

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:)	
)	Chapter 15
NILEX USA INC.)	Case No. 22-14719 KHT
)	
Debtor in Foreign Proceeding.)	

**PROPOSAL TRUSTEE’S, AS THE AUTHORIZED FOREIGN REPRESENTATIVE OF
NILEX USA, INC., MOTION, PURSUANT TO SECTIONS 105(a), 363, 1501, 1520 and
1521 OF THE BANKRUPTCY CODE AND RULES 2002, 6004 AND 9013, FOR ENTRY
OF AN ORDER APPROVING SALE OF ASSETS FREE AND CLEAR OF LIENS,
CLAIMS AND INTERESTS AND GRANTING RELATED RELIEF**

KSV Restructuring Inc. (“**KSV**”), in its capacity as Proposal Trustee (the “**Proposal Trustee**”) and authorized foreign representative of Nilex USA Inc. (“**Nilex USA**”) (together with Nilex Inc. the “**Nilex Debtors**”) in the proceeding (the “**Canadian Nilex USA Proceeding**”¹), commenced by the filing of a notice of intention to make a proposal (an “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) on November 24, 2022 and currently pending in the Court of King’s Bench of Alberta, Canada (the “**Alberta Court**”), by and through its undersigned counsel, Lewis Roca Rothgerber Christie LLP, hereby files this motion seeking an order approving the sale of substantially all of Nilex USA’s assets (the “**U.S. Assets**”) free and clear of liens, claims and interests (the “**U.S. Sale Motion**”). In support of the U.S. Sale Motion, KSV states as follows:

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b) and 11 U.S.C. § 1501 of the Bankruptcy Code. This is a core proceeding

¹ The Canadian Nilex USA Proceeding, together with similar proceedings commenced by Nilex Inc. on October 27, 2022, are collectively referred to herein as the “**Canadian Proceedings**.”

pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this district pursuant to 28 U.S.C. § 1410(1).

INTRODUCTION

The principal purpose of Nilex USA seeking protection under chapter 15 of the Bankruptcy Code along with the Canadian Proceedings is to: (a) create a stabilized environment to allow the Nilex Debtors to complete the transaction identified in the sale process commenced prior to these proceedings (the “**Sale Process**”) by Valitas Capital Partners (“**Valitas**”), an investment banking firm engaged by Nilex Inc. (“**Nilex Canada**”) in respect to the assets of the Nilex Debtors and approved by the Alberta Court on November 8, 2022, which going concern transaction is in the best interests of the Nilex Debtors and their stakeholders; and (b) if appropriate, file a proposal in the Canadian Proceedings for the benefit of the creditors of the Nilex Debtors.

BACKGROUND²

I. The Structure and General Operations of the Nilex Debtors.

Nilex Canada is a corporation formed under the laws of Alberta, Canada with its headquarters and principal place of business located in Edmonton, Alberta, Canada. Nilex Canada has been operating in the geosynthetics industry providing civil environmental products and technologies since 1977. The Nilex Debtors provide environmental solutions that are used in road building, erosion and sediment control, water management and containment. The Nilex Debtors also offer conversion and fabrication options, along with customization of standard products to site and project-specific requirements. Nilex Canada leases its head office in

² A copy of the Declaration of Robert Kofman, a Managing Director of KSV, in support of: (I) Petition for Recognition as a Foreign Main Proceeding; (II) Application for Order to Show Cause With Temporary Restraining Order and Preliminary Injunctive Relief; and (III) Motion for Order Approving Sale of Assets Free and Clear of Liens, Claims and Interests and Granting Related Relief (the “**Kofman Declaration**”) is attached hereto as **Exhibit 1**. The facts stated in this Petition are supported by the Kofman Declaration.

Edmonton and also operates from leased premises in Calgary, Saskatoon, Surrey and Toronto. Nilex Canada presently has approximately 70 full-time employees and 44 seasonal employees. Nilex Canada is the 100% shareholder of Nilex USA, which operates from leased premises in Utah and Colorado. Nilex USA has approximately eight full-time employees.

Canadian Imperial Bank of Commerce (“**CIBC**”) is the Nilex Debtors’ senior secured lender. As of October 17, 2022, CIBC was owed approximately \$13.42 million by the Nilex Debtors.³ PEF 2010 Nilex Investment Limited Partnership (“**Fulcrum**”) has been Nilex Canada’s controlling shareholder since 2013. Fulcrum is also a secured creditor of Nilex Canada. Fulcrum has contractually subordinated the amounts owed to it by Nilex Canada to CIBC. As of August 31, 2022, Fulcrum was owed approximately \$33.8 million by Nilex Canada. CIBC has and is continuing to provide funding to Nilex Canada for the benefit of the Nilex Debtors during the Canadian Proceedings - its post-filing advances are secured under a Court-approved lender priority charge authorized in the Canadian Proceedings.

II. Business Operations and Financial Performance of the Nilex Debtors.

Headquartered in Edmonton, Alberta with operations in Canada and the United States, the Nilex Debtors are providers of environmental solutions that are used in road building, erosion and sediment control, water management and containment. As set forth below, due to the COVID-19 pandemic, rising material costs, supply chain issues and slow-downs in the construction industry in those regions of Canada and the United States where the Nilex Debtors conduct operations, the Nilex Debtors have incurred significant and recurring losses for several consecutive years.

³ Unless otherwise noted herein, all currency references are to U.S. dollars. Currently, the exchange rate is 1.33 Canadian dollars for each U.S. dollar.

Nilex Canada had sales in each of 2020 and 2021 in excess of \$37 million. As of August 31, 2022, it had assets with a book value of approximately \$25 million. As of October 17, 2022, its obligations to CIBC totaled approximately \$13.42 million (the “CIBC Debt”) and its obligations to Fulcrum totaled, as of August 31, 2022, approximately \$33.8 million. As of the NOI filing date of October 27, 2022, it owed its 232 unsecured creditors \$9.17 million.⁴

Nilex USA’s business is less significant than Nilex Canada’s business, with sales for the ten-months ending October 31, 2022, of approximately \$4.4 million.⁵ A summary of Nilex USA’s assets as of October 31, 2022, is as follows:

<u>Description</u>	<u>Book Value (\$000s)</u>
Inventory	1,222
Accounts receivable	543
Cash	469
Fixed Assets	42
Other Assets	20
Total	2,296

As described further below, Nilex USA is a borrower under the credit agreement with CIBC, which is secured by all of Nilex USA’s assets. Nilex USA has approximately 50 unsecured creditors with claims totaling approximately \$607,000 as of November 24, 2022 (being the date of its NOI filing), excluding amounts owed to Nilex Canada, which total over \$4 million. The vast majority of these unsecured creditors, by number, are located in the United States. Nilex Canada is by far Nilex USA’s largest creditor, representing approximately 87% of all of Nilex USA’s unsecured debt.

⁴ This amount excludes certain off-balance sheet obligations, including amounts that may be owing for terminated leases and to terminated employees.

⁵ Excluding off-balance sheet liabilities, including amounts owing to CIBC, certain employee claims and amounts owing for real property and equipment leases.

III. The Credit Agreement.

Nilex Canada and Nilex USA, as borrowers, and CIBC, as lender, entered into a Credit Agreement dated June 1, 2018, whereby CIBC made available to Nilex Canada a revolving credit facility and term loan (as amended, the “**Credit Agreement**”). The obligations under the Credit Agreement are secured pursuant to, among other things, a general security agreement among Nilex Canada, Nilex USA and CIBC dated June 1, 2018. Nilex Canada’s primary bank account is with CIBC. The Nilex Debtors operate a centralized cash management system wherein accounts receivable collections are paid into accounts, including blocked accounts, with CIBC and applied to the CIBC loan facilities (the “**Cash Management System**”). The Nilex Debtors are continuing and expect to continue to use the existing Cash Management System, including the bank accounts and arrangements presently in place with CIBC, throughout the Canadian Proceedings. Absent the Forbearance Agreement (defined below), CIBC is not required to continue to advance any further credit facilities to the Nilex Debtors.

IV. Events Leading to the Commencement of the Canadian Proceedings.

The Nilex Debtors have incurred losses for several consecutive years. Losses have continued in recent years due to the Covid-19 pandemic, rising material costs, supply chain issues and slowdowns in the construction industry. The revenues of the Nilex Debtors are seasonal. Winter is usually the slowest season, with revenues gradually increasing in the spring and peaking in the summer months.

Factors outside of the Nilex Debtors’ control have caused liquidity challenges. Given the seasonality of its business, the Nilex Debtors were facing a liquidity crisis in October 2022, which led to the commencement of the Canadian Proceedings. In particular, the Nilex Debtors’ reduced revenues during the slower winter months, rising storage costs, rising inventory costs,

high operating expenses, increasing low-cost competition, decreased customer capital spending due to the COVID-19 pandemic, and increased debt servicing costs resulted in serious liquidity challenges and a default under the Credit Agreement.

V. The Proposed Sale.

A. The Sale Process.

On October 6, 2021, Nilex Canada retained Valitas to conduct a sale process (the “Sale Process”) for the business and assets of the Nilex Debtors. A summary of the Sale Process to-date is provided below:

- the Sale Process offered for sale the Nilex Debtors’ business and assets;
- Valitas compiled a comprehensive list of over 400 prospective purchasers based on geography and industry;
- Valitas selected 16 of the prospective purchasers as strong acquisition candidates based on, *inter alia*, strategic fit. Nine of these parties confirmed their interest in the opportunity; and
- nine prospective purchasers, plus three additional strategic parties, performed due diligence, including reviewing the confidential information memorandum prepared by Valitas and information made available in a virtual data room. A subset of the prospective purchasers also conducted site visits and attended management meetings.

Valitas initially requested that prospective purchasers submit non-binding letters of intent in March 2022; however, none of the offers received were acceptable to the Nilex Debtors. At the time, the Nilex Debtors forecasted improved results for the balance of 2022 and believed that going back to prospective purchasers later in the year would result in a higher purchase price based on the forecasted improved results. Ultimately, the forecasted results did not materialize.

In August 2022, Valitas re-engaged with prospective purchasers and since that time has facilitated their due diligence. Valitas provided interested parties with a template term sheet to be

used as the basis for submitting non-binding letters of intent. Several non-binding letters of intent were submitted in late September 2022.

On or around October 8, 2022, Valitas sent interested parties a process letter, which set out the Sale Process timelines (the “**Process Letter**”). The Process Letter, specified, *inter alia*:

- interested parties were required to submit binding offers by no later than 3:00 pm (Mountain Time) on November 8, 2022 (the “**Bid Deadline**”) in the form of a template asset purchase agreement which was uploaded to the data room; and
- the Nilex Debtors’ objective was to enter into a binding agreement of purchase and sale (the “**APA**”) by no later than November 15, 2022.

The Sale Process timelines and milestones were, in part, a product of negotiations between the Nilex Debtors and CIBC pursuant to which CIBC agreed to fund these proceedings. The timelines and milestones were set out in a Forbearance Agreement dated October 17, 2022 (the “**Forbearance Agreement**”) between the Nilex Debtors and CIBC, which considered that the Sale Process had been ongoing for several months. Funding under the Forbearance Agreement was tied, *inter alia*, to the Nilex Debtors advancing the Sale Process in accordance with the agreed timelines and milestones in the Forbearance Agreement.

B. The Sale Process Results

A summary of the Sale Process results is as follows:

- four going-concern offers were submitted;
- from the Bid Deadline until November 18, 2022, the Nilex Debtors, with the assistance of Valitas, the Proposal Trustee, the Nilex Debtors’ legal counsel and the Proposal Trustee’s legal counsel, worked with Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (together, the “**Purchasers**”) and their legal counsel to finalize the terms of the APA; and
- the APA was executed on November 18, 2022.

C. The Material Sale Terms

Pursuant to L.B.R. 6004-1(d), and the APA,⁶ a summary of the material sale terms is as follows:

Terms and Highlighted Provisions	Canadian Transaction	US Transaction	Location in Sale Order of APA
Purchaser	Terrafix Geosynthetics Inc. (the "Canadian Purchaser")	Hanes Companies, Inc. (the "U.S. Purchaser")	APA, p. 1
Purchased Assets	Substantially all assets of the Nilex Debtors.		APA, Art. 2
Agreements with Management	Transition Services Agreement		TSA, generally
Releases	Not applicable		Not applicable
Private Sale/No Competitive Bidding	This Sale is a private sale. The APA will not be subject to higher and better offers at public auction and will be subject to Orders entered in the Alberta Court and U.S. Bankruptcy Court		APA, § 6.3
Interim Arrangements with Proposed Buyer	Transition Services Agreement		TSA, generally
Use of Proceeds	Payment to Proposal Trustee		APA, § 3.3
Tax Exemption	Goods and Services Tax and Harmonized Sales Tax		APA, § 3.6
Record Retention	At the time of Closing all books and records will be turned over to the Purchasers		APA, § 8.2
Sale of Avoidance Actions	Not applicable		Not applicable
Requested Findings as to Successor Liability	See Sale Order		Sale Order, ¶¶ 10, 18, 19, 20
Credit Bid	Not applicable		Not applicable
Relief from Rule 6004(h)	The Sale Order shall be effective immediately upon entry, and the Proposal Trustee and Purchaser are authorized, but are not required, to close the Sale immediately upon entry of this Order, notwithstanding the fourteen-day stay periods in Bankruptcy Rules 6004(h) and 6006(d), which are expressly waived		Sale Order, ¶ 23
Purchase Price	The Purchase Price has been sealed pending further order of the Alberta Court.		APA, § 3.1
Good Faith Deposit	The Purchasers have paid a deposit representing approximately 13% of the Purchase Price, which is being held in the Proposal Trustee's trust account.		APA, § 3.2
Adjustment Mechanism	The estimated Purchase Price for the both the Canadian Transaction and the US Transaction is based on an Interim Statement of Adjustments. Within 60 days following Closing of each transaction, the applicable Vendor is to		APA, § 4.1

⁶ A redacted copy of the APA is attached as **Exhibit 2**.

Terms and Highlighted Provisions	Canadian Transaction	US Transaction	Location in Sale Order of APA
	provide a Final Statement of Adjustments. The difference between the Interim Statement of Adjustments and the Final Statement of Adjustments shall be paid promptly by the applicable Vendor/Purchaser, which amount shall accrue interest at the Prime Rate plus 1%.		
Locations and Sale and Free and Clear of Unexpired Leases	The Canadian Purchaser will assume the leases for Nilex Canada's premises in Edmonton, Calgary and BC. The leases for Nilex Canada's premises in Ontario and Saskatchewan will not be assumed by the Purchaser. Nilex Canada may continue to occupy the Ontario and Saskatchewan locations for up to six months in accordance with the Transition Services Agreement ("TSA").	The leases for both US locations will not be assumed by the US Purchaser. The premises can be occupied by Nilex USA for a period of up to six months in accordance with the TSA.	APA, § 2.4
Employees	<p>The Purchasers intend to offer employment to the vast majority of Nilex Canada's employees in Canada and four of the eight Nilex USA employees. Certain of the employees who are not offered employment by the Purchaser will be offered the opportunity to provide transition services to the Purchaser pursuant to the TSA.</p> <p>All wages and vacation pay accrued to the Effective Date are for the account of the Nilex Debtors. Following closing, all wages and vacation pay accruing in respect of Transferred Employees will be for the account of the Purchasers from and after the Effective Date, as will wages and vacation pay for Transition Employees pursuant to the TSA, albeit Transition Employees will remain employees of Nilex Canada or Nilex USA. Payroll and benefits for any non-Transferred Employees and non-Transition Employees will remain the obligation of Nilex Canada or Nilex USA following the Effective Date.</p>		APA, §6.6
Representations and Warranties	Consistent with the terms of a standard insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.		APA, Art. 5
Closing	Subject to Alberta Court approval (obtained on November 28, 2022), closing of the Canadian Transaction is contemplated to occur on or before December 16, 2022. The Outside Date is February 28, 2023.	Closing of the US Transaction is contemplated to occur promptly following US Court approval. The Outside Date is February 28, 2023.	APA, § 8.1

Terms and Highlighted Provisions	Canadian Transaction	US Transaction	Location in Sale Order of APA
Other Material Conditions	The only material condition precedent to the Canadian Transaction is Alberta Court approval. The closing of the Canadian Transaction is not subject to US Court approval and/or completion of the US Transaction.	The only material condition precedent to the US Transaction is approval of the Canadian transaction by the Alberta Court and the US Court.	APA, § 7.1

D. Transition Services Agreement.

Pursuant to the APA, the execution of the TSA by the Nilex Debtors and the Purchasers is a condition to the closing of the Canadian Transaction and the US Transaction. The purpose of the TSA is for the Nilex Debtors to maintain in good standing, during these proceedings, certain contracts and real property lease agreements until those locations can be vacated, at which time those leases are intended to be disclaimed by the Nilex Debtors. Also pursuant to the TSA, certain employees will remain employees of the Nilex Debtors during the transition period, but will provide assistance to the Purchasers as it relates to transition issues. As part of the TSA, the Purchasers are required to fund any costs incurred by the Nilex Debtors in providing the Transition Services (as defined in the TSA). The TSA also requires that the Purchasers fund a deposit equal to one month of the estimated transition costs. The TSA has a term of up to six months. A copy of the TSA is attached as **Exhibit 3**.

VI. Default Under the CIBC Credit Agreement.

The Credit Agreement provides that the CIBC Debt becomes immediately due and payable on the occurrence of an Event of Default (as defined in the Credit Agreement). The Nilex Debtors are in default under the Credit Agreement and, accordingly, on September 15, 2022, CIBC issued a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. On October 17, 2022, CIBC and the Nilex Debtors entered into the Forbearance Agreement,

which among other things, allows the Nilex Debtors, subject to the terms and conditions of the Forbearance Agreement, to continue to access the credit facilities under the Credit Agreement and to continue to use the Cash Management System to meet working capital requirements while the Nilex Debtors carry out the Sale Process and the Canadian Proceedings. CIBC has also agreed to temporarily forbear from enforcing its rights, subject to the terms and conditions of the Forbearance Agreement. Pursuant to the Forbearance Agreement, CIBC will apply the Nilex Debtors' post-filing receipts against their pre-filing indebtedness and new advances by CIBC to the Nilex Debtors during the Canadian Proceedings and are to be secured by the Lender Priority Charge (as defined in the Petition for Recognition).

As a result of the CIBC defaults and other issues, Nilex Canada decided to initiate restructuring proceedings by filing an NOI on October 27, 2022, and Nilex USA filed an NOI on November 24, 2022. The NOI filings were intended to provide the Nilex Debtors with the stability required to complete the Sale Process and the going concern transaction identified therein in the near term. The Sale Process was approved by the Alberta Court on November 8, 2022 and on November 28, 2022 the Alberta Court, among other things, approved the transaction contemplated by the APA described above. A motion seeking recognition of the order of the Alberta Court, among other things, approving a sale of the Nilex USA assets, has been filed herewith.

