1, 2022 through July 31, 2023, and (iii) approving the Receiver’s Fourth Report to Court dated November 1, 2022 (the “**Fourth Report**”), the Receiver’s supplement to the Fourth Report dated December 8, 2022 (the “**Fourth Report Supplement**”) and the Receiver’s Fifth Report to Court dated August 15, 2023 (the “**Fifth Report**”, together with the Fourth Report and the Fourth Report Supplement, the “**Reports**”) and the Receiver’s activities described therein, was heard this day by judicial videoconference.

ON READING the Reports, and on hearing the submissions of counsel for the Receiver, and such other parties listed on the Participant Information Form, no one else appearing although properly served as appears from the Affidavit of Service of Nancy Thompson sworn August 15, 2023, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated August 15, 2023 (the “**NOM**”), the Fifth Report, be and hereby is abridged, such that service of the NOM and the Fifth Report is hereby validated, and that further service thereof is hereby dispensed with.

DISTRIBUTIONS AND INTERIM DISTRIBUTIONS

Distribution of Personal Property Proceeds

2. **THIS COURT ORDERS** that the Receiver is hereby authorized to make the following distributions, in the following amounts, from the proceeds of the sale of the personal property of Golden Miles, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver:

- (a) \$314,755 to Mr. Mahal, subject to Paragraph 3 below; and
- (b) \$247,000 to Skymark.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to set-off the amount of \$95,000 from the distribution to Mr. Mahal authorized by Paragraph 2 hereof, resulting in a net distribution to Mr. Mahal of \$219,755, and from this \$95,000: (a) apply \$75,000 against the costs of the Receiver and Blakes incurred in these proceedings, and (b) distribute \$20,000 to Skymark, in each case in full satisfaction of Mr. Mahal's obligations in respect of the cost award made by Mr. Justice McEwen in these proceedings in an endorsement dated May 10, 2023.

Distribution & Holdbacks of Real Property Proceeds

4. **THIS COURT ORDERS** that the Receiver is hereby authorized to make the following distributions in the following amounts, from the proceeds of the sale of the real property of Mahal VC, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver:

- (a) \$1,659,413 to Vicano;
- (b) \$5,097,556 to Skymark;
- (c) \$1,399,340 to KLN;
- (d) in addition to the distribution set out in subparagraph 4(c), up to \$1,047,826 to KLN.

5. **THIS COURT ORDERS** that the amount and payment of the distribution to KLN set out in sub-paragraph 4(d) shall be subject to the prior written approval of Skymark and KLN, or further order of this Court.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to maintain the following holdbacks from the proceeds of the sale of the real property of Mahal VC:

- (a) \$600,000, defined in the Fifth Report as the "Mahal VC Cost Reserve";

- (b) \$3,650,000, defined in the Fifth Report as the “Orr Holdback”; and
- (c) \$1,500,000, defined in the Fifth Report as the “Omit Tax Reserve”,

in each case pending further order of this Court.

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

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

the distributions authorized by Paragraphs 2 and 4 hereof (the “**Distributions**”) shall be binding on KSV, in its capacity as trustee in bankruptcy of the Companies, and any successor trustee in bankruptcy that may be appointed in respect of the Companies, and shall not be void or voidable by creditors of the Companies, nor shall the Distributions constitute nor be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, nor shall the Distributions constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation and shall, upon the receipt thereof by the recipients, be free of all claims, liens, security interests, charges or encumbrances.

REPORT & STATEMENT OF RECEIPTS AND DISBURSEMENTS APPROVAL

8. **THIS COURT ORDERS** that the Reports, and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

9. **THIS COURT ORDERS** that the statement of receipts and disbursements for the period October 1, 2021 through July 31, 2023, attached to the Fifth Report be and is hereby accepted and approved.


FEE APPROVALS

10. **THIS COURT ORDERS** that the fees of the Receiver in the amount of \$195,469.75, plus HST and disbursements, for the period March 1, 2022 through July 31, 2023 (the “**Fee Approval Period**”) be and hereby are approved.

11. **THIS COURT ORDERS** that the fees of the Receiver’s counsel, Blakes, in the amount of \$336,326, plus HST and disbursements, for the Fee Approval Period be and hereby are approved.

MISCELLANEOUS

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



Digitally signed by
Peter Cavanagh

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

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

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

Proceeding Commenced at Toronto

**ORDER
(Distribution and Fee & Activity Approval)**

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

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

Daniel Loberto, LSO #79632Q
Tel: 416-863-2937
Fax: 416-863-2653
Email: daniel.loberto@blakes.com

Lawyers for the Receiver

Appendix “D”

Receivership of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles")
Interim Statement of Receipts and Disbursements
For the Period August 1, 2023 to March 21, 2024
(\$: unaudited)

Description	Note	Total Amount	Allocation (%)		Allocation (\$)	
			Mahal VC	Golden Miles	Mahal VC	Golden Miles
Balance in Receiver's account, before accrued liabilities, as at July 31, 2023		16,915,992	89.6%	10.4%	15,157,361	1,758,631
<i>Receipts</i>						
Interest		396,171	89.6%	10.4%	354,984	41,187
		<u>396,171</u>	<u>89.6%</u>	<u>10.4%</u>	<u>354,984</u>	<u>41,187</u>
<i>Disbursements</i>						
Distribution to Alvarez and Marsal Canada Inc., as Receiver of Skymark	1	5,364,556	95.0%	5.0%	5,097,556	267,000
Distribution to Vicano	1	1,659,413	100.0%	0.0%	1,659,413	-
Distribution to KLN	1	1,399,340	100.0%	0.0%	1,399,340	-
Unencumbered funds transferred to Golden Miles bankruptcy trustee		1,277,182	0.0%	100.0%	-	1,277,182
Distribution to Santokh	1	219,755	0.0%	100.0%	-	219,755
Legal fees and disbursements		96,597	80.0%	20.0%	77,278	19,319
Consulting fees		53,366	100.0%	0.0%	53,366	-
Funds transferred to fund the Companies' bankruptcy estates		51,577	89.4%	10.6%	46,124	5,452
HST		24,333	85.7%	14.3%	20,850	3,482
Receiver's fees		37,680	80.0%	20.0%	30,144	7,536
Bank charges		182	50.0%	50.0%	91	91
		<u>10,183,980</u>	<u>82.3%</u>	<u>17.7%</u>	<u>8,384,162</u>	<u>1,799,818</u>
Balance in Receiver's account, before accrued liabilities, as at March 8, 2024		<u>7,128,182</u>	<u>100.0%</u>	<u>0.0%</u>	<u>7,128,182</u>	<u>0</u>
<i>Accrued Liabilities</i>						
Accrued fees of bankruptcy trustee's counsel, including HST		155,297	100.0%	0.0%	155,297	-
		<u>155,297</u>	<u>100.0%</u>	<u>0.0%</u>	<u>155,297</u>	<u>-</u>
Balance after accrued liabilities, before reserves		<u>6,972,886</u>	<u>100.0%</u>	<u>0.0%</u>	<u>6,972,886</u>	<u>0</u>

Notes

1. Represents distributions to the secured creditors of Mahal VC and Golden Miles pursuant to an order of the Court dated August 23, 2023.

Appendix “E”

February 24, 2023

VIA E-MAIL

Chris Burr
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto ON M5L 1A9

Dear Chris:

**Re: 12175622 Canada Ltd. ("121") / Receivership of Golden Miles Food Corporation and Mahal Venture Capital Asset Purchase Agreement
Client Matter No.: 99274-1**

Our client has received the attached Omit Tax Bills with respect to the real property located at 155 Adams Blvd, Brantford, relating to the years 2020, 2021, and 2022.

As the transaction pursuant to the Asset Purchase Agreement dated March 18, 2022 between 121 and the receiver and trustee closed on May 18, 2022, your client is responsible for the payment of the taxes owing for 2020 and 2021, as well as an amount representing 137 days of the tax bill for 2022, in respect of the period prior to-closing.

Please confirm that payment will be made by your client and provide us with a receipt.

Thank you.

Best regards,

DICKINSON WRIGHT LLP



Lisa S. Corne

LSC/jss
Encl.

cc: David Preger
Ryan Cooper



Omit Tax Bill

2022 Omit 7 (21 Tax)

Billing Date

November 25, 2022

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
Tel: (519) 759-4150, tax.info@brantford.ca

Roll Number 2906-030-007-07200-0000				ACCOUNT NUMBER 00167800		
Assessed Owner(s) / Mailing Address 12175622 CANADA LTD 155 ADAMS BLVD BRANTFORD ON N3S 7V8				Mortgage Co. & Ref. #		
				Assessed Property 155 ADAMS BLVD BRANTFORD CON 3 PT LOTS 38 AND 39 RP 2R6545 PARTS 1 AND 2 RP 2R4747 PART 1 RP 2R1332 PARTS 1 TO 3		
				Effective Date: Jan 1, 2021		
Assessment		Municipal			Education	
Tax Class	Value	CITY OF BRANTFORD LEVIES:	Tax Rate	Amount	Tax Rate	Amount
IX N	12,698,000	M - MUNICIPAL	0.01859171	\$236,077.53	0.00880000	\$111,742.40
Sub Totals		Municipal Levy			Education Levy	\$111,742.40
					\$236,077.53	
Special Charges/Credits		CVA Phase-In Adjustment		Summary		
				Tax Levy Subtotal Municipal & Education \$347,819.93		
				Special Charges/Credits \$0.00		
				CVA Phase-In Adjustment N/A		
				2021 Tax Cap Adjustment N/A		
				2022 Omit 7 (21 Tax) Taxes \$347,819.93		
				Less Interim Billing \$0.00		
				Past Due/Credit (As at Nov 24, 2022)** \$0.00		
				Total Amount Due \$347,819.93		
Total \$0.00				1st INSTALMENT Due	2nd INSTALMENT Due	
				\$173,910.93 Jan 6, 2023	\$173,909.00 Feb 17, 2023	
Late penalty is 1.25% on the day of default, plus 1.25% monthly until taxes are paid. **Any Past Due shown includes penalty to: Nov 30, 2022						

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
Tel: (519) 759-4150, tax.info@brantford.ca

Please retain bill for Income Tax purposes.