VII. The Canadian Proceedings.

The BIA governs the NOI process in Canada which includes the appointment of a Proposal Trustee. The BIA is a federal statute that governs a number of different insolvency proceedings to which individuals and corporations are subject, including bankruptcies, receiverships, and proposals proceedings. An NOI commences a proceeding under the BIA that

allows financially troubled corporations the opportunity to restructure their affairs. It is often the first stage of a debtor-in-possession restructuring process under the BIA, which allows a company to restructure its financial affairs through a formal proposal to creditors (similar to filing a plan of arrangement and compromise). The NOI proceeding and eventual proposal provides an opportunity for a company to avoid forced liquidation in bankruptcy, permits an insolvent company to sell assets, subject to court approval, and allows creditors to receive compensation for amounts owing to them.

A Proposal Trustee is an independent licensed insolvency trustee who is appointed by the “Official Receiver” (which is a representative of the Office of the Superintendent in Bankruptcy in Canada) to assist the company with the filing of its NOI and/or proposal and to monitor the debtor company's ongoing operations during the NOI proceeding. The Proposal Trustee’s duties include monitoring the ongoing financial and other activities of a debtor company, reporting to the court on any major events that might impact the viability of the company, assisting the company in the preparation of its proposal, notifying the creditors of any meetings of creditors and tabulating the votes at these meetings.

On October 27, 2022, Nilex Canada filed its NOI with the Official Receiver under section 50.4(1) of the BIA. The NOI was filed in consultation with the Nilex Debtors’ professional advisors in order to try to restructure or sell the Nilex Debtors as a going concern for the benefit of their stakeholders after it was determined that a transaction for the Nilex Debtors could not be completed outside of a formal restructuring proceeding. Once the Official Receiver accepted Nilex Canada’s NOI filing, it issued a Certificate of Filing of a Notice of Intention to Make Proposal (“**Certificate**”), triggering a statutory stay of proceedings, as set out in the BIA for an initial 30 days (often referred to as the “**Initial Stay Period**”) to enable Nilex Canada to take steps to

prepare and file a proposal. The Certificate designated KSV as the Licensed Insolvency Trustee for Nilex Canada. The Initial Stay Period is subject to extension upon application to the Court for additional periods, not exceeding 45 days for any individual extension, to a maximum of five months following the initial Initial Stay Period, to allow Nilex Canada to file a proposal.

On October 31, 2022, Nilex Canada filed in the Canadian Proceedings an Application (approving extension of time to file a proposal, an administration charge, and other relief) (the “**Application**”). The Application sought, *inter alia*, a 45-day extension of the initial 30-day deadline to file a Proposal, a grant of certain charges (as described below), approval of continued use of Nilex Canada’s cash management system, and approval of the on-going Sale Process. After a hearing held on November 8, 2022, the Alberta Court granted the Application and entered its Order (approving extension of time to file a proposal, administration charge, and other relief) (the “**Proposal Order**”), attached as **Exhibit 4**. *See* Kofman Declaration, Exhibit 1. Pursuant to the Proposal Order, among other things, the Alberta Court extended the Initial Stay Period to January 10, 2022.

On November 24, 2022, Nilex USA filed its NOI with the Official Receiver under section 50.4(1) of the BIA. The NOI was filed in consultation with Nilex Debtors’ professional advisors for the primary purpose of completing the transaction that resulted from the Sale Process. As with Nilex Canada, once accepted by the Official Receiver, a certificate was issued, thereby triggering a statutory Stay Period for an initial 30 days (the “**Nilex USA Initial Stay Period**”). The Certificate designated KSV as the Licensed Insolvency Trustee for Nilex USA. The Nilex USA Initial Stay Period is subject to extension upon application to the Court, as discussed in detail earlier.

On November 21, 2022, Nilex Canada filed in the Canadian Proceeding an application (sale approval and vesting order, procedural consolidation and ancillary relief) (the “**Second Application**”). Among other things, the Second Application sought orders from the Alberta Court (a) extending the time to file a proposal for the Nilex Debtors to and including February 7, 2022 (thereby extending the Nilex USA Initial Stay Period); (b) extending to Nilex USA certain relief granted to Nilex Canada in the Proposal Order, including the granting of the Charges over the assets and property of Nilex USA; (c) procedurally (but not substantively) consolidating the Nilex Canada and Nilex USA NOI proceedings; (d) approving the purchase and sale transaction (the “**Transaction**”) contemplated in the asset purchase agreement dated November 18, 2022 between the Nilex Debtors as vendors and the Purchasers; (e) authorizing the Proposal Trustee to act as foreign representative in respect of the Nilex Debtors, or either one of them, for the purpose of having the Canadian Proceedings recognized in the United States of America; and (f) authorizing the Proposal Trustee to make an interim distribution or distributions to CIBC. After a hearing held on November 28, 2022, the Alberta Court granted the relief requested in the Application, entering certain Orders including an Order (procedural consolidation and ancillary relief) (“**Ancillary Order**”), attached as **Exhibit 5**. Pursuant to the Ancillary Order, the Alberta Court extended the Nilex USA Initial Stay Period and further extended the Initial Stay Period of Nilex Canada to February 7, 2023. The extension of the Nilex USA Initial Stay Period and the Initial Stay Period for Nilex Canada will continue to prohibit any proceeding or enforcement process against the Nilex Debtors or their assets. *Id.* at ¶ 3. Further, all rights and remedies of any entity, whether judicial or extra-judicial, are stayed and suspended against the Nilex Debtors and their assets. *Id.*

VIII. The Proposal Trustee's Intended Actions.

The Proposal Trustee intends to continue to monitor the business of the Nilex Debtors and act in accordance with the powers and obligations set forth in the BIA and the orders of the Alberta Court. One of the Orders granted as part of the Second Application on November 28, 2022 was an Order (sale approval and vesting) (the “**Approval and Vesting Order**”), attached as **Exhibit 6**. A motion seeking recognition of the Approval and Vesting Order in respect to Nilex USA is being filed simultaneously with this Petition. *See* Kofman Declaration, Exhibit 3.

Also on November 28, 2022, the Alberta Court entered an Order (sealing confidential appendices) (the “**Sealing Order**”), attached as **Exhibit 7**. The Nilex Debtors and the Purchasers agreed that certain terms of the APA, including the Purchase Price, as defined therein, were to be kept confidential. As a result, the APA has been filed under seal in the Canadian Proceedings.

IX. The Chapter 15 Case

On December 2, 2022, the Proposal Trustee contemporaneously with the filing of this U.S. Sale Motion, filed a Chapter 15 Petition for Recognition of Foreign Proceedings Pursuant to Section 1515 and 1517 of the United States Bankruptcy Code and Related Relief for Nilex USA (the “**Petition for Recognition**”) in order to recognize Nilex USA's case as a foreign main proceeding.

Relevant to the U.S. Sale Motion, the Petition for Recognition seeks, *inter alia*,

- Recognition of the Canadian Proceeding as a foreign main proceeding as defined in section 1502(4) of the Bankruptcy Code;
- Granting comity to and giving full force and effect to the Canadian Nilex USA Proceeding, specifically the Proposal Order, the Ancillary Order and implementation of the Administrative Charge, Lender Priority Charge, D&O Charge and the KERP Charge; and
- Awarding the Proposal Trustee such other and further relief as this Court deems just and appropriate.

See Petition for Recognition, p. 14-15.

RELIEF REQUESTED

The Proposal Trustee, as the Foreign Representative, by and through the U.S. Sale Motion and pursuant to 11 U.S.C. §§ 363(b), (f) and (m) and FED. R. BANKR. P. 2002, 6004, and 9013 and L.B.R. 6004-1, respectfully requests that this Court enter an Order approving the sale of the U.S. Assets free and clear of all liens, claims, and interests. The Proposal Trustee also requests that the Court recognize and enforce any sale order entered by the Alberta Court approving the sale of the U.S. Assets to the Purchaser.

Approval of the Proposed Sale to the Purchaser is in the best interests of Nilex USA bankruptcy estate. The Proposed Sale to the Purchaser represents the culmination of a marketing and Sale Process conducted by the Nilex Debtors and Valitas. The Proposed Sale is not conditioned on further due diligence or financing contingencies. The Purchaser has demonstrated that it has the ability to close the transaction upon obtaining the necessary approval from the Alberta Court and this Court.

DISCUSSION AND RELEVANT LEGAL AUTHORITY

It is anticipated that, either explicitly or by reference to 11 U.S.C. § 1520, 11 U.S.C. § 363 will apply to the Nilex USA chapter 15 case. *See In re Qimonda AG Bankruptcy Litigation*, 433 B.R. 547, 560 (E.D. Va. 2010) (“§ 1520 lists only three provisions from Chapter 3—namely §§ 361, 362, and 363—that apply automatically, all of which are routinely implicated in Chapter 15 proceedings.”).

Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” *See* 11 U.S.C. § 363(b)(1); *see also* *Cajun Elec. Power Coop., Inc. v. Official Comm. of*

Unsecured Creditors (In re Cajun Elec. Power Coop., Inc.), 119 F.3d 349, 354 (5th Cir. 1997). The proper standard for the Court's use in considering a proposed motion to sell is the "business judgment" test and, under that standard, the debtor-in-possession has the burden to establish sound business reasons for the terms of the proposed sale. *See In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004) (*citing In re Lionel*, 722 F.2d 1063 (2nd Cir. 1983)). The factors for the Court to consider in whether to approve the sale include: (i) any improper or bad motive; (ii) that the price is fair and the negotiations or bidding occurred at arm's length; and (iii) adequate procedures, including proper exposure to the market and accurate and reasonable notice to all parties in interest. *Id.*

The Purchaser of the U.S. Assets in this case is not an "insider" of the Proposal Trustee or the Nilex Debtors, as defined in Bankruptcy Code section 101(31) and is purchasing the U.S. Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). The Proposed Sale has been widely marketed to a large group of potential purchasers of the U.S. Assets and the Proposal Trustee believes that the price being received for the U.S. Assets is fair and reasonable under the circumstances. Accordingly, the Proposal Trustee has demonstrated compelling circumstances and good and sufficient business purpose and justification for the Sale.

11 U.S.C. § 363(f) provides that a debtor may sell property under 11 U.S.C. § 363(b) free and clear of any interest in such property of an entity other than the estate only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Proposal Trustee submits that subsections (2) and/or (3) of the above statute apply to the U.S. Assets. Indeed, the Nilex Debtors' primary secured creditor, CIBC, has consented to the sale of the U.S. Assets, thereby satisfying subsection (2) of the statute. Furthermore, Fulcrum, Nilex Canada's controlling shareholder and secured creditor of Nilex Canada, but not Nilex USA, has contractually subordinated its secured claim and the amounts it is owed to it by Nilex Canada to CIBC. Accordingly, the U.S. Assets can be sold free and clear of liens, interests, and claims pursuant to 11 U.S.C. § 363(f).

Approval of the sale of the U.S. Assets has been requested in the Canadian Proceedings and will promote the objectives and principles provided in chapter 15 of the Bankruptcy Code, including Section 1501. The relief requested in the U.S. Sale Motion is specifically of a type contemplated by Section 1521 and chapter 15.

DISPOSITION OF SALE PROCEEDS

All liens and security interests in the U.S. Assets will attach to the respective proceeds of sale.

NOTICE OF THIS MOTION

Notice of the U.S. Sale Motion is being served on all creditors, interested parties and the United States Trustee pursuant to FED. R. BANKR. P. 2002(a)(2) and Local Bankruptcy Rule 9013-1.

WHEREFORE, the Proposal Trustee respectfully requests that the Court enter an Order approving the sale of substantially all of Nilex USA's U.S. Assets free and clear of liens, claims, and interests; specifying that, to the extent applicable, liens, claims, or interests attach to the

proceeds of any sale; recognizing and enforcing any order approving the sale entered by the Alberta Court; and requests such other and further relief as the Court deems appropriate.

Dated: December 2, 2022.

Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

s/ Chad S. Caby

Brent R. Cohen, No. 11297

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*Attorneys for KSV Restructuring Inc., as
Proposal Trustee and authorized Foreign
Representative of Nilex USA Inc.*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

In re:)
) Chapter 15
NILEX USA INC.) Case No.
)
Debtor in Foreign Proceeding.)

**DECLARATION OF ROBERT KOFMAN IN SUPPORT OF:
(I) PETITION FOR RECOGNITION AS A FOREIGN MAIN PROCEEDING;
(II) MOTION FOR ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTIVE RELIEF; AND (III) MOTION FOR
ORDER APPROVING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS
AND INTERESTS AND GRANTING RELATED RELIEF**

I, Robert Kofman, state as follows in support of the *Petition For Recognition as a Foreign Main Proceeding* (the “*Petition*”); the *Motion For Order to Show Cause With Temporary Restraining Order and Preliminary Injunctive Relief* (the “*Motion*”); and the *Motion for Order Approving Sale of Assets Free and Clear of Liens, Claims and Interests and Granting Related Relief* (the “*Sale Motion*”):

1. I am a Managing Director at the firm of KSV Restructuring Inc. (“**KSV**”). I have personal knowledge of all the statements made in this Declaration.

2. KSV is the Proposal Trustee (the “**Proposal Trustee**”) for Nilex Inc. (“**Nilex Canada**”) and Nilex USA Inc. (“**Nilex USA**”) (collectively referred to as the “**Nilex Debtors**”) in the proceeding pending in the Court of King’s Bench of Alberta, Canada (the “**Alberta Court**”), Court File No. 24-2878531 (the “**Canadian Proceedings**”) under the Bankruptcy and Insolvency Act (the “**BIA**”).

3. To the best of my knowledge and belief, the Canadian Proceedings are the only judicial or administrative proceeding, including an interim proceeding, under a law relating to

insolvency or adjustment of debt in which proceeding the assets and affairs of the Nilex Debtors are subject to control or supervision by a court, for the purpose of reorganization or liquidation.

4. Nilex USA is seeking protection under chapter 15 of the Bankruptcy Code. The principal purpose of these proceedings, along with the Canadian Proceedings is to: (a) create a stabilized environment to allow the Nilex Debtors to complete the transaction identified in the sale process commenced prior to these proceedings (the “**Sale Process**”) by Nilex Inc. (“**Nilex Canada**”), which was carried out by an investment banker it retained, Valitas Capital Partners (“**Valitas**”), in respect of the business and assets of the Nilex Debtors, which Sale Process was approved by the Alberta Court on November 8, 2022, and which resulting going concern transaction is in the best interests of the Nilex Debtors and their stakeholders; and (b) if appropriate, file a proposal in the Canadian Proceedings for the benefit of the creditors of the Nilex Debtors.

The Structure and General Operations of the Nilex Debtors.

5. Nilex Canada is a corporation formed under the laws of Alberta, Canada with its headquarters and principal place of business located in Edmonton, Alberta, Canada. Nilex Canada has been operating in the geosynthetics industry providing civil environmental products and technologies since 1977. The Nilex Debtors provide environmental solutions that are used in road building, erosion and sediment control, water management and containment. The Nilex Debtors also offer conversion and fabrication options, along with customization of standard products to site and project-specific requirements. Nilex Canada leases its head office in Edmonton and also operates from leased premises in Calgary, Saskatoon, Surrey and Toronto. Nilex Canada presently has approximately 70 full-time employees and 44 seasonal employees. Nilex Canada is the 100%

shareholder of Nilex USA, which operates from leased premises in Utah and Colorado. Nilex USA has approximately eight full-time employees.

6. Canadian Imperial Bank of Commerce (“**CIBC**”) is the Nilex Debtors’ senior secured lender. As of October 17, 2022, CIBC was owed approximately \$13.42 million by the Nilex Debtors.¹ PEF 2010 Nilex Investment Limited Partnership (“**Fulcrum**”) has been Nilex Canada’s controlling shareholder since 2013. Fulcrum is also a secured creditor of Nilex Canada. Fulcrum has contractually subordinated the amounts owed to it by Nilex Canada to CIBC. As of August 31, 2022, Fulcrum was owed approximately \$33.8 million by Nilex Canada. CIBC has and is continuing to provide funding to Nilex Canada for the benefit of the Nilex Debtors during the Canadian Proceedings - its post-filing advances are secured under a Court-approved lender priority charge authorized in the Canadian Proceedings.

Business Operations and Financial Performance of the Nilex Debtors.

7. Headquartered in Edmonton, Alberta with operations in Canada and the United States, the Nilex Debtors are providers of environmental solutions that are used in road building, erosion and sediment control, water management and containment. As set forth below, due to the COVID-19 pandemic, rising material costs, supply chain issues and slow-downs in the construction industry in those regions of Canada and the United States where the Nilex Debtors conduct operations, the Nilex Debtors have incurred significant and recurring losses for several consecutive years.

8. Nilex Canada had sales in each of 2020 and 2021 in excess of \$37 million. As of August 31, 2022, it had assets with a book value of approximately \$25 million. As of October 17, 2022, its obligations to CIBC totaled approximately \$13.42 million (the “**CIBC Debt**”) and its

¹ Unless otherwise noted herein, all currency references are to U.S. dollars. Currently, the exchange rate is 1.33 Canadian dollars for each U.S. dollar.

obligations to Fulcrum totaled, as of August 31, 2022, approximately \$33.8 million. As of the NOI filing date of October 27, 2022, it owed its 232 unsecured creditors \$9.17 million.²

9. Nilex USA's business is less significant than Nilex Canada's business, with sales for the ten-months ending October 31, 2022, of approximately \$4.4 million.³ A summary of Nilex USA's assets as of October 31, 2022, is as follows:

<u>Description</u>	<u>Book Value (\$000s)</u>
Inventory	1,222
Accounts receivable	543
Cash	469
Fixed Assets	42
Other Assets	20
Total	2,296

10. As described further below, Nilex USA is a borrower under the credit agreement with CIBC, which is secured by all of Nilex USA's assets. Nilex USA has approximately 50 unsecured creditors with claims aggregating totaling \$607,000 as of November 24, 2022 (being the date of its NOI filing), excluding amounts owed to Nilex Canada, which total over \$4 million. The vast majority of these unsecured creditors, by number, are located in the United States. Nilex Canada is by far Nilex USA's largest creditor representing approximately 87% of all of Nilex USA's unsecured debt.

The Credit Agreement.

11. Nilex Canada and Nilex USA, as borrowers, and CIBC, as lender, entered into a Credit Agreement dated June 1, 2018, whereby CIBC made available to Nilex Canada a revolving credit facility and term loan (as amended, the "**Credit Agreement**"). The obligations under the

² This amount excludes certain off-balance sheet obligations, including amounts that may be owing for terminated leases and to terminated employees.

³ Excluding off-balance sheet liabilities, including amounts owing to CIBC, certain employee claims and amounts owing for real property and equipment leases.

Credit Agreement are secured pursuant to, among other things, a general security agreement among Nilex Canada, Nilex USA and CIBC dated June 1, 2018. Nilex Canada's primary bank account is with CIBC. The Nilex Debtors operate a centralized cash management system wherein accounts receivable collections are paid into accounts, including blocked accounts, with CIBC and applied to the CIBC loan facilities (the “**Cash Management System**”). The Nilex Debtors are continuing and expect to continue to use the existing Cash Management System, including the bank accounts and arrangements presently in place with CIBC, throughout the Canadian Proceedings. Absent the Forbearance Agreement (defined below), CIBC is not required to continue to advance any further credit facilities to the Nilex Debtors.