2022 OMIT 7 (21 TAX) TAX BILL

ACCOUNT NUMBER 00167800	MORTGAGE CO. & Ref. #:
PROPERTY ROLL NUMBER 2906-030-007-07200-0000	PROPERTY ADDRESS 155 ADAMS BLVD
ASSESSED OWNER(S) 12175622 CANADA LTD	
DUE DATE Feb 17, 2023	AMOUNT DUE \$173,909.00

PLEASE MAKE CHEQUE PAYABLE TO THE CITY OF BRANTFORD

00001678000 000173909000



96

2nd INSTALMENT

REMITTANCE PORTION

Please Return this stub with your Payment. DO NOT STAPLE.
If a receipt is required, return bill without detaching stub and include a self-addressed stamped envelope

AMOUNT PAID, IF DIFFERENT

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
Tel: (519) 759-4150, tax.info@brantford.ca

Please retain bill for Income Tax purposes.

2022 OMIT 7 (21 TAX) TAX BILL

ACCOUNT NUMBER 00167800	MORTGAGE CO. & Ref. #:
PROPERTY ROLL NUMBER 2906-030-007-07200-0000	PROPERTY ADDRESS 155 ADAMS BLVD
ASSESSED OWNER(S)	

1st INSTALMENT

REMITTANCE PORTION

Please Return this stub with your Payment. DO NOT STAPLE.
If a receipt is required, return bill without detaching stub and include a self-



Mail to: P.O. Box 515, Brantford, ON N3T 6L6
 Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
 Tel: (519) 759-4150, tax.info@brantford.ca

Omit Tax Bill

2022 Omit 7 (22 Tax)
 Billing Date
November 25, 2022

Roll Number 2906-030-007-07200-0000				ACCOUNT NUMBER 00167800			
Assessed Owner(s) / Mailing Address 12175622 CANADA LTD 155 ADAMS BLVD BRANTFORD ON N3S 7V8				Mortgage Co. & Ref. #			
				Assessed Property 155 ADAMS BLVD BRANTFORD CON 3 PT LOTS 38 AND 39 RP 2R6545 PARTS 1 AND 2 RP 2R4747 PART 1 RP 2R1332 PARTS 1 TO 3			
				Effective Date: Jan 1, 2022			
Assessment		Municipal			Education		
Tax Class	Value	CITY OF BRANTFORD LEVIES:	Tax Rate	Amount	Tax Rate	Amount	
IX N	12,698,000	M - MUNICIPAL	0.01895924	\$240,744.43	0.00880000	\$111,742.40	
Sub Totals		Municipal Levy			\$240,744.43	Education Levy	
						\$111,742.40	
Special Charges/Credits		CVA Phase-In Adjustment			Summary		
					Tax Levy Subtotal Municipal & Education \$352,486.83		
					Special Charges/Credits \$0.00		
					CVA Phase-In Adjustment N/A		
					2022 Tax Cap Adjustment N/A		
					2022 Omit 7 (22 Tax) Taxes \$352,486.83		
					Less Interim Billing \$0.00		
					Past Due/Credit (As at Nov 24, 2022) ** \$0.00		
					Total Amount Due \$352,486.83		
					1st INSTALMENT Due	2nd INSTALMENT Due	
Total \$0.00					\$176,243.83 Jan 6, 2023	\$176,243.00 Feb 17, 2023	

Late penalty is 1.25% on the day of default, plus 1.25% monthly until taxes are paid. **Any Past Due shown includes penalty to: Nov 30, 2022

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
 Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
 Tel: (519) 759-4150, tax.info@brantford.ca

Please retain bill for Income Tax purposes.

2022 OMIT 7 (22 TAX) TAX BILL

ACCOUNT NUMBER 00167800	MORTGAGE CO. & Ref. #:
PROPERTY ROLL NUMBER 2906-030-007-07200-0000	PROPERTY ADDRESS 155 ADAMS BLVD
ASSESSED OWNER(S) 12175622 CANADA LTD	
DUE DATE Feb 17, 2023	AMOUNT DUE \$176,243.00

2nd INSTALMENT

REMITTANCE PORTION

Please Return this stub with your Payment. DO NOT STAPLE.
 If a receipt is required, return bill without detaching stub and include a self-addressed stamped envelope

AMOUNT PAID, IF DIFFERENT

PLEASE MAKE CHEQUE PAYABLE TO THE CITY OF BRANTFORD

00001678000 000176243003



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Mail to: P.O. Box 515, Brantford, ON N3T 6L6
 Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
 Tel: (519) 759-4150, tax.info@brantford.ca

Please retain bill for Income Tax purposes.

2022 OMIT 7 (22 TAX) TAX BILL

ACCOUNT NUMBER 00167800	MORTGAGE CO. & Ref. #:
PROPERTY ROLL NUMBER 2906-030-007-07200-0000	PROPERTY ADDRESS 155 ADAMS BLVD
ASSESSED OWNER(S)	

1st INSTALMENT

REMITTANCE PORTION

Please Return this stub with your Payment. DO NOT STAPLE.
 If a receipt is required, return bill without detaching stub and include a self-



Omit Tax Bill

2022 Omit 7 (20 Tax)
Billing Date November 25, 2022

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
 Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
 Tel: (519) 759-4150, tax.info@brantford.ca

Roll Number 2906-030-007-07200-0000	ACCOUNT NUMBER 00167800
Assessed Owner(s) / Mailing Address 12175622 CANADA LTD 155 ADAMS BLVD BRANTFORD ON N3S 7V8	Mortgage Co. & Ref. # Assessed Property 155 ADAMS BLVD BRANTFORD CON 3 PT LOTS 38 AND 39 RP 2R6545 PARTS 1 AND 2 RP 2R4747 PART 1 RP 2R1332 PARTS 1 TO 3 Effective Date: Jan 1, 2020

Assessment		Municipal			Education	
Tax Class	Value	CITY of BRANTFORD LEVIES:	Tax Rate	Amount	Tax Rate	Amount
IX N	12,698,000	M - MUNICIPAL	0.01830140	\$232,391.18	0.01250000	\$158,725.00

Sub Totals	Municipal Levy	\$232,391.18	Education Levy	\$158,725.00
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Special Charges/Credits	CVA Phase-In Adjustment	Summary	
		Tax Levy Subtotal Municipal & Education	\$391,116.18
		Special Charges/Credits	\$0.00
		CVA Phase-In Adjustment	N/A
		2020 Tax Cap Adjustment	N/A
		2022 Omit 7 (20 Tax) Taxes	\$391,116.18
		Less Interim Billing	\$0.00
		Past Due/Credit (As at Nov 24, 2022)**	\$0.00
		Total Amount Due	\$391,116.18
Total	\$0.00	1st INSTALMENT Due	2nd INSTALMENT Due
		\$195,558.18 Jan 6, 2023	\$195,558.00 Feb 17, 2023

Late penalty is 1.25% on the day of default, plus 1.25% monthly until taxes are paid. **Any Past Due shown includes penalty to: Nov 30, 2022

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
 Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
 Tel: (519) 759-4150, tax.info@brantford.ca

Please retain bill for Income Tax purposes.

2022 OMIT 7 (20 TAX) TAX BILL

ACCOUNT NUMBER 00167800	MORTGAGE CO. & Ref. #:
PROPERTY ROLL NUMBER 2906-030-007-07200-0000	PROPERTY ADDRESS 155 ADAMS BLVD
ASSESSSED OWNER(S) 12175622 CANADA LTD	
DUE DATE Feb 17, 2023	AMOUNT DUE \$195,558.00

PLEASE MAKE CHEQUE PAYABLE TO THE CITY OF BRANTFORD

00001678000 000195558006



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2nd INSTALMENT

REMITTANCE PORTION

Please Return this stub with your Payment. DO NOT STAPLE.
 If a receipt is required, return bill without detaching stub and include a self-addressed stamped envelope

AMOUNT PAID, IF DIFFERENT

Mail to: P.O. Box 515, Brantford, ON N3T 6L6
 Courier to: 58 Dalhousie St, Brantford, ON N3T 2J2
 Tel: (519) 759-4150, tax.info@brantford.ca

Please retain bill for Income Tax purposes.

2022 OMIT 7 (20 TAX) TAX BILL

ACCOUNT NUMBER 00167800	MORTGAGE CO. & Ref. #:
PROPERTY ROLL NUMBER 2906-030-007-07200-0000	PROPERTY ADDRESS 155 ADAMS BLVD
ASSESSSED OWNER(S)	

1st INSTALMENT

REMITTANCE PORTION

Please Return this stub with your Payment. DO NOT STAPLE.
 If a receipt is required, return bill without detaching stub and include a self-

Appendix “F”

VENDOR'S UNDERTAKING TO READJUST

155 Adams Boulevard, Brantford, Ontario

TO: 12175622 Canada Ltd. (the "**Purchaser**")

RE: Sale by KSV Restructuring Inc., in its capacities as Court-appointed receiver and manager, and trustee in bankruptcy of Mahal Venture Capital Inc. and Golden Miles Food Corporation, and not in its personal or corporate capacity (collectively, the "**Vendor**") to the Purchaser of the lands and premises municipally known as 155 Adams Boulevard, Brantford, Ontario pursuant to an asset purchase agreement dated as of March 18, 2022 between the Vendor and the Purchaser, as may be amended from time to time (collectively, the "**Purchase Agreement**")

IN CONSIDERATION OF the Closing of the above-noted transaction and in accordance with and subject to the terms of the Purchase Agreement, the Vendor hereby undertakes to readjust all items on the Statement of Adjustments within 45 days from the Closing Date, upon written request by the Purchaser.

This Undertaking may be executed electronically and transmitted by e-mail or in PDF format and the reproduction of any signature electronically, and/or by e-mail or in PDF format will be treated as though such reproduction was an executed original signature.

Capitalized terms not defined herein shall have the respective meanings given to them in the Purchase Agreement.

(balance of page intentionally left blank; signature page follows)

DATED as of the 29th day of April, 2022.

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

Per:  _____

Name: Noah Goldstein
Title: Managing Director

I have the authority to bind the corporation.

Appendix “G”

EXECUTION VERSION

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

- and -

12175622 CANADA LTD.

ASSET PURCHASE AGREEMENT

DATED AS OF March 18, 2022

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ASSET PURCHASE AGREEMENT

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

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

(collectively, the “**Vendor**”)

- and -

12175622 Canada Ltd.

(the “**Purchaser**”)

RECITALS:

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

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

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

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

ARTICLE 1 INTERPRETATION

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

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

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **“control”** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **“controlled”** shall have a similar meaning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Governmental Authority” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Permitted Encumbrances” means, collectively:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.6 Additional Rules of Interpretation.

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

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

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

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

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

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

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

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

SCHEDULES

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

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

**ARTICLE 2
PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES**

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

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

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

2.3 Assignment of Contracts.

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

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

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

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

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

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

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

2.4 Transfer and Assignment of Permits and Licences.

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

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

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

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

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

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

ARTICLE 3 PURCHASE PRICE & TAXES

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

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

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

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

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

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

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

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

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

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

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

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

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

3.7 Tax Elections.

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

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

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

ARTICLE 4 PROCEDURES

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

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

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

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

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

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7 CLOSING ARRANGEMENTS

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

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

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

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

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

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

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

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

ARTICLE 8 CONDITIONS OF CLOSING

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

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

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

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

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

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

ARTICLE 9 TERMINATION

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

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

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

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

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

9.3 Treatment of Deposit.

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

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

ARTICLE 10 GENERAL

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

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

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

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

10.4 Notices.

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

(2) if to the Vendor to:

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

Attention: Mitch Vininsky
Email: mvininsky@ksvadvisory.com

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

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

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

(3) if to the Purchaser, to:

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

Attention: Santokh Mahal
Email: smahal@rogers.com

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

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

Attention: David Preger
Email: Dpreger@dickinsonwright.com

Attention: Lisa Corne
Email: Lcorne@dickinsonwright.com

Attention: David Seifer
Email: Dseifer@dickinsonwright.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

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

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

12175622 CANADA LTD.

Name:

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

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

By: _____
Name:
Title:

12175622 CANADA LTD.

By:  _____
Name: Santokh Mahal

Title: Director

(I have authority to bind the corporation)

SCHEDULE "A"

Assigned Contracts

Assigned Contracts

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

Nil.

Critical Contracts

The following Assigned Contracts are Critical Contracts:

Nil.

Personal Property Leases

The following Assigned Contracts are Personal Property Leases:

Nil.

SCHEDULE "B"

Owned Real Property

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

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

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

SCHEDULE "C"

Permits & Licences

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

- Building Permit No. 16 005638

SCHEDULE "D"

Purchased Assets

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

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

SCHEDULE "E"**Deleted Encumbrances**

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

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

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

Appendix “H”

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

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

SERVICE

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

SALE AGREEMENT APPROVAL

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

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and

directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Receiver's and the Companies' right, title and interest in and to the Purchased Assets described in the APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated October 1, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Brant (No. 2) of an Application for Vesting Order in the form prescribed

by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule “D” hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “B” hereto.

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

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

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

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

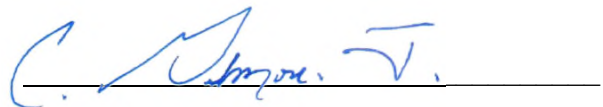
- (a) the pendency of these proceedings;

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MISCELLANEOUS

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



Schedule A – Form of Receiver’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and –

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

RECEIVER’S CERTIFICATE

RECITALS

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

B. Pursuant to an Order of the Court dated April 11, 2022 the Court approved the agreement of purchase and sale made as of March 18, 2022 (as amended, the "**APA**") between the Receiver and 12175622 Canada Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Companies’ right, title and interest in and to the Purchased Assets, which vesting is to be

effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 8 of the APA have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the APA;
2. The conditions to Closing as set out in Article 8 of the APA have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____

Name:

Title:

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

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

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

5

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

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

(unaffected by the Vesting Order)

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

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

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

Schedule D – Real Property

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

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

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

SKYMARK FINANCE CORPORATION
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

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

Proceeding Commenced at Toronto

APPROVAL AND VESTING ORDER

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Caitlin McIntyre, LSO #72306R

Tel: 416-863-4174

Fax: 416-863-2653

Email: caitlin.mcintyre@blakes.com

Lawyers for the Receiver

Appendix “I”

Outstanding Litigation Summary

Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Sixth Report of the Receiver and Third Report of the Trustee, dated March 26, 2024.

Talib Action

1. This proceeding involves Golden Miles claiming, among other things, \$90,912.92 from Munir Talib and Kabir Narang d.b.a. SNACKBYTES (“Snack”) in connection with breach of contract. Golden Miles’ statement of claim, dated November 30, 2018, states that Golden Miles and Snack had a previous business relationship involving Snack offering Golden Miles’ goods for sale on consignment at various Sears’ locations, and that Snack failed to remit funds to Golden Miles in accordance with this relationship despite several demands to do so. Snack asserts in its statement of defense, dated February 22, 2019, that, among other things, (i) Golden Miles and Snack entered into an oral agreement for Snack to act as a commission-based sales intermediary between Golden Miles and Sears, and that Snack would be responsible for shipping, stocking and ensuring compliance with quality standards, (ii) Sears would make payment to Snack after sale of Golden Miles’ products, Snack would keep its commission amount, and remit the remainder of the payment to Golden Miles, (iii) Snack was not responsible for damaged goods, expired goods, unsold goods, or other discrepancies, (iv) Sears noted several concerns to Snack regarding Golden Miles’ products, including changed expiry dates and mould concerns, (v) Sears eventually rejected Golden Miles’ products, terminated its relationship with Golden Miles, and removed Golden Miles’ products from its shelves, and (vi) Snack did not withhold any additional amounts received from Sears.
2. The Trustee does not intend to pursue the Talib Action.

Amex Action

3. This proceeding involves Santokh and Golden Miles (together, the “Mahal Defendants”) defaulting on an Amex Business Platinum Card credit facility, and Amex claiming the amount due (\$119,797). Mahal Defendants’ statement of defense and counterclaim, dated October 7, 2019, claims that the Mahal Defendants did not use the platinum card for purchases exceeding \$7,000, that Amex’s claim is vexatious, and that the Mahal Defendants believe they are a victim of fraud. The Mahal Defendants also counterclaimed for \$200,000 in damages for Amex’s actions negatively affecting their credit and interest rates at other credit agencies (the “Amex Counterclaim”). Amex’s Reply and Defense to the Amex Counterclaim, dated April 27, 2020, provided specific examples of the Mahal Defendants using the platinum card for purchases far exceeding \$7,000 (e.g., a \$20,000 payment made at Porsche, and an \$84,466.25 trailer purchase by Jesse Mahal), as well as a summary of correspondence between Amex and the Mahal Defendants regarding these purchases.
4. The Trustee does not intend to pursue the counterclaims in the Amex Action. Amex may choose to file a claim in the Golden Miles bankruptcy for its primary claims against Golden Miles.