Events Leading to the Commencement of the Canadian Proceeding.

12. The Nilex Debtors have incurred losses for several consecutive years. Losses have continued in recent years due to the Covid-19 pandemic, rising material costs, supply chain issues and slowdowns in the construction industry. The revenues of the Nilex Debtors are seasonal. Winter is usually the slowest season, with revenues gradually increasing in the spring and peaking in the summer months.

13. Factors outside of the Nilex Debtors' control have caused liquidity challenges. Given the seasonality of their business, the Nilex Debtors were facing a liquidity crisis in October 2022 which led to the commencement of the Canadian Proceedings. In particular, the Nilex Debtors' reduced revenues during the slower winter months, rising storage costs, rising inventory costs, high operating expenses, increasing low-cost competition, decreased customer capital spending due to the COVID-19 pandemic, and increased debt servicing costs resulted in serious liquidity challenges and a default under the Credit Agreement.

The Proposed Sale.

A. The Sale Process.

14. On October 6, 2021, Nilex Canada retained Valitas to conduct a sale process (the “**Sale Process**”) for the business and assets of the Nilex Debtors. A summary of the Sale Process to-date is provided below:

- the Sale Process offered for sale the Nilex Debtors’ business and assets;
- Valitas compiled a comprehensive list of over 400 prospective purchasers based on geography and industry;
- Valitas selected 16 of the prospective purchasers as strong acquisition candidates based on, *inter alia*, strategic fit. Nine of these parties confirmed their interest in the opportunity; and
- nine prospective purchasers, plus three additional strategic parties, performed due diligence, including reviewing the confidential information memorandum prepared by Valitas and information made available in a virtual data room. A subset of the prospective purchasers also conducted site visits and attended management meetings.

15. Valitas initially requested that prospective purchasers submit non-binding letters of intent in March 2022; however, none of the offers received were acceptable to the Nilex Debtors. At the time, the Nilex Debtors forecasted improved results for the balance of 2022 and believed that going back to prospective purchasers later in the year would result in a higher purchase price based on the forecasted improved results. Ultimately, the forecasted results did not materialize.

16. In August 2022, Valitas re-engaged with prospective purchasers and since that time has facilitated their due diligence. Valitas provided interested parties with a template term sheet to be used as the basis for submitting non-binding letters of intent. Several non-binding letters of intent were submitted in late September 2022.

17. On or around October 8, 2022, Valitas sent interested parties a process letter, which set out the Sale Process timelines (the “**Process Letter**”). The Process Letter, specified that, *inter alia*:

- interested parties were required to submit binding offers by no later than 3:00 pm (Mountain Time) on November 8, 2022 (the “**Bid Deadline**”) in the form of a template asset purchase agreement which was uploaded to the data room; and
- the Nilex Debtors’ objective was to enter into a binding agreement of purchase and sale (the “**APA**”) by no later than November 15, 2022.

18. The Sale Process timelines and milestones were, in part, a product of negotiations between the Nilex Debtors and CIBC pursuant to which CIBC agreed to fund these proceedings. The timelines and milestones were set out in a Forbearance Agreement dated October 17, 2022 (the “**Forbearance Agreement**”) between the Nilex Debtors and CIBC, which considered that the Sale Process had been ongoing for several months. Funding under the Forbearance Agreement was tied, *inter alia*, to the Nilex Debtors advancing the Sale Process in accordance with the agreed timelines and milestones in the Forbearance Agreement.

B. The Sale Process Results.

19. A summary of the Sale Process results is as follows:

- four going-concern offers were submitted;
- from the Bid Deadline until November 18, 2022, the Nilex Debtors, with the assistance of Valitas, the Proposal Trustee, the Nilex Debtors’ legal counsel and the Proposal Trustee’s legal counsel, worked with Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the “**Purchasers**”) and their legal counsel to finalize the terms of the APA; and
- the APA was executed on November 18, 2022.

C. The Sale Terms.

20. A summary of the APA is as follows:

Description	Canadian Transaction	US Transaction
Purchasers	Terrafox Geosynthetics Inc. (the “Canadian Purchaser”)	Hanes Companies, Inc. (the “U.S. Purchaser”)
Purchased Assets	Substantially all assets of the Nilex Debtors	
Purchase Price	The Purchase Price has been sealed pending further order of the Alberta Court.	
Deposit	The Purchasers have paid a deposit representing approximately 13% of the Purchase Price, which is being held in the Proposal Trustee’s trust account.	
Adjustment Mechanism	The estimated Purchase Price for the both the Canadian Transaction and the US Transaction is based on an Interim Statement of Adjustments. Within 60 days following Closing of each transaction, the applicable Vendor is to provide a Final Statement of Adjustments. The difference between the Interim Statement of Adjustments and the Final Statement of Adjustments shall be paid promptly by the applicable Vendor/Purchaser, which amount shall accrue interest at the Prime Rate plus 1%.	
Locations	The Canadian Purchaser will assume the leases for Nilex Canada’s premises in Edmonton, Calgary and BC. The leases for Nilex Canada’s premises in Ontario and Saskatchewan will not be assumed by the Purchaser. Nilex Canada may continue to occupy the Ontario and Saskatchewan locations for up to six months in accordance with the Transition Services Agreement (“TSA”).	The leases for both US locations will not be assumed by the US Purchaser. The premises can be occupied by Nilex USA for a period of up to six months in accordance with the TSA.
Employees	The Purchasers intend to offer employment to the vast majority of Nilex Canada’s employees in Canada and four of the eight Nilex USA employees. Certain of the employees who are not offered employment by the Purchasers will be offered the opportunity to provide transition services to the Purchasers pursuant to the TSA. All wages and vacation pay accrued to the Effective Date are for the account of the Nilex Debtors. Following closing, all wages and vacation pay accruing in respect of Transferred Employees will be for the account of the Purchasers from and after the Effective Date, as will wages and vacation pay for Transition Employees pursuant to the TSA, albeit Transition Employees will remain employees of Nilex Canada or Nilex USA. Payroll and benefits for any non-Transferred Employees and non-Transition Employees will remain the obligation of Nilex Canada or Nilex USA following the Effective Date.	
Representations and Warranties	Consistent with the terms of a standard insolvency transaction, i.e., on an “as is, where is” basis, with limited representations and warranties.	
Closing	Subject to Alberta Court approval, (obtained on November 28, 2022) closing of the Canadian Transaction is contemplated to occur on or before December 16, 2022. The Outside Date is February 28, 2023.	Closing of the US Transaction is contemplated to occur promptly following US Court approval. The Outside Date is February 28, 2023.
Material Conditions	The only material condition precedent to the Canadian Transaction is Alberta Court approval (which has happened). The closing of the Canadian Transaction is not subject to US Court	The only material condition precedent to the US Transaction is approval of the Canadian transaction by the Alberta Court and the US Court.

Description	Canadian Transaction	US Transaction
	approval and/or completion of the US Transaction.	

D. Transition Services Agreement.

21. Pursuant to the APA, the execution of the TSA by the Nilex Debtors and the Purchasers is a condition to closing of the Canadian Transaction and the US Transaction. The purpose of the TSA is for the Nilex Debtors to maintain in good standing, during these proceedings, certain contracts and real property lease agreements until those locations can be vacated, at which time those leases are intended to be disclaimed by the Nilex Debtors. Also pursuant to the TSA, certain employees will remain employees of the Nilex Debtors during the transition period, but will provide assistance to the Purchasers as it relates to transition issues. As part of the TSA, the Purchasers are required to fund any costs incurred by the Nilex Debtors in providing the Transition Services (as defined in the TSA). The TSA also requires that the Purchasers fund a deposit equal to one month of the estimated transition costs. The TSA has a term of up to six months.

Default Under the CIBC Credit Agreement.

22. The Credit Agreement provides that the CIBC Debt becomes immediately due and payable on the occurrence of an Event of Default (as defined in the Credit Agreement). The Nilex Debtors are in default under the Credit Agreement and, accordingly, on September 15, 2022, CIBC issued a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. On October 17, 2022, CIBC and the Nilex Debtors entered into the Forbearance Agreement, which among other things, allows the Nilex Debtors, subject to the terms and conditions of the Forbearance Agreement, to continue to access the credit facilities under the Credit Agreement and to continue to use the Cash Management System to meet working capital requirements while the Nilex Debtors carry out the Sale Process and the Canadian Proceedings. CIBC has also agreed to temporarily

forbear from enforcing its rights, subject to the terms and conditions of the Forbearance Agreement. Pursuant to the Forbearance Agreement, CIBC will apply the Nilex Debtors' post-filing receipts against their pre-filing indebtedness and new advances by CIBC to the Nilex Debtors during the Canadian Proceeding are to be secured by the Lender Priority Charge (as defined below).

23. As a result of CIBC defaults and other issues, Nilex Canada decided to initiate restructuring proceedings by filing an NOI on October 27, 2022, while Nilex USA filed an NOI on November 24, 2022. The NOI filings were intended to provide the Nilex Debtors with the stability required to complete the Sale Process and the going concern transaction identified therein in the near term. The Sale Process was approved by the Alberta Court on November 8, 2022 and on November 28, 2022, the Alberta Court, among other things, approved the transaction contemplated by the APA described above. A motion seeking recognition of the order of the Alberta Court, among other things, approving a sale of the Nilex USA assets, has been filed herewith.

The Canadian Proceedings.

24. The BIA governs the NOI process in Canada which includes the appointment of a Proposal Trustee. The BIA is a federal statute that governs a number of different insolvency proceedings to which individuals and corporations are subject, including bankruptcies, receiverships, and proposals proceedings. An NOI commences a proceeding under the BIA that allows financially troubled corporations the opportunity to restructure their affairs. It is often the first stage of a debtor in possession restructuring process under the BIA, which allows a company to restructure its financial affairs through a formal proposal to creditors (similar to filing a plan of arrangement and compromise). The NOI proceeding and eventual proposal provides an

opportunity for a company to avoid forced liquidation in bankruptcy, permits an insolvent company to sell assets, subject to court approval, and allows creditors to receive compensation for amounts owing to them.

25. A Proposal Trustee is an independent licensed insolvency trustee who is appointed by the “Official Receiver” (which is a representative of the Office of the Superintendent in Bankruptcy in Canada) to assist the company with the filing of its NOI and/or proposal and to monitor the debtor company's ongoing operations during the NOI proceeding. The Proposal Trustee’s duties include monitoring the ongoing financial and other activities of a debtor company, reporting to the court on any major events that might impact the viability of the company, assisting the company in the preparation of its proposal, notifying the creditors of any meetings of creditors and tabulating the votes at these meetings.

26. On October 27, 2022, Nilex Canada filed its NOI with the Official Receiver under section 50.4(1) of the BIA. The NOI was filed in consultation with the Nilex Debtors’ professional advisors in order to try to restructure or sell the Nilex Debtors as a going concern for the benefit of their stakeholders after it was determined that a transaction for the Nilex Debtors could not be completed outside of a formal restructuring proceeding. Once the Official Receiver, accepted Nilex Canada’s NOI filing, it issued a Certificate of Filing of a Notice of Intention to Make Proposal (“**Certificate**”) triggering a statutory stay of proceedings, as set out in the BIA, for an initial 30 days (often referred to as the “**Initial Stay Period**”) to enable Nilex Canada to take steps to prepare and file a proposal. The Certificate designated KSV as the Licensed Insolvency Trustee for Nilex Canada. The Initial Stay Period is subject to extension upon application to the Court for additional periods, not exceeding 45 days for any individual extension, to a maximum of five months following the Initial Stay Period, to allow Nilex Canada to file a proposal.

27. On October 31, 2022, Nilex Canada filed in the Canadian Proceeding an application (approving extension of time to file a proposal, an administration charge, and other relief) (the “**Application**”). The Application sought, *inter alia*, a 45-day extension of the initial 30-day deadline to file a Proposal, a grant of certain charges (as described below), approval of continued use of Nilex Canada’s cash management system, and approval of the on-going Sale Process. After a hearing held on November 8, 2022, the Alberta Court granted the Application and entered its Order (approving extension of time to file a proposal, administration charge, and other relief) (the “**Proposal Order**”), attached as **Exhibit 1**. Pursuant to the Proposal Order, among other things, the Alberta Court extended the Initial Stay Period to January 10, 2022.

28. As specified in the Proposal Order, the following four charges (the “**Charges**”) were granted against the property of Nilex Canada, with priority over all other secured claims:

- An Administrative Charge for the benefit of the Nilex Debtors’ professionals, not to exceed an aggregate amount of \$350,000 (CAN). *Id.* at ¶¶ 6 and 7;
- A Lender Priority Charge, not to exceed an aggregate principal amount of \$20,000,000 (CAN), plus interest, fees and expenses, as security for any advances made under the Credit Agreement after the filing of the NOI. *Id.* at ¶¶ 11 and 12;⁴
- A “D&O Charge” for purposes of indemnifying directors and officers against obligations and liabilities that they may incur in their role as directors and officers after the filing of the NOI, not to exceed an aggregate amount of \$925,000 (CAN). *Id.* at ¶¶ 15 and 16;
- A “KERP Charge” pursuant to an approved key employee retention plan, not to exceed an aggregate amount of \$800,000 (CAN). *Id.* at ¶¶ 18, 19 and 20.

29. CIBC is a party to the Canadian Proceedings and did not object to the forgoing charges.

⁴ The Lender Priority Charge secures all new advances made by CIBC under the Credit Agreement made after the filing of the NOI, while post-filing receipts are first used to pay down the debt that was owed to CIBC as of the filing date.

30. On November 24, 2022, Nilex USA filed its NOI with the Official Receiver under section 50.4(1) of the BIA. The NOI was filed in consultation with Nilex Debtors' professional advisors for the primary purpose of completing the transaction that resulted from the Sale Process. As with Nilex Canada, once accepted by the Official Receiver, a certificate was issued thereby triggering a statutory Stay Period for an initial 30-days (the "**Nilex USA Initial Stay Period**"). The Certificate designated KSV as the Licensed Insolvency Trustee for Nilex USA. The Nilex USA Initial Stay Period is subject to extension upon application to the Court, as discussed in detail earlier.

31. On November 21, 2022, Nilex Canada filed in the Canadian Proceeding an application (sale approval and vesting order, procedural consolidation and ancillary relief) (the "**Second Application**"). Among other things, the Second Application sought orders from the Alberta Court (a) extending the time to file a proposal for the Nilex Debtors to and including February 7, 2022 (thereby extending the Nilex USA Initial Stay Period); (b) extending to Nilex USA certain relief granted to Nilex Canada in the Proposal Order, including the granting of the Charges over the assets and property of Nilex USA; (c) procedurally (but not substantively) consolidating the Nilex Canada and Nilex USA NOI proceedings; (d) approving the purchase and sale transaction (the "**Transaction**") contemplated in the asset purchase agreement dated November 18, 2022 between the Nilex Debtors as vendors and the Purchasers; (e) authorizing the Proposal Trustee to act as foreign representative in respect of the Nilex Debtors, or either one of them, for the purpose of having the Canadian Proceedings recognized in the United States of America; and (f) authorizing the Proposal Trustee to make an interim distribution or distributions to CIBC. After a hearing held on November 28, 2022, the Alberta Court granted the relief requested in the Application, entering certain Orders including an Order (procedural consolidation

and ancillary relief) (“**Ancillary Order**”), attached as **Exhibit 2**. Pursuant to the Ancillary Order, the Alberta Court extended the Nilex USA Initial Stay Period and further extended the Initial Stay Period of Nilex Canada to February 7, 2023. The extension of the Nilex USA Initial Stay Period and the Initial Stay Period for Nilex Canada will continue to prohibit any proceeding or enforcement process against the Nilex Debtors or their assets. *Id.* at ¶ 3. Further, all rights and remedies of any entity, whether judicial or extra-judicial, are stayed and suspended against the Nilex Debtors and their assets. *Id.*

The Proposal Trustee’s Intended Actions.

32. The Proposal Trustee intends to continue to monitor the business of the Nilex Debtors and act in accordance with the powers and obligations set forth in the BIA and the orders of the Alberta Court. One of the Orders granted as part of the Second Application on November 28, 2022 was an Order (sale approval and vesting) (the “**Approval and Vesting Order**”), attached as **Exhibit 3**. A motion seeking recognition of the Approval and Vesting Order in respect of Nilex USA is being filed simultaneously with this Petition.

33. Also on November 28, 2022, the Alberta Court entered an Order (sealing confidential appendices) (the “**Sealing Order**”), attached as **Exhibit 4**. The Nilex Debtors and the Purchasers agreed that certain terms of the APA, including the Purchase Price, as defined therein, were to be kept confidential. As a result, the APA has been filed under seal in the Canadian Proceedings.

The Nilex Debtors’ Center of Main Interests.

A. The Location of Those Who Manage Nilex USA.

34. Management of each of the Nilex Debtors occurs almost entirely in Edmonton. All executive level and substantial decisions are made in Canada.

35. Nilex USA cannot operate independently of Nilex Canada. The Nilex Debtors' business is fully integrated. The directors of Nilex USA and Nilex Canada are the same. The senior management team of the Nilex Debtors, including the President and CEO, Vice-President of Finance, Director of Supply Chain, Director of Human Resources, Director of Technical Services (collectively, the "**Management Team**") are all located in Canada. The Management Team develops all corporate strategies for the Nilex Debtors. Additionally, almost all members of the Management Team are residents of Edmonton and perform their duties out of the Edmonton head office. The Management Team reports to a board of directors that effectively controls the Nilex Debtors. All directors of the Nilex Debtors reside in Canada. The only managers of the Nilex Debtors who are not Canadian residents are Alan Strecker (Regional Sales Manager) and Christy Burton (Office Manager), both of whom report to the Sales Director in Canada, who reports to the President and CEO, Trevor Derksen, based in Edmonton.

36. All capital allocation decisions for the Nilex Debtors are directed by the Management Team and approved by the Management Team. The leaders of the business units in all jurisdictions execute the decisions made by the Management Team in Edmonton. Trevor Derksen, the President and CEO of Nilex Canada, is involved in all major negotiations with large clients regardless of the business entity that serves those clients or the jurisdiction in which their projects are located. The material terms of all major contracts require approval by the Management Team, as do all major spending decisions. Furthermore, most major clients in the United States are supported by a Sales Manager in Colorado and the Sales Director, who is based in British Columbia.

37. The Nilex Debtors use the Cash Management System to fund operations. The books and records of the Nilex Debtors are prepared and maintained in Edmonton. Jeff Allen, Vice-

President of Finance, has responsibility for the Nilex Debtors' accounting and all administrative oversight. Payroll services for the Nilex Debtors are administered by a payroll professional of Nilex Canada, located in the Edmonton Head Office.