Ford Action

5. This proceeding involves Mahal VC allegedly defaulting on a Ford truck lease agreement, and Ford subsequently obtaining an Order dated October 8, 2019 (the “Ford Order”) requiring, among other things, (i) Mahal VC to inform Ford of the location of the truck and to deliver up possession, (ii) the Sheriff of any relevant jurisdiction to seize the vehicle and deliver it to Ford, and (iii) Mahal VC to pay Ford’s costs. The Order was made without notice to Mahal VC, as Ford noted in its material that it thought Mahal VC would attempt to hide, move or dispose of the vehicle if served with the Ford’s materials. The Affidavit of Bruce Mitchell dated October 2, 2019, confirms that prior to the issuance of the Ford Order, Ford had requested payment several times, and that Mahal VC refused to surrender the vehicle to Ford’s bailiff. The Ford Order also notes that the matter was to return to the Court for review on October 29, 2019, however, the related application confirmation form notes that the respective hearing would be adjourned *sine die* returnable on five days’ notice.
6. The Court Officer notes that this is a claim against the Mahal VC with no counterclaims and there is nothing for the Court Officer to pursue. Ford may choose to file a claim in the Mahal VC bankruptcy for its primary claims against Mahal VC (however the Court Officer notes that due to the amount of the secured claims against Mahal VC and the amount of the remaining Real Property Proceeds, there will not be any distributions to Mahal VC’s unsecured creditors).

Canadafresh Action

7. The Court Officer understands that the Canadafresh Action was dismissed on consent on August 17, 2020. There are accordingly no steps for the Court Officer to take in respect of this litigation.

Garage Living Action

8. This claim against Golden Miles is stayed and Garage Living Inc. (“Garage Living”) is on the service list for these proceedings, at its request. Garage Living may choose to file a claim in the Golden Miles bankruptcy for its claims against Golden Miles.

Skymark Actions

9. Skymark is insolvent and subject to the Skymark Receivership Proceedings. The Court Officer’s ability to proceed against Skymark in respect of the Skymark Actions is therefore stayed, and any counterclaims by Skymark against the Companies are likewise stayed. The Court Officer does not intend to pursue any of the Skymark Actions, other than possibly by filing a proof of claim in the Skymark receivership proceedings to the extent there are expected to be any unsecured distributions.

Appendix “J”



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Chris Burr

Partner

Dir: 416-863-3261

chris.burr@blakes.com

Reference: 25198/2

December 18, 2023

Via Email

Lisa Corne
Dickinson Wright LLP
199 Bay Street, Suite 2200
Toronto, ON M5L 1G4

Re: Mahal Venture Capital et. al. – Decision not to Proceed with Litigation

Lisa,

Further to our ongoing correspondence on this matter, this letter is to advise that KSV Restructuring Inc., in its capacity as licensed insolvency trustee in the bankruptcies (in such capacity, the “Trustee”) of Mahal Venture Capital Inc. (“Mahal VC”) and Golden Miles Food Corporation (“Golden Miles”), will not be pursuing the claims or counterclaims of Mahal VC or Golden Miles in respect of the following outstanding proceedings (the “Subject Litigation”):

- a. Vicano Construction Limited v. Golden Miles Food Corporation, Mahal Venture Capital Inc., Skymark Finance Corporation and KLN Holdings Inc., Court File No. CV-19-113;
- b. Golden Miles v. Vicano Construction Limited, Lanhack Consultants Inc., Peter Vicano aka Peter Joseph Vicano, Peter J. Vicano and David Hacking, Court File No. CV-19-121;
- c. Golden Miles v. The Corporation of the City of Brantford, Michael Neves, and Andrew McMahon, Court File No. CV-21-86; and
- d. Vivian Group Inc. v. Mahal Venture Capital Inc., Court File No. CV-18-00001205-000.

We understand that your client may seek to bring a motion in respect of some or all of the Subject Litigation under Section 38 of the *Bankruptcy and Insolvency Act*. Please keep us posted on your plans and timing for that, and provide us with copies of any materials that you file. Let us know if you require anything further from the Trustee.

We will also be notifying the other parties to the Subject Litigation of the Trustee’s decision not to pursue the claims.

1393-9029-5305.1

TORONTO

CALGARY

VANCOUVER

MONTRÉAL

OTTAWA

NEW YORK

LONDON

Blake, Cassels & Graydon LLP | blakes.com

Blakes

Sincerely,



Chris Burr

Email Cc: M. Vininsky, *Trustee*

Appendix “K”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

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

RESPONDENTS

AFFIDAVIT OF MITCH VININSKY
(Sworn March 26, 2024)

I, Mitch Vininsky, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Managing Director of KSV Restructuring Inc. ("KSV").
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on October 1, 2021 ("Order"), KSV was appointed as receiver and manager (the "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 located on the property municipally known as 155 Adams Blvd., Brantford, Ontario.
3. I have been involved in the management of this mandate since the proceedings commenced. As such, I have knowledge of the matters to which I hereinafter depose.
4. On March 26, 2024, the Receiver issued its Sixth Report to Court in which it outlined its activities with respect to the Companies and provided information with respect to its fees.

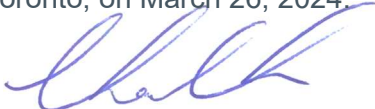
5. I hereby confirm that attached as Exhibit "A" hereto are true copies of the accounts of KSV for the periods indicated and confirm that these accounts accurately reflect the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of additional information with respect to all members of KSV who have worked on this matter, including their roles, hours and rates, and I hereby confirm that the list represents an accurate account of such information.

7. I consider the accounts to be fair and reasonable considering the circumstances connected with this administration.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amount claimed in the accounts.

SWORN BEFORE ME at the City of
Toronto, on March 26, 2024.



Catherine Anne Stuyck-Therault, a
Commissioner, etc.,
Province of Ontario for KSV Advisory Inc.
and KSV Restructuring Inc.
Expires February 19, 2025



Mitch Vininsky

This is Exhibit "A" referred to in the
Affidavit of Mitch Vininsky sworn before
me, this 26th day of March, 2024

A handwritten signature in blue ink, appearing to read 'Catherine', is written above a horizontal dotted line.

.....
Catherine Anne Stuyck-Therault, a Commissioner, etc.,
Province of Ontario for KSV Advisory Inc. and KSV Restructuring Inc.
Expires February 19, 2025



ksv advisory inc.

220 Bay Street, Suite 1300, Box 20

Toronto, Ontario, M5J 2W3

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F +1 416 932 6266

ksvadvisory.com

INVOICE

Mahal Venture Capital Inc. and Golden Miles Food Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300, Box 20
Toronto, ON M5J 2W3

March 8, 2024

Invoice No: 3542

HST #: 818808768RT0001

**Re: Mahal Venture Capital Inc. (“Mahal VC”) and Golden Miles Food Corporation
 (“GM” and together with Mahal, the “Companies”)**

For professional services rendered by KSV Restructuring Inc. for the period August 1, 2023 to February 29, 2024, in its capacity as receiver and manager (the “Receiver”) of all assets, undertakings and properties of the Companies formerly owned or used in connection with the flour mill (“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”) appointed pursuant to an order of the Ontario Superior Court of Justice issued on October 1, 2021 (“Receivership Order”), including;

- Corresponding with Alvarez & Marsal Canada Inc. (“A&M”), in its capacity as Court-appointed receiver (the “Skymark Receiver”) of Skymark Finance Corporation (“Skymark”), Chaitons LLP (“Chaitons”), Skymark’s counsel, and Fasken Martineau DuMoulin LLP (“Fasken”), counsel to the Skymark Receiver, regarding the receivership proceedings;
- Corresponding with Blake, Cassels & Graydon LLP (“Blakes”), the Receiver’s counsel, regarding the receivership proceedings, as further outlined below;
- Reviewing a report prepared by Altus Group (the “Altus Report”) regarding its review of the claim by Vicano Construction Limited (“Vicano”) and corresponding with Blakes regarding the Altus Report, including on August 1 and 2, 2023;
- Reviewing all Court materials prepared in connection with a motion by the Receiver returnable August 23, 2023 in connection with, among other things, seeking a distribution to the Companies’ secured creditors (the “First Interim Distribution Motion”);
- Preparing the Fifth Report to Court dated August 15, 2023 (the “Fifth Report”) and Supplement to the Fifth Report dated August 22, 2023 (the “Fifth Report Supplement”), in connection with the First Interim Distribution Motion;

- Corresponding extensively with Blakes regarding the Fifth Report and Fifth Report Supplement;
- Reviewing correspondence between Blakes and parties to certain outstanding litigation with the Companies (the “Outstanding Litigation”) and discussing the same with Blakes, including on August 16, 17 and 22, 2023, September 27 and 28, 2024, October 12, 2023, November 1, 13, 15, 21 and 27, 2024 and December 4 and 13, 2023;
- Corresponding with Glaholt Bowles LLP (“Glaholt”) in respect of a review of certain of the Outstanding Litigation;
- Reviewing correspondence between Blakes, Santokh Mahal and his counsel regarding a proposed motion under Section 38 of the *Bankruptcy and Insolvency Act*;
- Preparing an interim distribution to the secured creditors of the Companies on or around August 24, 2023 (the “Interim Distribution”);
- Corresponding with Blakes in connection with the status of certain holdbacks from the Interim Distribution (the “Holdbacks”);
- Corresponding extensively with Fasken and A&M regarding the Outstanding Litigation and Holdbacks, including on August 22, 2023, October 12, 2023, November 13, 2023, December 1 and 4, 2023 and January 15, 2024;
- Corresponding with Bennett Jones LLP regarding a trust claim asserted by its clients against the proceeds from the sale of the Property;
- Preparing the Receiver’s interim report pursuant to Subsection 246(2) of the *Bankruptcy and Insolvency Act*;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees	\$ 28,682.50
HST	<u>3,728.73</u>
Total due	<u>\$ 32,411.23</u>

KSV Restructuring Inc.
Mahal Venture Capital Inc. and Golden Miles Food Corporation

Time Summary

For the period ending February 29, 2024

Personnel	Rate (\$)*	Hours	Amount (\$)
Mitch Vininsky	\$700 - \$750	21.00	14,865.00
Murtaza Tallat	\$525 - \$550	22.45	11,846.25
Other Staff and administration		9.20	1971.25
Total fees		52.65	<u>28,682.50</u>

*KSV increased its rates effective January 1, 2024, consistent with historical practices.