38. The following policies, procedures, operating manuals and practices are developed, updated and administered in the Edmonton head office and are applied across the Nilex Debtors:

- human resources — including employee policies and procedures, benefits, wellness, confidentiality and privacy policies;
- corporate accounting policies;
- code of ethics;
- corporate standards;
- information and telecommunications policies and procedures;
- marketing and communications policies and procedures; and
- delegation of authority matrix.

39. The following programs are created and refined in Canada at the Edmonton head office:

- health, safety and environment and quality control functions of the Nilex Debtors;
- all corporate and employee training for all the employees of the Nilex Debtors;
- all training and development programs for operational personnel throughout the Nilex Debtors; and
- all leadership development programs.

40. Finally, the Proposal Trustee and Foreign Representative, a Canadian entity appointed by a Canadian court, is also based in Canada.

B. The Location of Nilex USA's Business.

41. With respect to the location of Nilex USA, the mind and management of Nilex USA is in Edmonton, Alberta. As to the location of Nilex USA's assets, this factor also favors Canada. The Nilex Debtors utilize the Cash Management System pursuant to which funding is determined and managed from the head office in Alberta. Nilex USA maintains a bank account in Canada and its treasury management function is centralized at the head office in Alberta.

42. The principal secured creditor of the Nilex Debtors is CIBC. The Nilex Debtors are both borrowers under the Credit Agreement, which is governed by Canadian Law:

- the availability of liquidity to the Nilex Debtors under the CIBC facility is derived from combining the net borrowings of Nilex Canada and net cash from Nilex USA against the borrowing base calculated under the Credit Agreement;
- all disbursements paid out by the Nilex Debtors must be signed or electronically released by a member of the treasury team, including the Vice-President of Finance, from the Edmonton office (except for petty cash disbursements); and
- while some cash receipts are deposited at the locations where they are received, they are all reported to the treasury group in the Edmonton office and then administered as part of the Cash Management System.

43. The Nilex Debtors' obligations under the Credit Agreement are secured pursuant to, among other things, a general security agreement among Nilex Canada, Nilex USA, and CIBC dated June 1, 2018 (the "GSA"). The GSA grants CIBC security over all present and after acquired personal property of the Nilex Debtors. CIBC is the first lien secured creditor of the Nilex Debtors. The only other significant indebtedness of Nilex USA is owed to Nilex Canada pursuant to intercompany transactions.

44. In addition, Nilex Canada, which is also located in Canada, is Nilex USA's largest unsecured creditor.

45. As indicated above, Nilex USA's principal creditor relationship is with CIBC. As specified in the Credit Agreement, that relationship is governed by Canadian law.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 2, 2022.

s/Robert Kofman
Robert Kofman, Managing Director
KSV Restructuring Inc.

Clerk's stamp:

COURT/ESTATE FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-
3, AS AMENDED
APPLICANT: NILEX INC.
DOCUMENT **ORDER (approving extension of time to file a
proposal, administration charge, and other relief)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP
3500, 855 – 2nd Street S.W.
Calgary, AB T2P 4J8
Attn: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Facsimile: 403-260-9700
E-mail: kelly.bourassa@blakes.com /
alexia.parente@blakes.com
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 8, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta (via Webex)

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice J.S. Little

UPON THE APPLICATION by Nilex Inc. (the "**Company**"), for an order, among other things: (a) extending the time for the Company to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**"); (b) approving an Administration Charge (defined below); (c) approving the Sale Process (defined below) and its continuation; (d) approving the continued use of the Cash Management System (defined below); and (e) approving the distribution of the Garnished Funds (defined below) out of Court to the Company and directing any future Garnished Funds to be paid to the Company;

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn October 31, 2022 (the "**First Allen Affidavit**"), the First Report of KSV Restructuring Inc. in its capacity as proposal trustee of the Company (in such capacity, the "**Proposal Trustee**") dated October 31, 2022 (the "**First Report**"), and the Affidavit of Service of Lindsay Farr sworn November 3, 2022;

AND UPON HEARING the submissions of counsel for the Company, the Proposal Trustee, the Canadian Imperial Bank of Commerce ("**CIBC**"), and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

EXTENSION OF TIME TO FILE A PROPOSAL

2. Pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal is hereby extended to January 10, 2023 (as that date may be extended by further order of the Court, the "**Proposal Extension Date**").

NO INTERFERENCE WITH RIGHTS

3. Until and including the Proposal Extension Date, no individual, firm, corporation, governmental body, or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, or take any further action to issue or enforce any garnishee summons, except with the written consent of the Company and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

4. Until and including the Proposal Extension Date, all Persons having:
 - (a) statutory or regulatory mandates for the supply of goods and/or services; or

- (b) oral or written agreements or arrangements with the Company, including without limitation all purchase orders, supply agreements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company or exercising any other remedy provided under such agreements or arrangements. The Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Company in accordance with the payment practices of the Company, or such other practices as may be agreed upon by the supplier or service provider and each of the Company and the Proposal Trustee or as may be ordered by this Court.

ADMINISTRATION CHARGE

5. The Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Administrative Professionals on a bi-weekly basis, or as they may otherwise agree.
6. The Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$350,000 (before GST), as security for payment of their respective professional fees and disbursements incurred at their normal rates and charges, both before and after the making of this Order, in respect of this proceeding.
7. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

CASH MANAGEMENT SYSTEM AND LENDER PRIORITY CHARGE

8. The Company's execution and performance under the forbearance agreement dated as of October 17, 2022 between the Company and CIBC (among others), as may be amended from time to time (the "**Forbearance Agreement**") is hereby approved.
9. The Company shall be entitled to continue to utilize the credit facilities (the "**Cash Management System**") granted by CIBC under the Credit Agreement, as defined and described in the First Allen Affidavit (the "**Credit Agreement**"). For greater certainty, (i) the Company is authorized to borrow, repay and re-borrow such amounts from time to time as the Company may consider necessary or desirable under the Credit Agreement, subject to the terms and conditions of the Forbearance Agreement; and (ii) CIBC is authorized to apply receipts and deposits made to the Company's bank accounts, whether directly or through blocked accounts, against the indebtedness of the Company to CIBC in accordance with the Forbearance Agreement, whether such indebtedness arose before or after the date of this Order; provided, however that no advances made by CIBC to the Company under the Credit Agreement on or after the date hereof shall be used to pay the Company's obligations that were owing to CIBC prior to the date hereof.
10. The Cash Management System will be governed by the terms of the Credit Agreement and the Forbearance Agreement and such other documentation applicable to the Cash Management System. CIBC shall be an unaffected creditor in these proceedings, and the rights and remedies of CIBC shall be unaffected by paragraphs 3 and 4 of this Order or any other stay of proceedings that may be granted in these proceedings.
11. CIBC shall be entitled to the benefit of and is hereby granted a charge (the "**Lender Priority Charge**") on the Property, which charge shall not exceed an aggregate principal amount of 20,000,000 plus interest, fees and expenses, as security for any advances made under the Credit Agreement from and after the filing of the NOI.
12. The Lender Priority Charge shall have the priority set out in paragraphs 21 and 23 hereof.
13. The payments made by the Company pursuant to this Order, the Credit Agreement and the Forbearance Agreement, and the granting of the Lender Priority Charge shall not constitute or be deemed to be a preference, fraudulent conveyance or transfer at undervalue or other challengeable or reviewable transaction under the BIA or any

applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law. The rights of CIBC under this Order, including without limitation the Lender Priority Charge, shall be enforceable in any bankruptcy, interim receivership, or receivership or in any proceedings under the *Companies' Creditors Arrangement Act* (Canada) of the Company or Property.

D&O CHARGE

14. The Company shall indemnify the directors and officers against obligations and liabilities that they may incur in their role as directors and officers after the filing of the NOI, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's and officer's gross negligence or wilful misconduct.
15. Each of the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on all of the Property, which charge shall not exceed an aggregate amount of \$925,000, as security for the indemnity provided in this Order.
16. The D&O Charge shall have the priority set out in paragraphs 21 and 23 hereof.
17. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
 - (b) the Company's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy.

KERP

18. The Company's key employee retention plan (the "**KERP**") described in the First Report is hereby approved and the Company is authorized and directed to make the payments contemplated thereunder should the beneficiaries become entitled thereto in accordance with the terms and conditions of the KERP.

19. The beneficiaries of the KERP are hereby granted a charge (the "**KERP Charge**") on the Property which charge shall not exceed an aggregate amount of \$800,000, as security for all obligations under the KERP.
20. The KERP Charge shall have the priority set out in paragraphs 21 and 23 hereof.

PRIORITY OF CHARGES

21. The priorities of the Administration Charge, the Lender Priority Charge, the D&O Charge, and the KERP Charge, as between them, shall be as follows:
 - (a) First – Administration Charge;
 - (b) Second – Lender Priority Charge;
 - (c) Third – D&O Charge; and
 - (d) Fourth – KERP Charge.(collectively, the "**Charges**").
22. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
23. The Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
24. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the other beneficiaries of the Charges affected thereby, or further order of this Court.

SALE PROCESS

25. The sale process (the "**Sale Process**") commenced prior to the filing of the notice of intention to file a proposal by the Company in this proceeding, as described in the First Report, is commercially reasonable and is hereby ratified and approved.
26. The Company, with the assistance of the Proposal Trustee and Valitas Capital Partners, is hereby authorized and directed to continue the Sale Process, and do all things reasonably necessary to conduct and give full effect to the Sale Process and carry out the obligations thereunder, including taking any additional steps or executing additional documents as may be necessary or desirable in order to carry out and complete the Sale Process and a transaction or transactions thereunder.
27. The Company is authorized to apply to this Honourable Court for advice and directions in connection with the Sale Process.

FUNDS PAID OUT OF COURT

28. The Clerk of the Court of the King's Bench of Alberta is hereby directed to release to the Company all funds currently being held by it, or which may be paid into Court subsequent to this Order, pursuant to garnishee summons issued in Court of King's Bench File Number 1903-07838 (the "**Garnished Funds**").
29. The Company shall deposit the Garnished Funds in the Company's accounts with CIBC and they shall be applied in accordance with the provisions of the Credit Agreement and the Cash Management System to reduce the amounts outstanding to CIBC as first priority secured creditor.
30. Any Person who has received a garnishee summons directing it to pay funds to the Clerk of the Court is hereby directed to pay any such funds directly to the Company to be deposited by the Company into its accounts with CIBC and applied in accordance with the provisions of the Credit Agreement and the Cash Management System.

SEALING

31. Notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, confidential appendix 1 ("**Confidential Appendix**") of the First Report shall until further

Order of this Honourable Court, be sealed on the Court file and kept confidential to be shown only to a Justice of the Court of King's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Appendices in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 24-2878531. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE C.M. JONES ON NOVEMBER 9, 2022.

32. The Company and the Proposal Trustee are empowered and authorized, but not directed, to provide the Confidential Appendix (or any portion thereof, or information contained therein) to any interested party, entity or person that the Company or Proposal Trustee considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Company or the Proposal Trustee.
33. Any party may apply to set aside paragraph 31 of this order upon providing the Company, Proposal Trustee and all other interested parties with 5 days notice of such application.

MISCELLANEOUS MATTERS

34. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Proposal Trustee will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Proposal Trustee's reports shall be filed by the Clerk of the Court notwithstanding that they do not include an original signature.
35. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist the Proposal Trustee 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 order and to provide such assistance to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

36. Each of the Company or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
37. Any interested party (including the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SERVICE OF ORDER

38. Service of this Order shall be deemed good and sufficient:
- (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (b) by posting a copy of this Order on the Proposal Trustee's website at: [Nilex Inc. \(ksvadvisory.com\)](http://Nilex Inc. (ksvadvisory.com)).
39. Service of this Order on any other person is hereby dispensed with.
40. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER SECTION 50.4(1) OF THE BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (procedural consolidation and ancillary relief)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Blake, Cassels & Graydon LLP
Barristers and Solicitors
3500 Bankers Hall East Tower
855 – 2 Street SW
Calgary, Alberta T2P 4J8

I hereby certify this to be a true copy of the original Procedural order
Dated this 30th day of November 2022

Attention: Kelly Bourassa / Alexia Parente for Clerk of the Court
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON THE APPLICATION by Nilex Inc. and Nilex USA Inc. (each a “**Company**” and, collectively, the “**Companies**”) for an order, among other things: (i) procedurally consolidating the bankruptcy proceeding of Nilex Inc. (Estate No. 24-2878531) and Nilex USA Inc. (Estate No. 24-2887527) (each individually, a “**Proceeding**” and together, the “**Consolidated Proceeding**”) for administrative purposes; (ii) extending to Nilex USA Inc. certain relief granted previously to Nilex Inc.; (iii) ordering the style of cause in the within proceedings be amended to include Nilex USA Inc. as an applicant; (iv) authorizing KSV Restructuring Inc. (the “**Proposal Trustee**”), to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the Companies for the purpose of having these Proceedings recognized and approved in the United States of America pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-

1532; and (v) authorizing the Proposal Trustee to make an interim distribution to Canadian Imperial Bank of Commerce (“**CIBC**”);

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn on November 21, 2022, the second report of the Proposal Trustee dated November 21, 2022, the confidential appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, CIBC and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

EXTENSION OF TIME TO FILE A PROPOSAL

1. Pursuant to Section 50.4(9) of the BIA, the time for the Companies to file their respective proposals is hereby extended to February 7, 2023 (as that date may be extended by further order of the Court).

PROCEDURAL CONSOLIDATION

2. The bankruptcy estates of the Proceedings shall, subject to further order of the Court, be procedurally consolidated into one proceeding and shall continue under Estate No. 24-2878531 (the “**Consolidated Proceeding**”).
3. The procedural consolidation of the Proceedings pursuant to this Order shall not:
 - (a) affect the legal status or corporate structure of the Companies; or
 - (b) cause either Company to be liable for any claim for which they are otherwise not liable, or cause either Company to have an interest in an asset to which it otherwise would not have.
4. The Proceedings are not substantively consolidated, and nothing in this Order shall be construed to that effect.

5. A copy of this Order shall be filed by the Companies in the Court file for each of the Proceedings but any subsequent document required to be filed hereafter will only be required to be filed in the Consolidated Proceeding.
6. For avoidance of doubt, any motion, application or action, including the herein application, in respect of the Companies shall be brought and filed in the Consolidated Proceeding and if so brought and filed it shall be deemed brought and filed in each of the Proceedings as appropriate, without prejudice to any rules of court or otherwise that are applicable.
7. The Style of Cause in the within proceedings is hereby amended and shall be assigned to the Consolidated Proceeding:

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC
1985, c B-3, AS AMENDED

APPLICANTS

NILEX INC. and NILEX USA INC.

8. The relief granted by the Honourable Justice J.S. Little of this Court on November 8, 2022 (the “**November 8 Order**”), among other things, (i) approving a sale process as described in the Proposal Trustee’s first report to the Court dated October 31, 2022; (ii) expanding the stay of proceedings under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3, as amended, as set out in paragraphs 3 and 4 of the November 8 Order; and (iii) granting the Administration Charge, Lender Priority Charge, D&O Charge and KERP Charge (each as defined in the November 8 Order) and, in respect of the Charges (as defined in the November 8 Order) ordering that each shall constitute a charge on the Property (as defined in the November 8 Order), is hereby extended to Nilex USA Inc. and all of its present and future assets, undertakings and property of every nature and kind whatsoever and wherever in situate, including all proceeds thereof, in the same manner as set out in the November 8 Order.

FOREIGN REPRESENTATIVE

9. The Proposal Trustee is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for recognition of this Order (and other orders in the Consolidated Proceeding) and for assistance in carrying out the terms

of these orders and the Proposal Trustee is authorized and empowered to act as the Foreign Representative of the Companies or either Company in respect of the Consolidated Proceeding or either Proceeding for the purpose of having the Consolidated Proceeding or either Proceeding recognized in a jurisdiction outside Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § § 101-1532.

INTERIM DISTRIBUTION

10. The Proposal Trustee is hereby authorized, at such time as it determines appropriate, to make an interim distribution or interim distributions to CIBC from amounts received from the Transaction up to the full amount of the Company's indebtedness to CIBC, as set out in the Second Report, subject to the retention of amounts for any priority claims. Such interim distribution or interim distributions shall be free and clear of all claims and encumbrances and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of either of the Companies and shall not be void or voidable by creditors of the Companies, nor shall any such interim distribution 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 any such interim distribution constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
11. The interim distribution or interim distributions authorized in paragraph 10 of this Order shall be without prejudice to any rights of subrogation or marshaling that any subordinate creditors may have to amounts received from the Transaction following the interim distribution or interim distributions to CIBC.

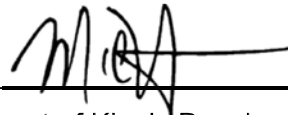
MISCELLANEOUS MATTERS

12. The Companies, the Proposal Trustee, and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

13. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories, or in any foreign jurisdiction including specifically, the United States of America, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order and other orders in the Consolidated Proceeding. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies or the Proposal Trustee, as an officer of this Court and Foreign Representative, as may be necessary or desirable to give effect to this Order and other orders in the Consolidated Proceeding, to grant representative status to the Proposal Trustee in any foreign proceeding of the Companies or either Company, or to assist the Companies and the Proposal Trustee and their agents in carrying out the terms of this Order and other orders in the Consolidated Proceeding.

SERVICE OF ORDER

14. Service of this Order shall be deemed good and sufficient:
- (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (ii) by posting a copy of this Order on the Proposal Trustee's website at:
<https://www.ksvadvisory.com/experience/case/nilex-inc>.
15. Service of this Order on any other person is hereby dispensed with.
16. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta



COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT ORDER (sale approval and vesting)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

I hereby certify this to be a true copy of the original Sale Approval & Vesting Order

Dated this 30th day of November 2022

for Clerk of the Court

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON the application of Nilex Inc. and Nilex USA Inc. (the "**Companies**") for an order, among other things: (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement dated November 18, 2022 (the "**APA**") between the Companies, as vendors, and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and appended as confidential appendix "3" (the "**Confidential Appendix**"), to the second report of KSV Restructuring Inc. in its capacity as proposal trustee ("**Proposal Trustee**"), dated November 21, 2022 (the "**Second Report**"); (ii) approving the transition services agreement attached to the APA as Exhibit "E"; and (iii) vesting in the Purchasers the Companies' right, title, and interest in and to the assets described in the APA (the "**Purchased Assets**") in accordance with the terms of the APA;

AND UPON HAVING READ the Application, the affidavit of Jeff Allen sworn on November 21, 2022 (the "**Second Allen Affidavit**"), the Second Report, the Confidential Appendix and other confidential appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON NOTING in the Second Report that, among other things, in the Proposal Trustee's view, the Sale Process was commercially reasonable, the value of the Transaction was the highest of any going concern offers received in the Sale Process and materially exceeds the liquidation value of the Companies' business, and that the Companies are acting in good faith and with due diligence;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, Canadian Imperial Bank of Commerce ("**CIBC**") and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITIONS

1. Capitalized terms not defined in this Order shall have the meanings attributed to them in the Second Allen Affidavit or the APA.