This is Exhibit "B" referred to in the
Affidavit of Mitch Vininsky sworn before
me, this 26th day of March, 2024



Catherine Anne Stuyck-Therault, a Commissioner, etc.,
Province of Ontario for KSV Advisory Inc. and KSV Restructuring Inc.
Expires February 19, 2025

Mahal Venture Capital Inc. and Golden Miles Food Corporation
Schedule of Professionals' Time and Rates
For the Period of August 1, 2023 to February 29, 2024

<u>Name</u>	<u>Role</u>	<u>Hours</u>	<u>Billing Rate</u> <u>(Per Hour)*</u>	<u>Total Fees by</u> <u>Professional</u> <u>(\$)</u>
Mitch Vininsky	All aspects of mandate	21.00	\$700 - \$750	14,865.00
Murtaza Tallat	Mandate assistance	22.45	\$525 - \$550	11,846.25
Other staff and administrative		9.20	\$160 - \$210	1,971.25
Total hours				52.65
Total fees				\$ 28,682.50
Average hourly rate				\$ 544.78

*The hourly rates increased effective January 1, 2024.

Appendix “L”

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

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

AFFIDAVIT OF CHRIS BURR

I, CHRIS BURR, of the City of Toronto, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am a Partner at the law firm of Blake, Cassels & Graydon LLP (“**Blakes**”), counsel to KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Mahal Venture Capital Inc. and Golden Miles Food Corporation (together, the “**Companies**”) owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario and, as such, I have knowledge of the matters to which I hereinafter depose.

2. KSV was appointed Receiver of the Companies pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated October 1, 2021, as amended (the “**Receivership Order**”).

3. Pursuant to the terms of the Receivership Order, the Receiver retained Blakes to advise it with regards to matters related to its appointment and the performance of its duties and powers.

4. Blakes’ fees and disbursements for the period to February 28, 2022 were passed and approved by the Order of Justice Gilmore dated April 11, 2022. Blakes’ fees and disbursements for the period from March 1, 2022 to July 31, 2023 were passed and approved by the Order of Justice Cavanagh dated August 23, 2023.

5. Blakes’ fees and disbursements for the period from August 1, 2023 to February 29, 2024 (the “**Period**”) are summarized in the invoices rendered to the Receiver (the “**Invoices**”). The Invoices are a fair and accurate description of the services provided, the disbursements incurred and the amounts charged by Blakes, and are calculated based on Blakes’ standard rates and charges. The Invoices contain information and advice over which privilege is asserted, and which privilege is not waived. As a result, redacted copies of the Invoices and a summary of the Invoices are attached hereto and marked as **Exhibit “A”**. Copies of the complete Invoices have been provided to the Receiver.

6. As set out in the summary included at Exhibit “A”, Blakes expended a total of 132.2 hours at an average hourly rate of \$799.61 during the Period.

7. Attached hereto and marked as **Exhibit “B”** is a summary of the lawyers whose services are reflected on the Invoices, including year of call, hourly rate and the total fees and hours billed.

This is **Exhibit "A"** referred to in the

Affidavit of Chris Burr

sworn before me
this 26th day of March, 2024



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

SUMMARY OF INVOICES OF BLAKE, CASSELS & GRAYDON
(Period from August 1, 2023 to February 29, 2024)

Period Ending	Fees	Disb. Subject to HST	Disb. Not Subject to HST	Subtotal	HST	Total	Hours
August 31, 2023	\$65,803.50	\$57.55	\$367.65	\$66,228.70	\$8,561.94	\$74,790.64	82.6
September 30, 2023	\$1,878.00	\$17.05	\$8.00	\$1,903.05	\$246.36	\$2,149.41	2.1
October 31, 2023	\$2,304.00	\$0.00	\$0.00	\$2,304.00	\$299.52	\$2,603.52	2.4
November 30, 2023	\$5,907.00	\$0.00	\$0.00	\$5,907.00	\$767.91	\$6,674.91	6.8
December 31, 2023	\$3,983.00	\$5,211.00	\$0.00	\$9,194.00	\$1,195.22	\$10,389.22	4.6
January 31, 2024	\$24,052.50	\$139.20	\$0.00	\$24,191.70	\$3,144.93	\$27,336.63	31.6
February 29, 2024	\$1,780.00	\$95.00	\$95.00	\$1,970.00	\$243.75	\$2,213.75	2.1
Totals:	\$105,708.00	\$5,519.80	\$470.65	\$111,698.45	\$14,459.63	\$126,158.08	132.2

Average Hourly Rate: \$799.61



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice
number(s) on cheque

September 29, 2023

KSV Restructuring Inc.
150 King Street West
Suite 2308, Box 42
Toronto, ON M5H 1J9
Canada

Invoice:
Billing Lawyer
HST/GST No.:
Client:
Matter:

2402945
Burr, Chris
R119396778
00025198
000002

Attention: Noah Goldstein
Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED
during the period ended August 31, 2023, as follows:

	Total Fees	
		\$ 65,803.50
Taxable Disbursement(s)		
Profile Report - Online	\$ 31.10	
Search Fees	26.45	
		<hr/>
		\$ 57.55
Non-taxable Disbursement(s)		
Court Fees	\$ 339.00	
Government Fees	28.65	
		<hr/>
		\$ 367.65
	Harmonized Sales Tax (13.0%)	8,561.94
		<hr/>
TOTAL DUE IN CANADIAN CURRENCY		\$ 74,790.64 CAD <i>KC</i>



Invoice: 2402945
Date: September 29, 2023
Page: 2

Re: Golden Miles and Mahal Venture Capital Receivership (000002)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
08/01/23	Burr, Chris	Reviewing Altus report; exchanging email messages with KSV team regarding same; updating Fifth Report.	1.8	960.00	1,728.00
08/01/23	Loberto, Daniel	Strategizing with C. Burr and KSV Advisory; reviewing file details; reviewing Janodee Investments Ltd. contact details.	0.5	730.00	365.00
08/01/23	Thompson, Nancy	Reviewing e-mail message from D. Loberto regarding Janodee Investments; conducting corporate search and reviewing same; making various inquiries; e-mail message to D. Loberto forwarding updated corporate profile report and noting available options to determine current address for service.	0.5	500.00	250.00
08/02/23	Burr, Chris	Drafting email to Altus team regarding disclosure of Report; drafting Fifth Report; drafting email to Vicano counsel regarding same; exchanging email messages with KSV team regarding Fifth Report; exchanging email messages with L. Come regarding Mahal distribution.	4.1	960.00	3,936.00
08/02/23	Thompson, Nancy	Receiving instructions from C. Burr; reviewing file for past fee approvals and confirming current period for approval; assembling copies of all invoices for the current period and preparing a summary; updating draft fee approval affidavit to include the additional invoices for the current period; updating draft fee approval affidavit swearing by KSV.	1.6	500.00	800.00
08/03/23	Burr, Chris	Revising Fifth Report to include interest on Mahal secured distribution; exchanging email messages with KSV team regarding same.	0.5	960.00	480.00
08/03/23	Loberto, Daniel	Strategizing with C. Burr; reviewing Fifth Report; outlining Fifth Report exhibits; reviewing report correspondence.	0.9	730.00	657.00
08/03/23	Thompson, Nancy	Reviewing copies of invoices for privileged or sensitive information.	1.2	500.00	600.00
08/08/23	Loberto, Daniel	Corresponding with creditor counsel regarding upcoming motion; corresponding with C. Burr regarding upcoming motion; reviewing latest version of receivers report.	0.5	730.00	365.00
08/08/23	Thompson, Nancy	Reviewing July 2023 invoice and updating	0.7	500.00	350.00



Invoice: 2402945
Date: September 29, 2023
Page: 3

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
		draft fee approval affidavit to incorporate same; e-mail message to C. Burr forwarding draft fee approval affidavits for Blakes and for KSV for review and comment.			
08/09/23	Burr, Chris	Exchanging email messages with KSV working group and Miller Thompson regarding [REDACTED] preparing updated Fifth Report; exchanging email messages with KSV team regarding same.	0.6	960.00	576.00
08/09/23	Loberto, Daniel	Reviewing information to be used in factum; considering factum issues and reviewing the law in respect of the same; drafting facts section of factum.	1.4	730.00	1,022.00
08/10/23	Burr, Chris	Preparing for and participating on call with M. Tallat regarding calculations of distributions in Fifth Report; reviewing revised Fifth Report; coordinating collection of exhibits to Fifth Report; preparing factum for distribution motion.	2.5	960.00	2,400.00
08/10/23	Loberto, Daniel	Considering factum issues and reviewing the law in respect of the same; strategizing with C. Burr.	0.6	730.00	438.00
08/11/23	Burr, Chris	Preparing factum for D. Loberto to draft; exchanging email messages with D. Loberto regarding same; coordinating update to service list; reviewing Vivian Group claim and preparing rider for Fifth Report regarding same; updating Fifth Report to reflect new comments.	2.8	960.00	2,688.00
08/11/23	Loberto, Daniel	Correspondence with creditor; strategizing with C. Burr; reviewing and revising service list; reviewing factum related information; drafting factum.	3.2	730.00	2,336.00
08/11/23	Thompson, Nancy	E-mail messages from and to D. Loberto; reviewing and revising the Service List; e-mail messages to D. Loberto and C. Burr forwarding the draft Service List for review; conducting corporate search and making various inquiries to obtain final contact information; reviewing and revising the Service List and circulating same.	1.0	500.00	500.00
08/13/23	Burr, Chris	Reviewing KSV comments on Fifth Report; revising same to include updates on Vivian Group, litigation, disclosure of KSV Report and corresponding changes; exchanging	3.5	960.00	3,360.00



Invoice: 2402945
Date: September 29, 2023
Page: 4

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
		email messages with KSV team regarding same; coordinating update of service list; drafting draft order; coordinating preparation of notice of motion; exchanging email messages with D. Loberto regarding [REDACTED].			
08/13/23	Loberto, Daniel	Drafting notice of motion; corresponding with C. Burr in connection with the same.	1.5	730.00	1,095.00
08/14/23	Burr, Chris	Exchanging email messages with working group regarding Notice of Motion and draft order; finalizing fee affidavit; exchanging email messages with L. Come regarding Mahal distribution; exchanging email messages with KLN and Vicano counsel regarding distributions; finalizing real property security opinion; coordinating preparation of factum for interim distribution with D. Loberto; reviewing KSV comments on Fifth Report; finalizing Notice of Motion; finalizing Fifth Report.	5.2	960.00	4,992.00
08/14/23	Loberto, Daniel	Drafting and finalizing notice of motion; corresponding with C. Burr in connection with the same; finalizing remaining motion materials; drafting factum and researching points of law in connection with the same.	7.7	730.00	5,621.00
08/14/23	Thompson, Nancy	Reviewing e-mail message from C. Burr; revising service list to include additional parties; finalizing the fee approval affidavit and e-mail message to C. Burr forwarding same for signing; conference call with C. Burr and commissioning his affidavit; reviewing appendices to the Fifth Report; preparing cover pages and index for the motion record; preparing pdf copies of the notice of motion and draft order; assembling cover pages together with the updated service list; resolving issues with secured copies of certain appendices; inserting bookmarks and cover pages; e-mail message to C. Burr and D. Loberto forwarding draft motion materials and noting outstanding items; e-mail message to N. Treffry regarding copies of postponements.	3.5	500.00	1,750.00
08/14/23	Treffry, Ngina	Providing the postponements to the Merk charge to N. Thompson.	0.1	320.00	32.00
08/14/23	Wu, Kevin	Researching case law and [REDACTED]	1.2	645.00	774.00



Invoice: 2402945
Date: September 29, 2023
Page: 5

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
		██████████ for factum.			
08/15/23	Loberto, Daniel	Reviewing and revising receiver's report and notice of motion; coordinating service of receiver motion material; drafting factum.	6.6	730.00	4,818.00
08/15/23	Thompson, Nancy	Uploading final package of the appendices and e-mail message to T. Murtaza forwarding link; revising fifth report to incorporate additional comments; e-mail messages to and from D. Loberto regarding same; assembling motion record and ensuring complies with requirements of the Commercial List; drafting cover e-mail message; e-mail messages to and from D. Loberto regarding final comments on the motion record and cover e-mail message; finalizing e-mail message to the service list and serving the motion record; drafting, finalizing and swearing the affidavit of service.	3.0	500.00	1,500.00
08/15/23	Wu, Kevin	Researching case law and ██████████ ██████████ for factum.	0.9	645.00	580.50
08/16/23	Loberto, Daniel	Reviewing and finalizing receiver's factum; strategizing with C. Burr with respect to the same.	3.0	730.00	2,190.00
08/16/23	Thompson, Nancy	Discussion with E. Durst; e-mail message to E. Durst forwarding form of Commercial List Request Form.	0.1	500.00	50.00
08/17/23	Burr, Chris	Exchanging email messages with Vicano counsel and KSV team regarding Vicano objections to quantum of claim.	0.3	960.00	288.00
08/17/23	Loberto, Daniel	Finalizing receiver's factum.	0.5	730.00	365.00
08/17/23	Riviglia, Anna	Filed Notice of Motion with the Commercial Court.			25.00
08/17/23	Thompson, Nancy	E-mail messages to and from the Commercial List office regarding options for filing the large motion record; preparing notice of motion for filing with the court pursuant to the instructions from the Commercial List office; arranging for the notice of motion and affidavit of service to be filed with the court.	0.5	500.00	250.00
08/18/23	Thompson, Nancy	Drafting participant information form; e-mail message to D. Loberto forwarding form and noting outstanding items for the upcoming	0.4	500.00	200.00



Invoice: 2402945
 Date: September 29, 2023
 Page: 6

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
		hearing.			
08/21/23	Burr, Chris	Researching [REDACTED]; reviewing [REDACTED]; exchanging email messages with R. Winterstein regarding same; exchanging email messages with Faskens regarding [REDACTED]; discussions with M. Vininsky regarding same; reviewing and finalizing factum for distribution motion; call with R. Winterstein regarding [REDACTED]; considering merits of [REDACTED]; drafting supplemental report regarding Vicano objection; reviewing [REDACTED]; exchanging email messages with N. Treffrey regarding same; exchanging email messages with Faskens regarding [REDACTED]; reviewing Vivian Group motion record; revising supplemental report; exchanging email messages with M. Vininsky regarding supplement.	5.6	960.00	5,376.00
08/21/23	Loberto, Daniel	Review, finalize and serve factum; coordinate other service related items.	0.9	730.00	657.00
08/21/23	Riviglia, Anna	Submitted Factum to filed with the Commercial Court.			25.00
08/21/23	Treffry, Ngina	Reviewing the parcel abstract for [REDACTED]; communicating with C. Burr regarding the transfer of charge registered as Instrument No. BC337603.	0.3	320.00	96.00
08/22/23	Burr, Chris	Preparing for call with Faskens, Alvarez & Marsal and M. Vininsky regarding [REDACTED]; call with R. Winterstein regarding same; reviewing documents related to [REDACTED]; reviewing documents provided by Fasken regarding [REDACTED]; call with R. Winterstein and D. Chochla regarding same; drafting supplementary report section regarding Skymark objection; updating draft order to reflect holdback for same; call with M. Tallat regarding [REDACTED]; revising supplement to reflect same; exchanging email messages with Faskens regarding same; exchanging email messages with R. Winterstein regarding same; finalizing supplement and revised draft order; coordinating service of same with D.	5.1	960.00	4,896.00



Invoice: 2402945
 Date: September 29, 2023
 Page: 7

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
		Loberto.			
08/22/23	Loberto, Daniel	Reviewing correspondence; uploading participant information form to Caselines; conferencing regarding distribution issues; serving supplement to receiver report and updated revised Order.	1.3	730.00	949.00
08/23/23	Amoroso, Carlo	Submitting Signed Order of Justice Cavanagh dated August 23, 2023 to be issued and entered and filed by the court through the e-portal.			25.00
08/23/23	Burr, Chris	Preparing for and attending Vivian Group lift stay motion and interim distribution motion; coordinating entry of order; coordinating distributions.	2.6	960.00	2,496.00
08/23/23	Loberto, Daniel	Attending interim distribution motion; entering of order.	1.3	730.00	949.00
08/24/23	Burr, Chris	Exchanging email messages with creditors regarding distributions.	0.2	960.00	192.00
08/29/23	Burr, Chris	Researching [REDACTED]; call with Vicano counsel regarding same; drafting update email to KSV team regarding same.	2.1	960.00	2,016.00
08/29/23	Loberto, Daniel	Reviewing status update email.	0.1	730.00	73.00
08/30/23	Burr, Chris	Call with R. Winterstein regarding [REDACTED].	0.7	960.00	672.00
Total Fees for this Matter					\$ 65,803.50

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
Amoroso, Carlo	CAMO	0.0	0.00	25.00
Burr, Chris	BUR	37.6	960.00	36,096.00
Loberto, Daniel	DQL	30.0	730.00	21,900.00
Riviglia, Anna	ANR	0.0	0.00	50.00
Thompson, Nancy	NAB	12.5	500.00	6,250.00
Treffry, Ngina	NGI	0.4	320.00	128.00
Wu, Kevin	KVW	2.1	645.00	1,354.50
Total		82.6		\$ 65,803.50



Invoice: 2402945
Date: September 29, 2023
Page: 8

Taxable Disbursement(s)

Profile Report - Online \$ 31.10
Search Fees 26.45

\$ 57.55

Non-taxable Disbursement(s)

Court Fees \$ 339.00
Government Fees 28.65

\$ 367.65

Harmonized Sales Tax (13.0%)