SERVICE

2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

3. The Transaction is hereby approved, and the execution of the APA and the TSA by the Companies is hereby authorized and approved, with such minor amendments as the Companies may deem necessary. The Companies are hereby authorized and directed to take such additional steps, perform, consummate, implement, execute and deliver such additional documents, including conveyance documents, bills of sale, assignments, transfers, deeds, indicia of title, tax elections, documents and instructions of whatsoever nature and kind as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchasers (or their nominee).

VESTING OF PROPERTY

4. Upon delivery of a Proposal Trustee's certificate to the Purchasers (or either of them, or their nominee), pursuant to the Canadian Closing or the US Closing (as defined in the APA), substantially in the form set out in Schedule "A" hereto (each respectively a "**Proposal Trustee's Certificate**"), all of the respective Company's right, title, and interest in and to the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, shall vest absolutely in the name of the applicable Purchaser (or its nominee), free and clear of and from any and all caveats, security interests (whether contractual, statutory, or otherwise), hypothecs, pledges, mortgages, liens, trusts or deemed trusts (whether contractual, statutory, or otherwise), reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, 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, (i) the Order of Justice J.S. Little of this Court in these proceedings dated November 8, 2022, and (ii) any other orders in these proceedings, in the event future orders modify or create additional charges;
- (ii) all charges, liens, security interests or claims, whether evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), the Uniform Commercial Code (United States) or any other personal property registry system, or otherwise; and
- (iii) those Claims listed in Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the encumbrances, caveats, interests, easements and restrictive covenants listed in Schedule "C" (collectively, "**Permitted Encumbrances**"))

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets that are the subject of the Canadian Closing or US Closing, as applicable, are hereby expunged, discharged, and terminated as against those Purchased Assets.

5. Upon delivery of a Proposal Trustee's Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby

authorized, requested and directed to accept delivery of such Proposal Trustee's Certificate and copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the applicable Purchaser or its nominee clear title to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, subject only to Permitted Encumbrances.

6. The aid and assistance of the officials of the public registries of any province or territory of Canada or the United States is requested to give effect to this Order; the Registrars of the Alberta Personal Property Registry, the British Columbia Personal Property Registry, the Saskatchewan Personal Property Registry, and the Ontario Personal Property Registry shall and are hereby directed to forthwith cancel and discharge any registrations at its respective Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Companies in any of the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, which are of a kind prescribed by applicable regulations as serial-numbered goods.
7. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and a Proposal Trustee's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
8. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Companies of the APA.
9. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Proposal Trustee) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of a Proposal Trustee's Certificate all Claims, including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, and may only be asserted against the net

proceeds from the sale of those Purchased Assets with the same priority as they had with respect to those Purchased Assets immediately prior to the sale, as if those 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.

CLOSING OF THE SALE TRANSACTION

10. Except as expressly provided for in the APA or by section 5 of the Alberta *Employment Standards Code*, the Purchasers (or their nominee, if any) shall not by completion of the Transaction, have any liability of any kind whatsoever in respect of any Claims against the Companies.
11. Upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), the applicable Company and all persons who claim by, through, or under it in respect of those Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of those Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to those Purchased Assets and, to the extent that any such persons or entities remain in possession or control of any of those Purchased Assets, or any certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to those Purchased Assets, they shall forthwith deliver possession thereof to the applicable Purchaser (or its nominee).
12. Upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), the applicable Purchaser (or its nominee) shall be entitled to enter into and upon, hold, and enjoy the applicable Purchased Assets for its own use and benefit without any interference of or by the Companies, or any person claiming by, through, or against the Companies.
13. Immediately upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), holders of Permitted Encumbrances shall have no claim whatsoever against the applicable Company or the Proposal Trustee.

14. The Proposal Trustee is directed to file with the Court a copy of each Proposal Trustee's Certificate, forthwith after delivery thereof to the applicable Purchaser (or its nominee).
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), section 20(e) of the *Personal Information Protection Act* (Alberta), and any other equivalent provision in any other provincial statute, the Companies are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Companies' records pertaining to the Companies' past and current employees, including personal information of those employees listed in the APA. The Purchasers (or their nominee) 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.

MISCELLANEOUS MATTERS

16. Notwithstanding:
 - (i) the pendency of these proceedings;
 - (ii) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA"), or the United States Bankruptcy Code, in respect of the Companies and any bankruptcy order issued pursuant to any such applications;
 - (iii) any assignment in bankruptcy made in respect of the Companies; and
 - (iv) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchasers (or their nominee) 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 settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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.

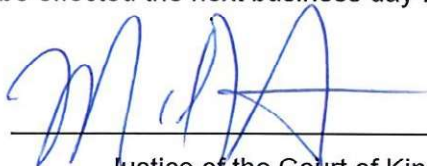
17. The Companies, the Proposal Trustee, the Purchasers (or their nominee), and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may

be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

18. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories or in any foreign jurisdiction including specifically, the United States of America, including the United States Bankruptcy Court, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, and to give effect to this Order and to assist the Companies 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 Companies as may be necessary or desirable to give effect to this Order or to assist the Companies and their agents in carrying out the terms of this Order.
19. Each of the Companies or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SERVICE OF ORDER

20. Service of this Order shall be deemed good and sufficient:
 - (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (ii) by posting a copy of this Order on the Proposal Trustee's website at:
<https://www.ksvadvisory.com/experience/case/nilex-inc>.
21. Service of this Order on any other person is hereby dispensed with.
22. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

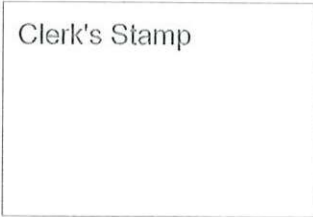


Justice of the Court of King's Bench of Alberta

Schedule "A"

Form of Proposal Trustee's Certificate

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. AND NILEX USA INC.

DOCUMENT PROPOSAL TRUSTEE'S CERTIFICATE

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 3810, 3500 Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5

Attention: Jane Dietrich / Danielle Maréchal
Telephone: 416-260-5223 / 403-351-2922
Facsimile: 403-648-1151
Email: jdietrich@cassels.com / dmarechal@cassels.com

RECITALS

- A. Pursuant to the filing of notices of intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) on October 27, 2022 by Nilex Inc. and on November 24, 2022 by Nilex USA Inc., KSV Restructuring Inc. consented to act as the Proposal Trustee.
- B. Pursuant to an Order of the Court dated November 28, 2022, the Court approved the Asset Purchase Agreement dated November 18, 2022 (the "**APA**"), between Nilex Inc. and Nilex USA Inc. (the "**Vendors**") and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and provided for the vesting in the Purchasers of the Vendors' right, title and interest in and to the Purchased Assets (the "**Transaction**"), which vesting is to be effective with respect to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, upon the delivery by the Proposal Trustee to the Purchasers of a certificate or certificates confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable; (ii) that the conditions to Canadian Closing or the US Closing, as applicable, as set

out in the APA have been satisfied or waived by the Vendors and the Purchasers; and (iii) the Applicable Transaction (as defined in the APA) has been completed to the satisfaction of the Vendors.

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Order (Sale Approval and Vesting).

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Proposal Trustee has received the **[Canadian / US]** Purchase Price for the Purchased Assets payable on the Closing Date **[for the Canadian Closing / US Closing]** pursuant to the APA;
2. The conditions to Closing **[for the Canadian Closing / US Closing]** as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Vendors and the Purchasers (or their nominee);
3. The Applicable Transaction (as defined in the APA) has been completed to the satisfaction of the Vendors and the Vendors have notified the Proposal Trustee of this in writing; and
4. This Certificate was delivered by the Proposal Trustee at **[City], [Province]** on _____ **[Date]**, 2022 at _____ **[a.m./p.m. Edmonton Time]**.

**KSV RESTRUCTURING INC., IN ITS CAPACITY
AS PROPOSAL TRUSTEE OF NILEX INC. AND
NILEX USA INC. AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: _____
Name:
Title:

Schedule "B"**Encumbrances to be Expunged and Discharged**

The Purchased Assets shall be conveyed to the applicable Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (each as defined in the APA), including without limitation the following:

Canadian Encumbrances to be Expunged and Discharged**Alberta**

Registration Number	Registration Date	Registering Party	Nature of Registration
10010720861	January 7, 2010	Element Fleet Management Inc.	Security Agreement
13042623420	April 26, 2010	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Land Charge
13042623460	April 26, 2010	PEF 2010 Nilex Investment Limited Partnership	Security Agreement
22060620459	June 6, 2022	Ian Wilson	Writ of Enforcement
22062937083	June 29, 2022	Leavitt Machinery Canada Inc.	Security Agreement
22071219384	July 12, 2022	Hugh Watt	Writ of Enforcement

British Columbia

Registration Number	Registration Date	Registering Party	Nature of Registration
314726H	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement
785579K	May 28, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Saskatchewan

Registration Number	Registration Date	Registering Party	Nature of Registration
301015975	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement
301770425	May 28, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Ontario

Registration Number	Registration Date	Registering Party	Nature of Registration
20130426 1704 1462 6168	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement

U.S. Encumbrances to be Expunged and DischargedColorado

Registration Number	Registration Date	Registering Party	Nature of Registration
20182049545	June 1, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Schedule "C"

Permitted Encumbrances

At the closing of the Transaction, the applicable Purchaser will be conveyed clear title to the applicable Purchased Assets subject to the Permitted Encumbrances as set forth in the APA in the definition of "Permitted Encumbrances".

COURT FILE NUMBER 24-2878531

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (sealing confidential appendices)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON THE APPLICATION by Nilex Inc. and Nilex USA Inc. (the "**Companies**"), for an order, among other things, sealing the confidential appendices (collectively, the "**Confidential Appendices**") to the second report of KSV Restructuring Inc. in its capacity as proposal trustee of Nilex Inc. (the "**Proposal Trustee**") dated November 21, 2022 (the "**Second Report**");

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn November 21, 2022, the Second Report, the Confidential Appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON HAVING BEEN ADVISED by counsel to the Companies that the applicable notice pursuant to Rule 6.32 of the *Alberta Rules of Court*, Alta Reg 124/2010 was given;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, CIBC and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITION

1. Capitalized terms not defined in this Order shall have the meanings attributed to them in the Second Allen Affidavit.

SEALING ORDER

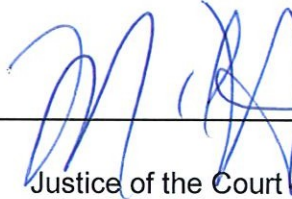
2. Notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, the Confidential Appendices shall, until the earlier of the termination of the TSA, or further Order of this Honourable Court, be sealed on the Court file and kept confidential to be shown only to a Justice of the Court of King's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Appendices in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 24-2878531. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE M.H. HOLLINS ON NOVEMBER 28, 2022.

3. The Companies and the Proposal Trustee are empowered and authorized, but not directed, to provide the Confidential Appendices (or any portion thereof, or information contained therein) to any interested party, entity or person that the Companies or Proposal Trustee considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Companies or the Proposal Trustee.
4. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying or varying the terms of this Order, with such application to be brought on five (5) days' notice to the Proposal Trustee

and the Companies and any other affected party in accordance with the *Alberta Rules of Court*, Alta Reg 124/2010 and this Order.

5. This Order must be served only upon those interested parties attending or represented at the within application and service may be affected by facsimile, electronic mail, personal delivery, or courier. Service is deemed to be affected the next business day following the transmission or delivery of such documents.
6. Service of this Order on any party not attending this application is hereby dispensed with.

A handwritten signature in blue ink, consisting of stylized initials 'M.A.' followed by a horizontal line extending to the right.

Justice of the Court of King's Bench of Alberta

NILEX INC.
and
NILEX USA INC.
and
TERRAFIX GEOSYNTHETICS INC.
and
HANES COMPANIES, INC.

ASSET PURCHASE AGREEMENT

November 18, 2022

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of the 18th day of November, 2022.

BETWEEN:

NILEX INC., AMALGAMATED UNDER THE LAWS OF THE PROVINCE OF ALBERTA
(**"Nilex Canada"**)

- and -

NILEX USA INC., INCORPORATED UNDER THE LAWS OF THE STATE OF COLORADO

(**"Nilex USA"**, and collectively with Nilex Canada, the **"Vendors"**)

- and -

TERRAFIX GEOSYNTHETICS INC., A CORPORATION FORMED UNDER THE LAWS OF THE PROVINCE OF ONTARIO

(the **"Canadian Purchaser"**)

-and-

HANES COMPANIES, INC., A CORPORATION FORMED UNDER THE LAWS OF THE STATE OF NORTH CAROLINA

(the **"US Purchaser"** and, together with the Canadian Purchaser, the **"Purchasers"**)

WHEREAS:

- A. The Vendors operate companies which distribute geosynthetic materials and civil environmental products and technologies and provide related services and support (the **"Business"**);
- B. On October 27, 2022, Nilex Canada commenced proceedings (the **"Nilex Canada Proposal Proceedings"**) under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the **"BIA"**) by filing a Notice of Intention to Make a Proposal under Division I of Part III of the BIA with the official receiver;
- C. Nilex USA intends to commence proceedings (the **"Nilex USA Proposal Proceedings"**) under Section 50.4(1) of the BIA by filing a Notice of Intention to Make a Proposal under Division I of Part III of the BIA with the official receiver;
- D. KSV Restructuring Inc. has consented to act as proposal trustee (the **"Proposal Trustee"**) of the Vendors in the Nilex Canada Proposal Proceedings and the Nilex USA Proposal Proceedings (collectively, the **"Proposal Proceedings"**) and as the foreign representative for the Vendors in the Chapter 15 Proceedings;

- E. On November 25, 2022, the Vendors intend to seek authorization from the Court: (i) for the procedural consolidation of the Proposal Proceedings; and (ii) for the Vendors or the Proposal Trustee to apply for recognition of the Proposal Proceedings, including, without limitation, to apply for an order under Chapter 15 of the United States Bankruptcy Code (the "**US Bankruptcy Code**"), including an order for recognition of the Proposal Proceedings as "foreign main" proceedings in the United States of America ("**Chapter 15 Relief**") in respect of which the Vendors or the Proposal Trustee shall be the foreign representative of the Vendors;
- F. The Vendors intend to seek the Chapter 15 Relief (the "**Chapter 15 Proceedings**") in the United States Bankruptcy Court: District of Colorado ("**US Court**") under the US Bankruptcy Code, including recognition of the Proposal Proceedings and recognition of the Sale Approval and Vesting Order in the US Court in respect Nilex USA, promptly following the application before the Court on November 25, 2022; and
- G. The Purchasers, subject to Court Approval, have agreed to purchase and acquire, and the Vendors have agreed to sell, transfer and assign to the Purchasers, all of the right, title and interest of the Vendors to the Purchased Assets and Assumed Liabilities, on the terms and conditions set forth herein.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party to the other, the Parties agree as follows.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following words and terms shall have the meaning set forth below:

- (a) "**Accounts Receivable**" means, with respect to the Vendors and without duplication, all accounts receivable, trade receivables, bills receivable, trade accounts, book debts, notes receivables, rebates, refunds (excluding tax refunds), customer credits and overpayments and other receivables of the Vendors, including as more particularly listed and described in Schedule 1.1(a), whether current or overdue, together with all interests accrued on such items, other than those Accounts Receivable identified in Schedule 1.1(a) as Excluded Accounts Receivable;
- (b) "**Accrued Vacations**" means the total amount of all accumulated and unpaid vacation in respect of Transferred Employees at the Closing Date, including banked days and sick days;
- (c) "**Affiliate**" means, with respect to any Person, any other Person or group of Persons acting in concert, directly or indirectly, that controls, is controlled by or is under common control with such Person and the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through ownership of more than fifty percent (50%) of the voting securities of such Person, through being the general partner or trustee of the other Person, or through contract or otherwise;

- (d) **"Agreement"** means this asset purchase agreement and all Schedules and Exhibits attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof;
- (e) **"Allocation Statement"** has the meaning ascribed to that term in Section 3.4;
- (f) **"Applicable Law"** means, in respect of any Person, assets, transaction, event or circumstance:
 - (i) statutes (including regulations or rules enacted thereunder);
 - (ii) judgments, decrees and orders of courts of competent jurisdiction;
 - (iii) regulations, orders, ordinances and directives issued by Governmental Authorities; and
 - (iv) the terms and conditions of all Permits, licenses, approvals and authorizations, which are applicable to such Person, asset, transaction, event or circumstance;
- (g) **"Applicable Privacy Law"** means all Applicable Law relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including the *Personal Information Protection and Electronic Documents Act* (Canada), and/or any comparable provincial law such as the *Personal Information Protection Act* (Alberta);
- (h) **"Applicable Transaction"** has the meaning ascribed to that term in Section 7.1;
- (i) **"ASPE"** means the Accounting Standards for Private Enterprises generally accepted in Canada from time to time and approved by the Chartered Professional Accountants of Canada as at the date on which such principles are to be applied or on which any calculation or determination is required to be made in accordance with generally accepted accounting principles;
- (j) **"Assignment and Assumption Agreement"** means an assignment and assumption agreement, substantially in the form attached hereto as Exhibit C evidencing the assignment to the applicable Purchaser of the applicable Vendor's interest in, to and under the Assumed Contracts and the assumption by the applicable Purchaser of all the Assumed Liabilities under or in respect of the Assumed Contracts;
- (k) **"Assignment Order"** means an order of the Court issued under the BIA, in form and substance satisfactory to the Parties, acting reasonably, assigning the applicable Vendor's right, benefit and interest in and to the Assumed Contracts to the applicable Purchaser, which order may form part of the Assignment Order;
- (l) **"Assumed Contracts"** means all Contracts and other legally binding commitments or arrangements of the Vendors which are listed and described in 1.1(l) (but excluding any Unassignable Contracts);
- (m) **"Assumed Liabilities"** has the meaning ascribed to that term in Section 2.3(a);

- (n) **"Base Price"** has the meaning ascribed to that term in Section 3.1(a);
- (o) **"BIA"** has the meaning ascribed to that term in Recital B;
- (p) **"Books and Records"** means all of the Vendors' books and records in its possession at the Closing Date relating to the Purchased Assets, including all technical and Business records, all contracts, licenses, approvals, warranties, manuals, accounting records, copies of insurance policies (excluding copies of insurance policies relating to directors' and officers' insurance), maintenance and usage logs related to the Purchased Assets, all programs and procedures of the Vendors related to their maintenance, usage, or operations and all Data Room Information related to the ownership, operation or conduct of the Purchased Assets and the Business whether in hard copy or electronic format;
- (q) **"Business"** has the meaning ascribed to that term in Recital A;
- (r) **"Business Day"** means a day other than a Saturday, Sunday or any other day on which the principal chartered banks located in Calgary, Alberta are not open for the transaction of domestic business during normal banking hours;
- (s) **"Canadian Closing"** means the completion, on the applicable Closing Date, of the purchase by the Canadian Purchaser and sale by Nilex Canada of all right, title, estate and interest of Nilex Canada in and to the applicable Purchased Assets and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such sale, all subject to and in accordance with the terms and conditions of this Agreement;
- (t) **"Canadian Purchase Price"** has the meaning ascribed to that term in Section 3.1;
- (u) **"Claim"** means any right or claim of any Person that may be asserted or made, in whole or in part, against any Vendor and its directors, officers, employees, agents or advisors, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, including any right of offset, setoff or recoupment and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA or under the US Bankruptcy Code had the applicable Vendor become bankrupt;
- (v) **"Closing"** means the Canadian Closing and the US Closing, as applicable;