8,561.94

Total Due for this Matter in Canadian Currency

\$ 74,790.64 CAD



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice
number(s) on cheque

October 30, 2023

KSV Restructuring Inc.
150 King Street West
Suite 2308, Box 42
Toronto, ON M5H 1J9
Canada

Invoice:
Billing Lawyer
HST/GST No.:
Client:
Matter:

2408144
Burr, Chris
R119396778
00025198
000002

Attention: Noah Goldstein
Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED
during the period ended September 30, 2023, as follows:

	Total Fees	\$ 1,878.00
Taxable Disbursement(s)		
OnCorp PPSA (electronic)	\$ 17.05	
		<hr/>
		\$ 17.05
Non-taxable Disbursement(s)		
Government Fees	\$ 8.00	
		<hr/>
		\$ 8.00
	Harmonized Sales Tax (13.0%)	246.36
		<hr/>
	TOTAL DUE IN CANADIAN CURRENCY	\$ 2,149.41 CAD <i>kc</i>



Invoice: 2408144
 Date: October 30, 2023
 Page: 2

Re: Golden Miles and Mahal Venture Capital Receivership (000002)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
09/07/23	Burr, Chris	Reviewing correspondence from L. Corne regarding [REDACTED]; exchanging email messages with KSV team regarding same.	0.3	960.00	288.00
09/25/23	Burr, Chris	Reviewing litigation pleadings; reviewing secured creditor registrations in connection with same; drafting email message to L. Corne regarding same.	0.7	960.00	672.00
09/25/23	Thompson, Nancy	E-mail message from C. Burr; conducting Ontario PPSA search; e-mail message to C. Burr forwarding search results.	0.2	500.00	100.00
09/28/23	Burr, Chris	Drafting email to Faskens and A&M regarding outstanding matters, including [REDACTED].	0.7	960.00	672.00
09/28/23	Loberto, Daniel	Reviewing C. Burr status update correspondence regarding outstanding issues.	0.2	730.00	146.00
Total Fees for this Matter					\$ 1,878.00

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
Burr, Chris	BUR	1.7	960.00	1,632.00
Loberto, Daniel	DQL	0.2	730.00	146.00
Thompson, Nancy	NAB	0.2	500.00	100.00
Total		2.1		\$ 1,878.00

Taxable Disbursement(s)

OnCorp PPSA (electronic) \$ 17.05

\$ 17.05

Non-taxable Disbursement(s)

Government Fees \$ 8.00

\$ 8.00

Harmonized Sales Tax (13.0%) 246.36

Total Due for this Matter in Canadian Currency \$ 2,149.41 CAD



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice
number(s) on cheque

November 16, 2023

KSV Restructuring Inc.
150 King Street West
Suite 2308, Box 42
Toronto, ON M5H 1J9
Canada

Invoice:
Billing Lawyer
HST/GST No.:
Client:
Matter:

2411185
Burr, Chris
R119396778
00025198
000002

Attention: Noah Goldstein
Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED
during the period ended October 31, 2023, as follows:

Total Fees	\$ 2,304.00
Harmonized Sales Tax (13.0%)	299.52
TOTAL DUE IN CANADIAN CURRENCY	\$ 2,603.52 CAD <i>KC</i>



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice
number(s) on cheque

December 21, 2023

KSV Restructuring Inc.
150 King Street West
Suite 2308, Box 42
Toronto, ON M5H 1J9
Canada

Invoice:
Billing Lawyer
HST/GST No.:
Client:
Matter:

2418528
Burr, Chris
R119396778
00025198
000002

Attention: Noah Goldstein
Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED
during the period ended November 30, 2023, as follows:

Total Fees	\$ 5,907.00
Harmonized Sales Tax (13.0%)	767.91
TOTAL DUE IN CANADIAN CURRENCY	\$ 6,674.91 CAD <i>ll.</i>



Invoice: 2418528
 Date: December 21, 2023
 Page: 2

Re: Golden Miles and Mahal Venture Capital Receivership (000002)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
11/01/23	Burr, Chris	Exchanging email messages with Faskens regarding ██████████.	0.2	960.00	192.00
11/13/23	Burr, Chris	Exchanging email messages with Glaholt team regarding ██████████; considering issues with respect to same.	0.5	960.00	480.00
11/15/23	Burr, Chris	Call with Glaholt team and M. Vininsky regarding ██████████; reviewing written summary of same prepared by Glaholt; drafting email to Fasken and Alvarez team regarding same.	1.4	960.00	1,344.00
11/16/23	Burr, Chris	Exchanging email messages with Vivian Group regarding ██████████.	0.2	960.00	192.00
11/21/23	Burr, Chris	Drafting email to R. Winterstein regarding ██████████; discussions with D. Loberto regarding ██████████; reviewing analysis by D. Loberto regarding same; exchanging email messages with KSV team regarding ██████████.	1.4	960.00	1,344.00
11/21/23	Loberto, Daniel	Discussion with C. Burr regarding ██████████; reviewing and summarizing background information; reviewing and summarizing the law with respect to ██████████; correspondence regarding review of law with C. Burr.	2.7	730.00	1,971.00
11/23/23	Burr, Chris	Exchanging email messages with Fasken regarding status of ██████████.	0.2	960.00	192.00
11/24/23	Burr, Chris	Exchanging email messages with Faskens regarding ██████████.	0.2	960.00	192.00
Total Fees for this Matter					\$ 5,907.00

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
Burr, Chris	BUR	4.1	960.00	3,936.00
Loberto, Daniel	DQL	2.7	730.00	1,971.00
Total		6.8		\$ 5,907.00



Invoice: 2418528
Date: December 21, 2023
Page: 3

Harmonized Sales Tax (13.0%)
Total Due for this Matter in Canadian Currency

767.91

\$ 6,674.91 CAD



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trademark Agents
 199 Bay Street
 Suite 4000, Commerce Court West
 Toronto ON M5L 1A9 Canada
 Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

December 31, 2023

KSV Restructuring Inc.
 150 King Street West
 Suite 2308, Box 42
 Toronto, ON M5H 1J9
 Canada

Invoice: 2423568
 Billing Lawyer Burr, Chris
 HST/GST No.: R119396778
 Client: 00025198
 Matter: 000002

Attention: Noah Goldstein
 Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED during the period ended December 31, 2023, as follows:

	Total Fees	\$ 3,983.00
Taxable Disbursement(s)		
Third Party Fees	\$ 5,211.00	<u>5,211.00</u>
		1,195.22
		<u>\$ 10,389.22</u> CAD <i>KC</i>
	TOTAL DUE IN CANADIAN CURRENCY	



Invoice: 2423568
Date: December 31, 2023
Page: 2

Re: Golden Miles and Mahal Venture Capital Receivership (000002)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
12/04/23	Burr, Chris	Exchanging email messages with KSV regarding [REDACTED]; exchanging email messages with Faskens regarding [REDACTED].	0.5	960.00	480.00
12/12/23	Loberto, Daniel	Corresponding with C. Burr regarding relevant court materials; coordinating retrieving relevant court materials from Court house.	0.2	730.00	146.00
12/13/23	Burr, Chris	Call with M. Vininsky regarding status of outstanding issues, including [REDACTED]; drafting letter to Dickinson Wright regarding [REDACTED]; exchanging email messages with KSV regarding same; exchanging email messages with A. Vivian.	1.1	960.00	1,056.00
12/13/23	Loberto, Daniel	Following up with law clerks regarding retrieving court files.	0.1	730.00	73.00
12/14/23	Amoroso, Carlo	Contacting agents to attend Brampton, Newmarket and Windsor courts to obtain copies of pleadings.			25.00
12/14/23	Loberto, Daniel	Corresponding with C. Amoroso regarding Windsor court files; coordinating retrieval of the same.	0.3	730.00	219.00
12/15/23	Amoroso, Carlo	Attended court office to take screen shots of Brampton, Newmarket and Windsor actions showing what documents the parties have filed.			25.00
12/15/23	Loberto, Daniel	Reviewing court file correspondence and associated originating process material.	0.3	730.00	219.00
12/18/23	Burr, Chris	Sending letter to Mahal regarding abandonment of litigation; exchanging email messages with co-defendants regarding same; sending status emails to Skymark and KLN.	0.7	960.00	672.00
12/19/23	Burr, Chris	Exchanging email messages with Dickinson Wright regarding Section 38 motion.	0.2	960.00	192.00
12/19/23	Loberto, Daniel	Coordinating retrieval of court records.	0.1	730.00	73.00
12/20/23	Loberto, Daniel	Coordinating retrieval of court records.	0.1	730.00	73.00



Invoice: 2423568
Date: December 31, 2023
Page: 3

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
12/29/23	Loberto, Daniel	Reviewing and summarizing court records for Mahal Venture Capital Inc. v. Ford Credit Canada Company and Amex Bank of Canada v Mahal et al; corresponding the same to C. Burr.	1.0	730.00	730.00
Total Fees for this Matter					\$ 3,983.00

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
Amoroso, Carlo	CAMO	0.0	0.00	50.00
Burr, Chris	BUR	2.5	960.00	2,400.00
Loberto, Daniel	DQL	2.1	730.00	1,533.00
Total		4.6		\$ 3,983.00