- (w) **"Closing Date"** means:
 - (i) in respect of the Canadian Closing, the date that is the later of: (i) three (3) Business Days following the later of the receipt by Nilex Canada of the Sale Approval and Vesting Order; and (ii) such other Business Day as the Parties may agree in writing; and
 - (ii) in respect of the US Closing, the date that is the later of: (i) three (3) Business Days following the later of the receipt by Nilex USA of the Vesting Recognition Order; and (ii) such other Business Day as the Parties may agree in writing;
- (x) **"Closing Payment"** has the meaning ascribed to that term in Section 3.3(b);
- (y) **"Closing Time"** means 10:00 a.m. (prevailing Calgary, Alberta time) on the Closing Date or such other date and time as the Parties may agree in writing that the Closing shall take place;
- (z) **"Consequential Damages"** has the meaning ascribed to that term in Section 11.5;
- (aa) **"Contracts"** means all contracts, agreements, leases, understandings and arrangements (whether oral or written) related to the Business to which a Vendor or an Affiliate of a Vendor are a party or by which a Vendor or an Affiliate or any of the Purchased Assets is bound or under which a Vendor or an Affiliate have rights;
- (bb) **"Court"** means the Court of King's Bench of Alberta, Judicial District of Edmonton;
- (cc) **"Court Approval"** means, in respect of each Closing, the approval of the Transaction by the Court or the US Court, as applicable;
- (dd) **"Cure Costs"** means all amounts, costs and expenses required to be paid to remedy all of the Vendors' monetary defaults in relation to the Assumed Contracts;
- (ee) **"Data Room Information"** means all information made available by the Vendors for the Purchasers' review in electronic form in an online data room in relation to the Vendors and/or the Purchased Assets;
- (ff) **"De Minimis Threshold"** has the meaning ascribed to that term in Section 4.2(c);
- (gg) **"Delivery Location"** has the meaning ascribed to that term in Section 6.4(a);
- (hh) **"Deposit"** has the meaning ascribed to that term in Section 3.2(a);
- (ii) **"Effective Time"** means 12:01 a.m. (prevailing Calgary, Alberta time) on the applicable Closing Date;
- (jj) **"Employees"** means all individuals employed by a Vendor as at the Effective Time who provide their services mainly in relation to the Business;
- (kk) **"Encumbrances"** means any liens, security interests, encumbrances, claims, charges, hypothecations, pledges, trusts or deemed trusts (whether contractual, statutory or otherwise), assignments, judgments, executions, writs of seizure or

execution, notices of sale, levies, mortgages, adverse Claims, restrictions on transfers of title, reservations of title, options, rights of first refusal or other preemptive interests or rights (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that either Purchaser is a successor, mere continuation, merger, consolidation, de facto merger, or continuation of either Vendor's Business, and (iv) any leasehold interest, license or other right, in favor of a Third Party or a Vendor, to use any portion of the Purchased Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown) whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise;

- (ll) **"Environment"** means the components of the earth and includes ambient air, land, surface and sub-surface strata, groundwater, surface water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems that include such components; and **"Environmental"** means relating to or in respect of the Environment;
- (mm) **"Equipment"** means, collectively, all of the equipment, motor vehicles, rolling stock, implements, tools, furniture and other similar tangible personal property of the Vendors and the Leased Equipment, including as more particularly listed and described in Part I of Schedule 1.1(mm);
- (nn) **"Excluded Accounts Receivable"** means those Accounts Receivable identified in Schedule 1.1(a) as Excluded Accounts Receivable;
- (oo) **"Excluded Assets"** means:
 - (i) all shares of capital stock or other equity interests of the Vendors;
 - (ii) all policies of insurance or assurance (including directors' and officers' insurance and claims against insurance and insurance settlements), except for the right to receive the proceeds of insurance in respect of Purchased Assets and all books and records related thereto which shall not constitute Excluded Assets;
 - (iii) the Purchase Price;
 - (iv) all rights to receive a refund of and/or credit in respect of, Taxes paid by or on behalf of a Vendor;
 - (v) the general ledger, financial statements, accounting and Tax records, minute books, corporate seal, taxpayer and other identification numbers and other corporate records of the Vendors relating to the organization, maintenance and existence of the Vendors; however, the Purchasers shall be provided with copies of all such documents that pertain to the Business;

- (vi) any Books and Records that a Vendor is required by Applicable Law to retain in its possession, provided however, the Purchasers shall be provided with copies of all such Books and Records that pertain to the Business;
 - (vii) any cash collateral securing letters of credit;
 - (viii) all cash, cash equivalents, deposits and bank accounts;
 - (ix) the Excluded Contracts, if any;
 - (x) the excluded assets and excluded Inventory, if any, as set forth in and described Schedule 1.1(o);
 - (xi) all agreements, Contracts, documents or data to the extent that they are owned or licensed by a Third Party with prohibitions in respect of the deliverability or disclosure by a Vendor to an assignee, transferee or purchaser;
 - (xii) the rights of the Vendors under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement; and
 - (xiii) such other assets as the Purchasers may exclude pursuant to Section 2.2(b);
- (pp) **"Excluded Contracts"** means all Contracts which are not Assumed Contracts and all Unassignable Contracts for which a Vendor concludes, acting reasonably, that any such Unassignable Contracts cannot be assigned under any circumstances and provides written notice of such Unassignable Contracts to the applicable Purchaser pursuant to Section 2.4(a);
- (qq) **"Excluded Liabilities"** has the meaning ascribed to that term in Section 2.3(b);
- (rr) **"Final Order"** means an order of the Court or the US Court, as applicable, that has not been vacated, stayed, set aside, amended, reversed, annulled or modified, as to which no appeal or application for leave to appeal therefrom has been filed and the applicable appeal period with respect thereto shall have expired without the filing of any appeal or application for leave to appeal, or if any appeal(s) or application(s) for leave to appeal therefrom have been filed, any (and such appeal(s) or application(s) have been dismissed, quashed, determined, withdrawn or disposed of with no further right of appeal) and all opportunities for rehearing, reargument, petition for certiorari and appeal being exhausted or having expired without any appeal, motion or petition having been filed and remaining pending, any requests for rehearing have been denied, and no order having been entered and remaining pending staying, enjoining, setting aside, annulling, reversing, remanding, or superseding the same, and all conditions to effectiveness prescribed therein or otherwise by Applicable Law or order having been satisfied;
- (ss) **"Final Statement of Adjustments"** has the meaning ascribed to that term in Section 4.3(b);

- (tt) **"General Conveyance"** means a bill of sale and general conveyance, substantially in the form attached hereto as Exhibit D, evidencing the conveyance to the applicable Purchaser of the applicable Vendor's right, title and interest in and to the Purchased Assets and the assumption by the applicable Purchaser of the Assumed Liabilities;
- (uu) **"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board, court (including the Court or the US Court, as applicable) or other agency exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government, having jurisdiction over a Party, the Purchased Assets or the Transaction;
- (vv) **"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority;
- (ww) **"GST/HST"** means the goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) and the regulations thereto, as amended from time to time; and **"GST/HST Legislation"** means such act and regulations collectively;
- (xx) **"Income Tax Act"** means, collectively, the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement), the *Income Tax Application Rules*, R.S.C. 1985, c.2 (5th Supplement) and the *Income Tax Regulations*, C.R.C., c. 945, in each case as amended to the date hereof;
- (yy) **"Intellectual Property"** means the Intellectual Property Rights of the Vendors or the Business existing as of the Closing Date, whether or not registrable, 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 such, inventions, works, designs, know-how, safety and operational statistics and audits; together with the intellectual property (including the trademarks and all goodwill arising from the use thereof) as more particularly listed and described in Schedule 1.1(yy));
- (zz) **"Intellectual Property Rights"** means any right or protection existing from time to time in a specific jurisdiction, whether registered or not, under any patent law or other invention or discovery law, copyright law, industrial designs, performance or moral rights law, trade-secret law, confidential information law, plant breeders law, integrated circuit topography law, semi-conductor chip protection law or other similar laws and includes legislation by competent Governmental Authorities and judicial decisions under common law or equity;
- (aaa) **"Interim Statement of Adjustments"** has the meaning ascribed to that term in Section 4.3(a);
- (bbb) **"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended;
- (ccc) **"Inventory"** means all tangible personal property, substances and consumable goods of any kind or nature (other than the Equipment) owned by the Vendors

including all materials, supplies, tooling, spare parts, service parts, pipes, tubing and accessories (including those in possession of suppliers, customers and other Third Parties) including all such items listed and described in Schedule 1.1(ccc);

- (ddd) **"Knowledge of the Company"** or any other similar knowledge qualification relating to the Vendors' awareness, means the actual knowledge of Trevor Derksen and Jeff Allen;
- (eee) **"Leased Equipment"** means the Vendors' interest, to the extent it is assignable, in all equipment, motor vehicles, rolling stock, implements, tools, furniture and other similar tangible personal property which is leased by the Vendors from a Third Party or a Purchaser including as more particularly listed and described in Schedule 1.1(ddd);
- (fff) **"Legal Proceeding"** means any litigation, action, suit, investigation, hearing, claim, complaint, grievance, enforcement action, garnishment steps, arbitration proceeding or other proceeding and includes any appeal or review or retrial of any of the foregoing and any application for same;
- (ggg) **"Losses and Liabilities"** means any and all assessments, charges, costs, damages, debts, expenses, fines, liabilities, losses, obligations and penalties, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Applicable Law, Claim by any Governmental Authority or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking and costs and expenses of any Legal Proceeding, assessment, judgment, settlement or compromise relating thereto, and all interest, fines and penalties and reasonable legal fees and expenses incurred in connection therewith (on a full indemnity basis), but does not include any Taxes under any Tax Laws in the United States arising in relation to all periods before the Effective Time;
- (hhh) **"Outside Date"** has the meaning ascribed to that term in Section 10.1(f);
- (iii) **"Parties"** means, collectively, the Purchasers and the Vendors, and **"Party"** means any one of them;
- (jjj) **"Permits"** means all franchises, licences, qualifications, authorizations, consents, certificates, certificates of authorization, decrees, orders-in-council, registrations, exemptions, consents, variances, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits and other approvals, obtained from, issued by or required by a Governmental Authority, including the permits as more particularly listed and described in Schedule 1.1(jjj);
- (kkk) **"Permitted Encumbrances"** means:
 - (i) Encumbrances given as security to a public utility or any Governmental Authority when required in the ordinary course of business but only insofar as they relate to any obligations or amounts not due as at the Closing Date;
 - (ii) applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing agreements, cost sharing

- reciprocal agreements and building and zoning restrictions and other similar agreements which do not materially impair the use of the Real Property (based on the current use of such affected property) affected thereby;
- (iii) any easements, servitudes, rights-of-way, licenses, agreements, restrictions that run with the land and other Encumbrances (including easements, rights-of-way and agreements for railways, sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables) which do not materially impair the use, operation or marketability of the Real Property (based on the current use of such affected property) affected thereby;
 - (iv) any privilege in favour of any lessor or licensor for rent to become due or for other obligations or acts, the performance of which is required under Contracts of the Vendors (including in respect of the Leased Equipment) so long as the payment or the performance of such other obligation or act is not delinquent and provided that such Encumbrances or privileges do not materially affect the use or the operation of the assets affected thereby;
 - (v) rights reserved to or vested in any Governmental Authority to control or regulate any of the Purchased Assets in any manner;
 - (vi) any Encumbrances permitted by a Final Order, before the applicable Closing; and
 - (vii) any Encumbrances under Applicable Law for Taxes that are not yet due or are not in arrears as of the Closing Date.
- (III) **"Person"** means any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executor, Governmental Authority or other entity however designated or instituted;
- (mmm) **"Personal Information"** means information about an identifiable natural Person, but does not include the business contact information when such information is used to contact such natural Person as a Representative of a business or the name, title, business address or telephone number of an employee of the Vendors, that is to be disclosed to the Purchasers at Closing or that was disclosed to the Purchasers to permit the Purchasers to carry out their due diligence in connection with the Transaction;
- (nnn) **"Prepaid Expenses"** means all prepaid expenses, deposits or insurance of the Vendors (but excluding prepaid expenses in respect of directors' and officers' insurance, property Taxes related to the Business and workers' compensation prepayments), in all cases to the extent such amounts are transferable to the applicable Purchaser including as more particularly listed and described in Schedule 1.1(nnn);
- (ooo) **"Prime Rate"** means the rate of interest, expressed as a rate per annum, designated by the main branch in Calgary, Alberta of the Canadian Imperial Bank of Commerce as the reference rate used by it to determine rates of interest charged

by it on Canadian dollar commercial loans made in Canada and which is announced by such bank, from time to time, as its prime rate, provided that whenever such bank announces a change in such reference rate then the "Prime Rate" for the purposes of this Agreement shall correspondingly change effective on the date the change in such reference rate is effective;

(ppp) "**Procedural Consolidation Order**" shall mean an order of the Court procedurally consolidating the Proposal Proceedings, if necessary;

(qqq) "**Proposal Proceedings**" has the meaning ascribed to that term in Recital D;

(rrr) "**Proposal Trustee**" has the meaning ascribed to that term in Recital D;

(sss) "**Purchase Price**" has the meaning ascribed to that term in Section 3.1;

(ttt) "**Purchased Assets**" means all of the tangible and intangible assets, undertaking and properties of the Vendors that relate to the Business, other than the Excluded Assets, wherever located, as more particularly described below:

(i) Accounts Receivable or collection rights for Accounts Receivable;

(ii) Assumed Contracts;

(iii) Books and Records (except, in the case of those required by Applicable provision in Law to be retained by the Vendors as copies thereof), in the case of any Books and Records that are stored in electronic form, the media on which the Books and Records are stored and any back-up related thereto;

(iv) Equipment (subject to the terms and conditions of the Contracts in respect of the Leased Equipment);

(v) Inventory;

(vi) Intellectual Property;

(vii) Permits, other than Permits which are not transferrable to the Purchasers (as specified on Schedule 1.1(jjj));

(viii) Prepaid Expenses;

(ix) all goodwill, together with the exclusive right of the applicable Purchaser to represent itself as carrying on the Business in succession to the Vendors; and

(x) all rights to related Claims for refunds and rights of set-off;

For certainty, the Excluded Assets are not part of the Transaction, are excluded from Purchased Assets and remain the exclusive property of the Vendors;

(uuu) "**Real Property**" means all real property leases and/or freehold real property (including all buildings, fixtures and improvements located thereon), as applicable,

owned or leased by the Vendors, including the real property or leases as more particularly listed and described in Schedule 1.1(uuu);

- (vvv) **"Recognition Order"** means a Final Order of the US Court recognizing the Nilex US Proposal Proceedings in the United States of America under Chapter 15 of the US Bankruptcy Code and related relief;
- (www) **"Representative"** means, in respect of a Person, each director, officer, employee, agent, legal counsel, accountant, professional advisor and other representative of such Person and its Affiliates, and with respect to the Vendors, includes the directors, officers, employees, agents, legal counsel, accountants, professional advisors and other representatives;
- (xxx) **"Sale Approval and Vesting Order"** shall mean an order of the Court: (i) approving the Transaction contemplated by this Agreement; (ii) authorizing the applicable Vendor to perform this Agreement; and (iii) vesting and assigning all right, title and interest of the applicable Vendor in and to the Purchased Assets to the applicable Purchaser free and clear of all Claims, Encumbrances (other than Permitted Encumbrances), and Excluded Liabilities and assigning all right, title and interest of the applicable Vendor in the Purchased Assets to the applicable Purchaser, in a form acceptable to the applicable Vendor and the applicable Purchaser;
- (yyy) **"Slow-Moving and Obsolete Inventory"** means the Inventory identified by SKU (stock keeping unit) as listed in Schedule 1.1(ccc) the net book value of which shall be determined using the methodology described in Schedule 1.1(ccc);
- (zzz) **"Specific Conveyances"** means all conveyances, bills of sale, assignments, transfers, and other documents or instruments that are reasonably required or desirable to convey, assign and transfer the applicable Vendor's interest in and to the Purchased Assets to the applicable Purchaser including:
- (i) a bill of sale for the Equipment forming part of the Purchased Assets, if required;
 - (ii) assignments of each of the Assumed Contracts; and
 - (iii) assignments in registrable form of all licenses, trademarks and trade names (whether or not registered), patents, copyrights, and other such forms of Intellectual Property, including all goodwill associated with same, which form part of the Purchased Assets;
- (aaaa) **"Tax"** or **"Taxes"** means, with respect to any Person, all supranational, national, federal, provincial, state, municipal, county, 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 including provincial sales taxes and retail sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, Environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers' compensation premiums,

employment insurance or compensation premiums, 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, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties;

(bbbb) "**Tax Legislation**" means, collectively, the Income Tax Act, Internal Revenue Code, all Canadian and United States federal, provincial, state, territorial, county, municipal and local, foreign, or other statutes, ordinances or regulations imposing a Tax, including all treaties, conventions, rules, regulations, orders, and decrees of any jurisdiction;

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

(dddd) "**Third Party**" means any Person who is not a Party, Affiliate or Representative;

(eeee) "**Third Party Claim**" means any Claim by a Third Party asserted against a Vendor for which a Purchaser has indemnified a Vendor or is otherwise responsible for pursuant to this Agreement;

(ffff) "**Transaction**" means the transaction for the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities as contemplated in this Agreement;

(gggg) "**Transaction Personal Information**" means any Personal Information in the possession, custody or control of the Vendors including Personal Information about employees, suppliers, customers, directors, officers or shareholders of the Vendors that is:

(i) disclosed to a Purchaser or its Representatives before the Effective Time by the Vendors, its Representatives, or otherwise; or

(ii) collected by a Purchaser or its Representatives before the Effective Time from the Vendors, its Representatives, or otherwise;

in each case in connection with the Transaction;

(hhhh) "**Transfer Taxes**" means all present and future transfer taxes, sales taxes including provincial sales taxes and retail sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including GST/HST;

(iiii) "**Transferred Employees**" has the meaning ascribed to that term in Section 6.6(d);

- (jjjj) **"Transition Services Agreement"** means a transition services agreement, substantially in the form attached hereto as Exhibit E;
- (kkkk) **"Unassignable Contracts"** has the meaning ascribed to that term in Section 2.4(a);
- (llll) **"US Closing"** means the completion, on the applicable Closing Date, of the purchase by the US Purchaser and sale by Nilex USA of all right, title, estate and interest of Nilex USA in and to the applicable Purchased Assets and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such sale, all subject to and in accordance with the terms and conditions of this Agreement;
- (mmmm) **"US Court"** has the meaning ascribed to that term in Recital F;
- (nnnn) **"US GAAP"** means the generally accepted accounting principles from time to time approved by the American Institute of Certified Public Accountants, or any successor entity thereto, applicable as at the date on which such principles are to be applied or on which any calculation or determination is required to be made in accordance with generally accepted accounting principles;
- (oooo) **"US Purchase Price"** has the meaning ascribed to that term in Section 3.1;
- (pppp) **"Vendors' Solicitors"** means the law firm of Blake, Cassels & Graydon LLP (or any successor thereto), or such other firm of solicitors as are appointed by the Vendors from time to time and notice of which is provided to the Purchasers;
- (qqqq) **"Vesting Recognition Order"** means a Final Order issued by the US Court that is properly served and noticed to all parties required to be served pursuant to Applicable Law, including, but not limited to all creditors of the Vendors, any party asserting a Third Party Claim, all counter-parties to Assumed Contracts, all taxing authorities of the Vendors, all required Governmental Authorities, and all parties claiming any known Encumbrances on Vendors or their property, with such service documented to the reasonable satisfaction of Purchasers, (i) recognizing and giving full effect to the Order in the Chapter 15 Proceedings; (ii) authorizing the sale of the Purchased Assets to Purchasers, including assumption and assignment of the Assumed Contracts; (iii) vesting in and to the Purchasers, title in the applicable Purchased Assets, including the Assumed Contracts free and clear of and from any and all Claims, Encumbrances (other than Permitted Encumbrances), and Excluded Liabilities, pursuant to 11 U.S.C. §§ 363(f) ,and 365(a) and that all persons holding any Claims or Encumbrances (other than Permitted Encumbrances) are permanently enjoined from asserting against Purchasers, the Purchased Assets and the Assumed Contracts such Claims and Encumbrances; (iv) contains finding of good faith and non-collusion of the Purchasers pursuant to 11 U.S.C. §§ 363(m) and (n) and that such order be immediately effective upon approval; (v) finding that such purchase is not a fraudulent transfer or bulk sale and the Purchase Price is fair and reasonably equivalent value for the Purchased Assets; (vi) that such sale is binding on Third Parties, including any Governmental Authorities, subject to its terms, and (vii) nothing contained in any subsequent plan confirmed by or order by the US Court shall conflict with or derogate from the terms of this Agreement or the Vesting

Recognition Order, which order shall be in form and substance satisfactory to Purchasers, acting reasonably; and

- (rrrr) **“Wages”** means all salaries, wages, commissions, bonuses, incentive compensation, allowances, indemnities, expenses, vacation pay, statutory holiday pay, personal days, sick days, employee benefit plan payments, employment-related payments and other remuneration as well as all employer contributions related thereto owing to Employees up to the Closing Date and all federal and provincial Taxes and withholdings in respect thereof.