Taxable Disbursement(s)

Third Party Fees

\$ 5,211.00

\$ 5,211.00

Harmonized Sales Tax (13.0%)

1,195.22

Total Due for this Matter in Canadian Currency

\$ 10,389.22 CAD



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trademark Agents
 199 Bay Street
 Suite 4000, Commerce Court West
 Toronto ON M5L 1A9 Canada
 Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

February 13, 2024

KSV Restructuring Inc.
 150 King Street West
 Suite 2308, Box 42
 Toronto, ON M5H 1J9
 Canada

Invoice: 2427990
 Billing Lawyer Burr, Chris
 HST/GST No.: R119396778
 Client: 00025198
 Matter: 000002

Attention: Noah Goldstein
 Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED during the period ended January 31, 2024, as follows:

	Total Fees	\$ 24,052.50
<u>Taxable Disbursement(s)</u>		
Third Party Fees	\$ 139.20	<hr/> \$ 139.20
	Harmonized Sales Tax (13.0%)	3,144.93
	TOTAL DUE IN CANADIAN CURRENCY	<hr/> \$ 27,336.63 CAD <i>KC</i>



Invoice: 2427990
Date: February 13, 2024
Page: 2

Re: Golden Miles and Mahal Venture Capital Receivership (000002)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
01/03/24	Loberto, Daniel	Coordinating retrieval of Brampton court records for review.	0.1	800.00	80.00
01/09/24	Burr, Chris	Exchanging email messages with D. Chochla regarding [REDACTED].	0.1	1,000.00	100.00
01/15/24	Burr, Chris	Preparing for and participating on status call with Faskens, A&M, M. Vininsky and M. Tallat; coordinating with D. Loberto regarding contents of Sixth Report; reviewing Fifth Report and email exchanges regarding same; considering strategy for relief requested in Sixth Report; coordinating booking of Court time with N. Thompson; exchanging email messages with A. Vivian regarding Vivian action.	3.2	1,000.00	3,200.00
01/15/24	Loberto, Daniel	Reviewing C. Burr summary email with respect to report.	0.1	800.00	80.00
01/16/24	Burr, Chris	Coordinating booking time for discharge motion; exchanging email messages with Faskens and KSV regarding same; exchanging email messages with KSV regarding [REDACTED].	0.7	1,000.00	700.00
01/16/24	Loberto, Daniel	Reviewing pertinent information for the purpose of drafting report; reviewing request form and coordinating submission to the Court; drafting of Sixth Report of the receiver and Third Report of the trustee.	3.4	800.00	2,720.00
01/16/24	Thompson, Nancy	Reviewing e-mail message from C. Burr and materials required for motion; drafting request form for hearing on February 22, 2024; e-mail message to C. Burr and D. Loberto forwarding form and noting additional information required; reviewing e-mail message from D. Loberto and changes to request form; discussion with D. Loberto regarding [REDACTED]; reviewing e-mail message from C. Burr and revising request form to incorporate comments; e-mail messages regarding possible change of hearing date.	1.4	525.00	735.00
01/17/24	Loberto, Daniel	Strategizing with N. Thompson regarding [REDACTED], and considering	5.7	800.00	4,560.00



Invoice: 2427990
Date: February 13, 2024
Page: 3

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
		solutions; reviewing Fifth Report of the receiver and Second Report of the trustee, as well as supplemental report to the fifth report; drafting sixth report of the receiver and third report of the trustee.			
01/17/24	Thompson, Nancy	Discussion with D. Loberto regarding [REDACTED]; reviewing e-mail message from D. Loberto and draft summary of information; reviewing and revising summary; reviewing [REDACTED]; e-mail message to D. Loberto forwarding comments on draft summary and noting requirements under the rules.	1.4	525.00	735.00
01/18/24	Loberto, Daniel	Reviewing statement of claim, statement of defense and related court documents in connection with debtor companies; reviewing structure of Sixth Report of the receiver and Third Report of the trustee.	0.8	800.00	640.00
01/18/24	Thompson, Nancy	Reviewing copies of invoices for the current period and noting possible privileged or sensitive information; drafting summary of invoices; drafting fee approval affidavit.	1.4	525.00	735.00
01/19/24	Burr, Chris	Coordinating court time for discharge motion; exchanging email messages with Fasken regarding same; exchanging email messages with Court office regarding same.	0.2	1,000.00	200.00
01/19/24	Loberto, Daniel	Drafting Sixth Report of the receiver and Third Report of trustee.	2.0	800.00	1,600.00
01/19/24	Thompson, Nancy	Updating draft fee approval materials; e-mail message to D. Loberto seeking update on hearing date; e-mail message to C. Burr forwarding draft fee approval materials for review.	0.6	525.00	315.00
01/22/24	Burr, Chris	Exchanging email messages with D. Chochla regarding settlement approval motion.	0.2	1,000.00	200.00
01/22/24	Loberto, Daniel	Drafting Sixth Report of the receiver and Third Report of trustee.	2.8	800.00	2,240.00
01/23/24	Burr, Chris	Drafting email to R. Winterstein; exchanging email messages with D. Loberto regarding 6th Report.	0.4	1,000.00	400.00
01/23/24	Loberto, Daniel	Finalizing first draft of Sixth Report of the receiver and Third Report of trustee;	2.2	800.00	1,760.00



Invoice: 2427990
Date: February 13, 2024
Page: 5

Harmonized Sales Tax (13.0%)	3,144.93
Total Due for this Matter in Canadian Currency	<hr/> \$ 27,336.63 CAD



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trademark Agents
 199 Bay Street
 Suite 4000, Commerce Court West
 Toronto ON M5L 1A9 Canada
 Tel: 416-863-2400 Fax: 416-863-2653

INVOICE

Please write invoice number(s) on cheque

March 11, 2024

KSV Restructuring Inc.
 150 King Street West
 Suite 2308, Box 42
 Toronto, ON M5H 1J9
 Canada

Invoice: 2433126
 Billing Lawyer Burr, Chris
 HST/GST No.: R119396778
 Client: 00025198
 Matter: 000002

Attention: Noah Goldstein
 Managing Director

Re: Golden Miles and Mahal Venture Capital Receivership

FOR PROFESSIONAL SERVICES RENDERED during the period ended February 29, 2024, as follows:

	Total Fees	\$ 1,780.00
Taxable Disbursement(s)		
Third Party Fees	\$ 95.00	\$ 95.00
Non-taxable Disbursement(s)		
Court Fees	\$ 95.00	\$ 95.00
	Harmonized Sales Tax (13.0%)	243.75
	TOTAL DUE IN CANADIAN CURRENCY	\$ 2,213.75 CAD <i>KK</i>



Invoice: 2433126
 Date: March 11, 2024
 Page: 2

Re: Golden Miles and Mahal Venture Capital Receivership (000002)

Date (m/d/y)	Timekeeper	Description	Hours	Rate	Amount (\$)
02/05/24	Loberto, Daniel	Reviewing N. Thompson comments to report; revising report based on amended relief and circulating the same to C. Burr for comments.	1.4	800.00	1,120.00
02/09/24	Loberto, Daniel	Reviewing N. Thompson comments to report; revising report based on amended relief and circulating the same to C. Burr for comments.	0.2	800.00	160.00
02/21/24	Burr, Chris	Exchanging email messages with Faskens and Bennett Jones regarding [REDACTED] and distribution motion.	0.3	1,000.00	300.00
02/28/24	Burr, Chris	Exchanging email messages with A. Vivian regarding [REDACTED].	0.2	1,000.00	200.00
Total Fees for this Matter					\$ 1,780.00

Matter Timekeeper Summary	ID	Hours	Rate (\$)	Amount (\$)
Burr, Chris	BUR	0.5	1,000.00	500.00
Loberto, Daniel	DQL	1.6	800.00	1,280.00
Total		2.1		\$ 1,780.00

Taxable Disbursement(s)

Third Party Fees \$ 95.00 \$ 95.00

Non-taxable Disbursement(s)

Court Fees \$ 95.00 \$ 95.00

Harmonized Sales Tax (13.0%) 243.75

Total Due for this Matter in Canadian Currency **\$ 2,213.75 CAD**

This is **Exhibit "B"** referred to in the

Affidavit of Chris Burr

sworn before me
this 26th day of March, 2024



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

EXHIBIT “B”

Name of Lawyer	Practice Group	Year of Call	Hourly Rate	Total Hours
Burr, Chris	Restructuring & Insolvency	2008	\$960	48.3
			\$1,000	5.5
Loberto, Daniel	Restructuring & Insolvency	2020	\$730	35.0
			\$800	20.1
Wu, Kevin	Restructuring & Insolvency	2023	\$645	2.1
Thompson, Nancy	Restructuring & Insolvency	<i>Law Clerk</i>	\$500	12.7
			\$525	8.1
Treffry, Ngina	Commercial Real Estate	<i>Law Clerk</i>	\$320	0.4

Total Fees Billed:	\$105,708.00
Total Hours:	132.2
Average Hourly Rate:	\$799.61

SKYMARK FINANCE CORPORATION
Applicants

- and -

MAHAL VENTURE CAPITAL INC., et al.
Respondents

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF CHRIS BURR
Sworn March 26, 2024**

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
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Email: chris.burr@blakes.com

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

Lawyers for the Receiver