1.2 Interpretation

The following rules of construction shall apply to this Agreement unless the context otherwise requires:

- (a) All references to monetary amounts, unless indicated to the contrary, are (i) in respect of the Canadian Closing, to the lawful currency of Canada and (ii) in respect of the US Closing, to the lawful currency of the United States of America, unless otherwise determined by the Purchasers, and all references to cash are references to any form of immediately available funds by way of wire transfer, certified cheque or bank draft.
- (b) Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.
- (c) The word “include” and derivatives thereof shall be read as if followed by the phrase “without limitation”.
- (d) The words “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Agreement and not to any particular provision of this Agreement.
- (e) The headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof.
- (f) Reference to any Article, Section, Schedule, or Exhibit means an article, section, schedule, or exhibit of this Agreement unless otherwise specified.
- (g) If any provision of a Schedule or Exhibit hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict.
- (h) All documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict.
- (i) This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party does not apply to the construction or interpretation of this Agreement.

1.3 Schedules

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

Schedule 1.1(a)	Accounts Receivable
Schedule 1.1(l)	Assumed Contracts
Schedule 1.1(gg)	Delivery Location
Schedule 1.1(mm)	Equipment
Schedule 1.1(oo)	Excluded Assets
Schedule 1.1(yy)	Intellectual Property
Schedule 1.1(ccc)	Inventory
Schedule 1.1(eee)	Leased Equipment
Schedule 1.1(jjj)	Permits
Schedule 1.1(nnn)	Prepaid Expenses
Schedule 1.1(uuu)	Real Property
Schedule 2.3	Assumed Liabilities
Schedule 3.1(a)	Closing Statement
Schedule 6.6	Employees
Exhibit A	Form of Vendor's Officer's Certificate
Exhibit B	Form of Purchaser's Officer's Certificate
Exhibit C	Form of Assignment and Assumption Agreement
Exhibit D	Form of Bill of Sale and General Conveyance
Exhibit E	Form of Transition Services Agreement

1.4 Interpretation if Closing does not Occur

Subject to Section 10.2, if a Closing does not occur, each provision of this Agreement which presumes that the applicable Purchaser has acquired the Purchased Assets shall be construed as having been contingent upon Closing having occurred.

ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS

2.1 Agreement of Purchase and Sale

Subject to the terms and conditions of this Agreement, the Sale Approval and Vesting Order, the Assignment Order and the Vesting Recognition Order, as applicable, each Vendor hereby agrees to sell, assign and transfer to the applicable Purchaser, and the applicable Purchaser agrees to purchase, accept and receive from the applicable Vendor, all of such Vendor's right, title and interest in and to Purchased Assets as herein provided, in each case free and clear of all Encumbrances, Claims (other than Permitted Encumbrances) and Excluded Liabilities and to assume, discharge and perform the Assumed Liabilities.

2.2 Transfer of Purchased Assets

- (a) Provided that applicable Closing occurs and subject to the terms and conditions of this Agreement, possession, risk and beneficial ownership of the applicable Purchased Assets and Business shall transfer from the applicable Vendor to the applicable Purchaser at the Effective Time.
- (b) Notwithstanding anything else contained in this Agreement, the Purchasers shall have the right, prior to the Closing Date and by notice to the Vendors to remove any asset or assets from the Purchased Assets without reducing the Purchase Price.

2.3 Liabilities

- (a) Subject to the terms and conditions of this Agreement, the applicable Purchaser shall assume, pay, satisfy, discharge, perform and fulfil, from and after the Effective Time those obligations and Losses and Liabilities of the applicable Vendor which:
 - (i) arise under the Assumed Contracts, Intellectual Property and Leased Equipment, but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by such Vendor on or prior to the Closing;
 - (ii) arise under the Permits;
 - (iii) relate to the Employees as set forth in Section 6.6 (but subject in all cases to Section 2.3(b)(ii)); or
 - (iv) are listed in Schedule 2.3,

(collectively, the "**Assumed Liabilities**")

- (b) Other than the Assumed Liabilities, the Purchasers shall not assume or have any obligation to discharge, perform or fulfill any obligation or liability of the Vendors of any kind whatsoever (collectively, the "**Excluded Liabilities**") and all Excluded Liabilities remain the obligation and responsibility of the Vendors, including the obligations and Losses and Liabilities of the Vendors:
 - (i) owing to a lender or creditor of the Vendors, including any bank overdrafts or bank indebtedness and any indebtedness or liabilities other than the Assumed Liabilities owing under any promissory note, or contract for the borrowing of money;
 - (ii) relating to the Employees, including:
 - (A) unpaid Wages and Accrued Vacations;
 - (B) all payments, bonuses, disbursements, damages, fees, incentive compensation, accelerated benefits, retention payments or change-of-control payments payable to any of the Employees as a result of the consummation of the transactions contemplated hereby; and
 - (C) all liabilities to any Employees who are not Transferred Employees, including the severance cost as a result of their termination by the Vendors,

except as set forth in Section 6.6;
 - (iii) relating to an Excluded Asset;
 - (iv) all Cure Costs; and
 - (v) and Claims in relation to injury or damages that any Employee has against either of the Vendors for the time period prior to the Closing Date.

2.4 Assignment of Assumed Contracts and Third Party Consents

- (a) Other than as set out in Section 2.4(d), the applicable Vendor shall be deemed to have assigned the benefit of each Assumed Contract on the applicable Closing Date and the applicable Purchaser shall be deemed to have assumed, on the applicable Closing Date, all of such Vendor's obligations and liabilities relating to such contract arising and accruing in respect of the period commencing after the Closing Time.
- (b) To the extent that any Assumed Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the applicable Closing Date, (i) the applicable Vendor's rights, benefits and interests in, to and under the Assumed Contract may be conveyed to the applicable Purchaser pursuant to an order of the Court or the US Court, as applicable, including the Assignment Order or Sale Approval and Vesting Order, as applicable, (ii) the applicable Vendor will use commercially reasonable efforts to compel

assignment of such Assumed Contract by way of an order of the Court or the US Court, as applicable, including, the Assignment Order or Sale Approval and Vesting Order, and (iii) if an order including, as applicable, the Assignment Order or Sale Approval and Vesting Order are obtained in respect of such Assumed Contract, the applicable Purchaser shall accept the assignment of such Assumed Contract on such terms.

- (c) To the extent that any Cure Costs are payable with respect to any Assumed Contract, the applicable Purchaser shall pay such amount directly to the applicable counterparty and the Purchase Price shall be adjusted pursuant to Section 4.1(a)(vi).
- (d) To the extent that the Court Approval or Applicable Law does not permit the assignment to the applicable Purchaser of any Assumed Contract or the Vendors otherwise, for whatever reason, cannot assign any Assumed Contract without the consent of the other parties thereto and such consent has not yet been obtained as of the Closing Date (any such Assumed Contracts, collectively, the **"Unassignable Contracts"**), unless the Vendors conclude, acting reasonably, that any Unassignable Contracts cannot be assigned under any circumstances and provides written notice of such Unassignable Contracts to the applicable Purchaser, then:
 - (i) each of the Parties shall use reasonable commercial efforts to obtain, as may be required by the terms of such Assumed Contracts, consents or approvals to the assignment of such Assumed Contracts; provided that the Vendors shall not be required to pay any amount or fee whatsoever, including any costs or expenses in connection with its efforts to obtain such consent or approval, which shall be for the sole account of the applicable Purchaser, and for greater certainty, the applicable Purchaser shall be responsible for and shall pay all costs or expenses, which shall be paid either directly to the applicable counterparty or to the Vendors at or prior to Closing, which costs or expenses shall be in addition to the Purchase Price received by the Vendors for the Purchased Assets; and provided that the applicable Purchaser is under no obligation to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any Third Party in order to obtain any consents, authorizations or approvals in connection with the Assumed Contracts, other than as the applicable Purchaser determines in its sole discretion;
 - (ii) pending the effective transfer or assignment of the relevant Unassignable Contracts, the Vendors shall hold the rights, entitlements, benefits, remedies, duties and obligations under such Unassignable Contracts in trust for the exclusive benefit of the applicable Purchaser as bare trustee and agent, provided that the applicable Purchaser will pay, perform and discharge all duties and obligations of the Vendors and the applicable Purchaser shall have all rights, entitlements, benefits, remedies, arising or accruing with respect to such Unassignable Contracts during that period;
 - (iii) the Vendors shall, at the reasonable request and expense and under the direction of the applicable Purchaser, in the name of the Vendors or

otherwise as the applicable Purchaser shall reasonably specify, take all such reasonable actions and do all such reasonable things as shall, in the reasonable opinion of the applicable Purchaser, acting reasonably, be necessary or desirable in order that the rights, entitlements, benefits, remedies, duties and obligations of the Vendors under any such Unassignable Contract may be enjoyed, received or performed, as the case may be, in accordance with the terms of such Unassignable Contract, including that all monies receivable under such Unassignable Contract may be received by the applicable Purchaser and that all rights and licenses under such Unassignable Contracts may be exercised by the applicable Purchaser;

- (iv) the Vendors shall promptly pay over to the applicable Purchaser all such monies collected by the applicable Vendor in respect of such Unassignable Contracts, net of any unpaid related costs or expenses (including any Taxes that are payable in respect of the receipt of such amounts);
- (v) to the extent permitted by the applicable Unassignable Contract:
 - (A) the applicable Purchaser will pay, perform and discharge the duties and obligations under such Unassignable Contract, on behalf of the Vendors until such time as the effective transfer or assignment of the relevant Unassignable Contracts to the applicable Purchaser;
 - (B) the Vendors will exercise the rights, entitlements, benefits and remedies under such Unassignable Contracts, on behalf of the applicable Purchaser until such time as the effective transfer or assignment of the relevant Unassignable Contracts to the applicable Purchaser; and
 - (C) the applicable Purchaser shall indemnify and save harmless the Vendors from and against all of the Vendors' Losses and Liabilities arising as a consequence of the provisions of this Section 2.4, except to the extent caused by the gross negligence or wilful misconduct of the Vendors or their Representatives and except for Vendors' overhead and general administrative costs (to be determined in a manner consistent with past practices of Vendors in respect of the Purchased Assets); and
- (vi) the applicable Vendor's obligations under this Section 2.4 shall expire and terminate and cease to be in effect on the date that is: (i) in respect of all Assumed Contracts that are leases, one hundred and eighty (180) days following Closing; and (ii) in respect of all other Assumed Contracts, sixty (60) days following Closing, at which time all Unassignable Contracts for which consent is required for the assignment of such Unassignable Contract which has not been obtained by such date shall be deemed to be an Excluded Contract under this Agreement; without any adjustment of any kind whatsoever to the Purchase Price.
- (e) Nothing in this Agreement shall constitute an agreement to assign, and shall not be construed as an assignment of, or an attempt to assign to the Purchasers, any

Unassignable Contract until such time as the necessary consents or approvals with respect to the assignment are obtained.

- (f) Both before and after Closing, each of the Parties shall use all commercially reasonable efforts to obtain any and all approvals required under Applicable Law and any and all material consents of Third Parties required to permit the Transaction to be completed. The Parties acknowledge that the acquisition of such consents shall not be a condition precedent to Closing. In addition, it shall be the sole obligation of the applicable Purchaser, at the applicable Purchaser's sole cost and expense (in accordance with Section 2.4(d)(i)), to provide any and all financial assurances, deposits or security that may be required by Governmental Authorities or any Third Parties to permit the transfer to the applicable Purchaser of the Purchased Assets or any of them.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

In consideration of the sale, assignment, transfer and conveyance of the Purchased Assets and the Assumed Liabilities to the applicable Purchaser, the purchase price to be paid by the Purchasers to the Proposal Trustee, on behalf of the Vendors, for the Purchased Assets shall be the aggregate of:

- (a) C [REDACTED] plus US [REDACTED] (the "**Base Price**"), subject to adjustment only as set forth in Section 4.1 and calculated as the aggregate of the following amounts:
- (i) [REDACTED] % of the net book value of the Accounts Receivable aged less than 90 days past their invoice date;
 - (ii) [REDACTED] % of the net book value of the Accounts Receivable aged greater than or equal to 90 days past their invoice date; provided that to the extent the aggregate net book value of the Accounts Receivable is negative, no discount shall apply, it being the express intention of the Parties that the Purchaser shall not be required to increase the Purchase Price payable for Accounts Receivable that are negative, whether as a result of customer deposits, deferred revenue, customer credits, or otherwise;
 - (iii) [REDACTED] % of the net book value of Inventory excluding Slow-Moving and Obsolete Inventory;
 - (iv) [REDACTED] % of the net book value of Slow-Moving and Obsolete Inventory; and
 - (v) [REDACTED] % of the net book value of the property, plant, and equipment less the net book value of the Excluded Assets

(collectively, the "**Purchase Price**", the portion of the Purchase Price payable in respect of the Canadian Closing being the "**Canadian Purchase Price**" and the portion of the Purchase Price payable in respect of the US Closing being the "**US Purchase Price**"). An illustrative example of the Purchase Price is provided in Schedule 3.1(a) using September

30, 2022 net book values and will be adjusted to net book values as of the Effective Time to calculate the final Purchase Price.

3.2 Deposit

- (a) The Canadian Purchaser shall pay to the Proposal Trustee upon execution of this Agreement by the Parties as a deposit a cash amount equal to \$ [REDACTED] (the "Deposit"), which Deposit received by the Proposal Trustee pursuant to this Section 3.2(a) shall be held in trust by the Proposal Trustee in a non-interest bearing account and shall be releasable in accordance with this Agreement.
- (b) If the Canadian Closing occurs in accordance with the terms and conditions of this Agreement, the Deposit shall be credited against the Canadian Purchase Price, in partial satisfaction of the Canadian Purchaser's obligation to pay the Canadian Purchase Price and shall be released on behalf of the Vendors to the Proposal Trustee in immediately available funds.
- (c) In connection with the Canadian Closing only, if this Agreement is terminated:
 - (i) by the Vendors pursuant to:
 - (A) Section 10.1(c); or
 - (B) Section 10.1(e) on account of the conditions set forth in Sections 7.3(a) or 7.3(b) not being satisfied, or not capable of being satisfied, or waived by the Outside Date; or
 - (ii) by Purchasers pursuant to Section 10.1(d) and Vendors are, at the time of such termination, entitled to terminate this Agreement pursuant to Section 10.1(e) on account of the conditions in Sections 7.3(a) or 7.3(b) not being satisfied, or not capable of being satisfied, or waived by the Outside Date,then the Deposit shall be forfeited to the Vendors and the Deposit shall be released by the Proposal Trustee and paid or credited to the Vendors.
- (d) If the Agreement is terminated for any reason other than as contemplated by Section 3.2(c) prior to the Canadian Closing, then the Deposit shall be released by the Proposal Trustee and paid to the Canadian Purchaser.

3.3 Satisfaction of the Purchase Price

At the Canadian Closing, the Canadian Purchase Price shall be paid and satisfied as follows:

- (a) the Deposit shall be credited against the Canadian Purchase Price, in partial satisfaction of the Canadian Purchaser's obligation to pay the Canadian Purchase Price at Canadian Closing, and shall be released on behalf of the applicable Vendor to the Proposal Trustee in immediately available funds;
- (b) the Canadian Purchaser shall pay to the Proposal Trustee at Closing, by electronic wire transfer, the Canadian Purchase Price, less the Deposit, as set forth in the

Interim Statement of Adjustments plus any Transfer Taxes and fees payable under the terms hereof (the "**Canadian Closing Payment**"); and

- (c) as to the value of the applicable Assumed Liabilities, by the assumption of the Canadian Purchaser of the applicable Assumed Liabilities.

At the US Closing, the US Purchase Price shall be paid and satisfied as follows:

- (d) the US Purchaser shall pay to the Proposal Trustee at Closing, by electronic wire transfer, the US Purchase Price, as set forth in the Interim Statement of Adjustments plus any Transfer Taxes and fees payable under the terms hereof (the "**US Closing Payment**" and collectively with the Canadian Closing Payment, the "**Closing Payment**"); and
- (e) as to the value of the applicable Assumed Liabilities, by the assumption of the US Purchaser of the applicable Assumed Liabilities.

3.4 Allocation of the Purchase Price

Following Closing, Purchasers shall prepare a statement allocating the Purchase Price among the Purchased Assets (the "**Allocation Statement**") and shall afford the Vendors reasonable opportunity to review such statement. The Purchasers shall consider all reasonable comments provided by the Vendors on the Allocation Statement. The Purchasers and the Vendors shall report an allocation of the Purchase Price among the Purchased Assets in accordance with the Allocation Statement and shall not take any position inconsistent therewith in the filing of any Tax Returns or in the course of any audit by any Governmental Authority. Solely for purposes of calculating the Transfer Taxes payable by the Purchasers under Section 3.5, the Purchasers and the Vendors shall, no later than seven (7) days before the Closing Date, mutually agree on a preliminary allocation of the Purchase Price payable in respect of the Purchased Assets, including an allocation of such amounts to the Purchased Assets to be supplied in each province. If the final allocation of the Purchase Price under this Section 3.4 results in additional Transfer Taxes payable by the Purchasers, such additional Transfer Taxes shall be promptly paid in accordance with Section 3.5. If the final allocation of the Purchase Price under this Section 3.4 results in lower Transfer Taxes payable by the Purchasers, the Vendors shall be required to refund such Transfer Taxes to the Purchasers.

3.5 Transfer Taxes

The Parties agree that:

- (a) the Purchase Price is exclusive of all Transfer Taxes and the Purchasers shall be liable for and shall pay any and all Transfer Taxes pertaining to the Purchasers' acquisition of the Purchased Assets or the registration of any Specific Conveyances necessitated hereby;
- (b) where the Vendors are required under Applicable Law to collect or pay Transfer Taxes, the Purchasers will pay the amount of such Transfer Taxes to the applicable Vendor at Closing, which such Transfer Taxes the applicable Vendor shall remit to the appropriate Governmental Authority as soon after the applicable Closing as is practicable and in compliance with the applicable Tax Legislation;

- (c) except where a Vendor is required under Applicable Law to collect or pay such Transfer Taxes, the Purchasers shall pay such Transfer Taxes, including all applicable provincial sales taxes, directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due and shall provide the applicable Vendor with a purchase exemption certificate or its equivalent to support any reasonable exemption claimed in respect of the Purchased Assets, and the applicable Vendor will do and cause to be done such things as are reasonably requested to enable the Purchasers to comply with such obligation in a timely manner or if the applicable Vendor is required under Applicable Law to pay any such Transfer Taxes, the Purchasers shall promptly reimburse the applicable Vendor the full amount of such Transfer Taxes upon delivery to the Purchasers of copies of receipts showing payment of such Transfer Taxes; and
- (d) the Purchasers shall indemnify the Vendors for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendors may pay or for which the Vendors may become liable as a result of any failure by the Purchasers to pay or remit such Transfer Taxes.

3.6 GST/HST

- (a) To the extent such election is applicable to the Transaction or any portion of the Purchased Assets, the applicable Vendor and the applicable Purchaser shall execute jointly an election under Section 167 of the GST/HST Legislation to have the sale of the Purchased Assets take place on a GST/HST-free basis and the applicable Purchaser shall file such election no later than the filing date for its GST/HST return for the reporting period in which the sale of the Purchased Assets takes place. The Parties agree that, as between the applicable Vendor and the applicable Purchaser, the applicable Purchaser shall be solely liable for, and as a separate and independent covenant, the applicable Purchaser shall indemnify, defend and save harmless the applicable Vendor from, any GST/HST or any penalty, interest or other amounts with respect thereto (including any costs incurred by the applicable Vendor in collecting such amount from the applicable Purchaser), which may be payable by or assessed against the applicable Vendor under the GST/HST Legislation as a result of the Transactions not being eligible for such election or the applicable Purchaser's failure to file such election as required by the GST/HST Legislation.
- (b) If any payment made by a Vendor or a Purchaser as the result of a breach, modification or termination of this Agreement is deemed by GST/HST Legislation 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 shall be increased accordingly.

3.7 Accounts Receivable Election

If requested by a Purchaser or a Vendor, the applicable Purchaser and the applicable Vendor shall elect jointly in the prescribed form under section 22 of the Income Tax Act and the corresponding provisions of any other applicable Tax statute as to the sale of the Accounts Receivable 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.

ARTICLE 4 ADJUSTMENTS

4.1 Adjustments

- (a) All costs and revenues incurred, accruing, payable, paid, received or receivable in respect of the Purchased Assets, including maintenance, capital and operating costs, advances and payments with respect to Permitted Encumbrances (but specifically excluding Transfer Taxes) shall, subject to the provisions of this Agreement, be apportioned on an accrual basis between the Vendors and the Purchasers as of the Effective Time, on and subject to the following:
 - (i) except as otherwise provided in this Section 4.1, costs and revenues shall accrue in accordance with ASPE or US GAAP, as applicable;
 - (ii) all such costs and revenues accruing up to the Effective Time shall be for the Vendors' account and all costs and revenues accruing after the Effective Time shall be for the Purchasers' account;
 - (iii) all such revenues accruing up to the Effective Time shall be for the Vendors' account, regardless of whether such revenues are received or receivable prior to or after the Effective Time, and Purchasers shall hold in trust for, on behalf of and pay to the Vendors any such revenues received by the Purchasers, and all such revenues accruing after the Effective Time shall be for the Purchasers' account, regardless of whether such revenues are received or receivable prior to or after the Effective Time, and Vendors shall hold in trust for, on behalf of and pay to the Purchasers any such revenues received by the Vendors;
 - (iv) notwithstanding the foregoing, all cash and cash equivalents associated with Accounts Receivable that form part of the Purchased Assets shall be for the Purchasers' account regardless of whether such cash and cash equivalents are received or receivable prior to or after the Effective Time, and Vendors shall hold in trust for, on behalf of, and pay to the Purchasers any such revenues received by the Vendors;
 - (v) all costs and revenues of whatever nature pertaining to work performed or goods or services provided with respect to the Purchased Assets prior to the Effective Time shall be borne by and for the account of the Vendors, notwithstanding that such costs may be payable in whole or in part after the Effective Time and all costs and revenues of whatever nature pertaining to work performed or goods or services provided with respect to the Purchased Assets after the Effective Time shall be borne by and for the account of the Purchasers;
 - (vi) all Cure Costs shall be for the Vendors' account;

- (vii) the Wages as well as any liability and obligations relating to such Employees, for the time period up to the Closing Date shall be for the Vendors' account;
 - (viii) all Accrued Vacations shall be for the Vendors' account;
 - (ix) all payments, bonuses, disbursements, damages, fees, incentive compensation, accelerated benefits, retention payments or change-of-control payments payable to any of the Employees as a result of the consummation of the transactions contemplated hereby;
 - (x) all other periodic payments (other than income taxes and Transfer Taxes) shall be apportioned between the Vendors and the Purchasers on a per diem basis as of the Effective Time with all rentals and other periodic payments accrued to the Effective Time for the Vendors' account and all rentals and other periodic payments accrued after the Effective Time for the Purchasers' account; and
 - (xi) there shall not be any adjustment on account of income taxes and Transfer Taxes.
- (b) The effective time for income tax purposes shall be the Effective Time.

4.2 Equipment and Inventory

- (a) The Vendors and the Purchasers will jointly conduct an on-site physical count of the Equipment and Inventory to be completed not more than five (5) Business Days before Closing, and shall use commercially reasonable efforts to agree upon a written statement describing the adjustments to the Closing Payment set out in this Section 4.2.
- (b) If any individual items forming part of the Equipment included in the Purchased Assets as described in Schedule 1.1(mm) are not in good working condition and repair (in each case, as determined by the Parties, acting reasonably, giving consideration to the normal operating practices of the Vendors), not accounted for or if any such item is not reasonably capable of being delivered into the applicable Purchaser's possession or control at the Closing with good and exclusive title, free and clear of any Encumbrances and Claims, then the Closing Payment shall be reduced by an amount equal to the book value of such item, as applicable, and each such item shall constitute an Excluded Asset for the purposes of this Agreement.
- (c) Notwithstanding anything else contained in this Article 4, no adjustments shall be made pursuant to this Section 4.2 until such adjustments, in the aggregate, exceed one hundred thousand Canadian dollars (CAD\$100,000) (the "**De Minimis Threshold**") and then only by the amount that the adjustment amount exceeds the De Minimis Threshold.

4.3 Statement of Adjustments

- (a) The applicable Vendor shall carry out an interim accounting and adjustment and prepare and deliver to the applicable Purchaser at least three (3) Business Days prior to the applicable Closing Date a statement setting forth such Vendor's good faith estimate of all adjustments (the "**Interim Statement of Adjustments**") to be made for the transactions contemplated herein. The applicable Vendor shall make available to the applicable Purchaser all information reasonably necessary, including the Books and Records and financial statements of such Vendor, if applicable, for the applicable Purchaser to understand and confirm the calculations in that statement.
- (b) Within sixty (60) days following the Closing Date, the applicable Vendor shall prepare and deliver, and the applicable Purchaser shall cooperate in preparing, a final statement of all adjustments and payments (the "**Final Statement of Adjustments**"), on the basis of the information available within that period, to be made for the transactions contemplated herein, including any settlement payment required to be made by either Party as a result of differences between the Final Statement of Adjustments and the Interim Statement of Adjustments.
- (c) In the event the Parties are unable to agree on the Final Statement of Adjustments within thirty (30) days of delivery of such Final Statements of Adjustments, the Parties will immediately proceed with appointing an independent Third Party appraiser selected by the Proposal Trustee (so qualified by skill and experience to determine the dispute) to review the Parties' submissions on the Final Statement of Adjustments, which shall be binding on the Parties. The costs of the Third Party appraiser shall be borne equally by the applicable Purchaser and the applicable Vendor, and the Parties agree to cooperate in good faith and use commercially reasonable efforts to assist such Third Party appraiser in determining the Final Statement of Adjustments as soon as reasonably practical following the appraiser's appointment.
- (d) All adjustments shall be settled by the prompt payment by any Party obliged to make payment pursuant to this Agreement. Interest at the Prime Rate plus one percent (1%) per annum shall be paid on any settlement payment which remains unpaid by one Party to the other Party when due, with such interest accruing from the date such amount is due to the date payment is made.
- (e) Subject only to this Section 4.3, the Final Statement of Adjustments shall constitute the final accounting between the Parties in respect of costs and revenues accruing, payable, paid, received or receivable in respect of the Purchased Assets, shall be binding on the Parties and shall not be subject to dispute. For certainty, notwithstanding any other provision in this Agreement, save pursuant to the Final Statement of Adjustments, there shall be no further adjustments made between the Parties in respect of any costs or revenues accruing, payable, paid, received or receivable in respect of the Purchased Assets, including rentals, maintenance, development, capital and operating costs, advances, and payments with respect to Permitted Encumbrances, including, but not limited to, any costs or revenues that are disclosed or adjusted as a consequence of any subsequent joint venture audits, royalty adjustments or similar audit or adjustment procedures pursuant to the Assumed Contracts or Applicable Law.

- (f) The Purchasers and the Vendors will each bear their own fees and expenses, including the fees and expenses of their respective accountants and auditors, in preparing or reviewing, as the case may be, the Final Statement of Adjustments.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Vendors' Representations and Warranties

Each Vendor hereby represents and warrants to the Purchasers that:

- (a) the Vendor is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation and, provided that Court Approval is obtained, has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (b) provided that Court Approval is obtained, the Vendor has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement;
- (c) except for the Purchasers' rights under this Agreement, to the Knowledge of the Company, no Person has any contractual right or privilege for the purchase of any of the Purchased Assets other than in the ordinary course of business;
- (d) to the Knowledge of the Company, any and all copies of material Assumed Contracts that have been made available to the Purchasers are true and complete copies of the original Assumed Contracts, including all amendments, waivers and modifications thereto;
- (e) provided that Court Approval is obtained, the Vendor has good right and full and absolute authority to assign, transfer and convey the Vendor's right, title and interest in the Purchased Assets to the Purchasers in the manner contemplated herein;
- (f) provided that Court Approval is obtained, the consents, approvals or waivers that are required in connection with the assignment of the Assumed Contracts or, other than as provided in this Agreement, the execution, delivery and performance of this Agreement by the Vendor do not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or materially delay the consummation by the Vendor of the Transaction or have a material adverse effect on the Business;
- (g) the Vendor has not incurred any obligation or liability, contingent or otherwise, for broker's or finder's fees in respect of the Transaction for which the Purchasers shall have any obligations or liability;
- (h) the Vendor has not, as at the date hereof, received written notice of any Claims against them seeking to prevent the consummation of the Transaction;

- (i) in respect of Nilex Canada, the Vendor is not a non-resident of Canada for purposes of the Income Tax Act;
- (j) in respect of Nilex Canada, the Vendor is registered for GST/HST purposes under the GST/HST Legislation and its registration number is 103886032RT0001; and
- (k) provided that Court Approval is obtained, this Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding obligation of the Vendor and is enforceable against the Vendor in accordance with its terms.

5.2 Purchasers' Representations and Warranties

Each Purchaser hereby represents and warrants to and in favour of the Vendors that:

- (a) the Purchaser is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation and has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (b) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement;
- (c) provided that the Court Approval is obtained, execution, delivery and performance of this Agreement by the Purchaser does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or materially delay the consummation by the Purchaser of the Transaction;
- (d) it has not incurred any obligation or liability, contingent or otherwise, for broker's or finder's fees in respect of the Transaction for which the Vendors shall have any obligations or liability;
- (e) it has not received written notice of any Claims seeking to prevent the consummation of the Transaction;
- (f) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar Applicable Laws relating to creditors' rights generally and subject to general principles of equity;
- (g) it has sufficient funds available to it to enable it to pay in full the Purchase Price to the Vendors as herein provided and otherwise to fully perform its obligations under this Agreement;
- (h) neither the aggregate book value of the Purchased Assets in Canada of the Vendors, nor the consolidated gross revenues from sales in or from Canada generated from assets in Canada of the Vendors, both calculated in the manner prescribed under the Competition Act, exceeds \$93 million; and

- (i) the Canadian Purchaser is registered for GST/HST purposes under the GST/HST Legislation and its GST/HST registration number will be provided at Closing.
- (j) the Canadian Purchaser is a non-Canadian Person within the meaning of the *Investment Canada Act* (Canada).

5.3 Enforcement of Representations and Warranties

- (a) The representations and warranties of each Party contained in this Agreement shall survive until Closing and shall thereafter be of no further force and effect. Effective upon the occurrence of Closing, each Party hereby releases and forever discharges each other Party from any breach of any representations and warranties set forth in this Agreement.
- (b) The representations and warranties of the Vendors made herein or pursuant hereto are made for the exclusive benefit of the Purchasers, and the representations and warranties of the Purchasers made herein or pursuant hereto are made for the exclusive benefit of the Vendors, as the case may be, and are not transferable and may not be made the subject of any right of subrogation in favour of any other Person.
- (c) The Parties expressly acknowledge and agree that the provisions of this Section 5.3 and the limit on each Party's liability set out in this Section 5.3 are intended by the Parties as a limitation of liability that represents a fair and equitable allocation of the risks and liabilities that each Party has agreed to assume in connection with the subject matter hereof and is not an agreement within the provision of subsection 7(2) of the *Limitations Act* (Alberta).

5.4 No Additional Representations and Warranties

- (a) The Purchasers acknowledge and agree that they are acquiring the Purchased Assets on an "as is, where is" and "without recourse" basis, and that neither the Vendors, the Proposal Trustee nor any of their Representatives make any representations or warranties of any kind whatsoever, express or implied, except as explicitly set forth in Section 5.1, and in particular, and without limiting the generality of the foregoing, each Vendor expressly negates and disclaims, and none of the Vendors, the Proposal Trustee nor any of their Representatives shall be liable for, any representation or warranty (except as expressly set forth in Section 5.1) which may have been made or alleged to be made in any instrument or document related hereto, or in any statement or information made or communicated (in writing or orally) to the Purchasers or their Representatives in any manner including any opinion, information, or advice which may have been provided to the Purchasers by the Vendors, the Proposal Trustee or any of their Representatives in connection with the Purchased Assets, Assumed Liabilities or in relation to the Transaction. For greater certainty, except as expressly set forth in Section 5.1, neither the Vendors nor any of their Representatives make any condition, representation or warranty whatsoever, express or implied, with respect to:
 - (i) the merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or

- zoning, Environmental condition, existence of latent defects, quality, quantity or any other thing affecting any of the Purchased Assets;
- (ii) the validity or enforceability of the Assumed Contracts or Intellectual Property;
 - (iii) the value of any of the Purchased Assets or the future cash flow therefrom;
 - (iv) any regulatory approvals, Permits and licenses, consents or authorizations that may be needed to complete the Transaction contemplated by this Agreement or to operate or carry on the Business or any portion thereof; or
 - (v) the quality, condition, description, fitness for purpose, suitability, serviceability or merchantability of the Equipment or Inventory or any other tangible, depreciable equipment or property forming part of the Purchased Assets.
- (b) The Purchasers hereby acknowledge and confirm that they are satisfied with their due diligence investigations with respect to the Purchased Assets, Business and Assumed Liabilities and hereby acknowledge and confirm that they are relying solely on the Vendors' representation and warranties in Section 5.1 and their own investigations concerning the Purchased Assets, Business and Assumed Liabilities, and they have not relied on any advice from the Vendors, the Proposal Trustee nor any of their Representatives with respect thereto, including with respect to the matters specifically enumerated in Section 5.4(a) in connection with the purchase of the Purchased Assets and the Business and the assumption of the Assumed Liabilities pursuant hereto.
- (c) Except for the Vendors' representations and warranties in Section 5.1, any information regarding or describing the Business, Purchased Assets or the Assumed Liabilities in this Agreement (including the Schedules and Exhibits hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchasers, and except for the Vendors' representations and warranties in Section 5.1, no representation, warranty or condition, express or implied, has or will be given by the Vendors or any of their Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions.
- (d) Except for their express rights under this Agreement, the Purchasers hereby waive all rights and remedies (whether now existing or hereinafter arising and including all common law, tort, contractual and statutory rights and remedies) against the Vendors and their Representatives in respect of the Business, Purchased Assets, the Transaction and any representations or statements made or information or data furnished to the Purchasers or their Representatives in connection herewith (whether made or furnished orally or by electronic, faxed, written or other means). Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in the *Sale of Goods Act* (Alberta) (or similar applicable statutes), 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.

- (e) None of representations and warranties contained in this Article 5 shall survive Closing and, other than in the case of fraud, the Purchasers' sole recourse for any material breach of representation or warranty in this Article 5 shall be for the Purchasers to not complete the transactions in accordance with Sections 7.1 and 7.2 of this Agreement.

ARTICLE 6 COVENANTS

6.1 Maintenance of Business Until Closing

Until the applicable Closing Date, subject to the provisions of the BIA or the US Bankruptcy Code, or any order of the Court or the US Court in the Proposal Proceedings or the Chapter 15 Proceedings, the Vendors shall:

- (a) conduct the Business in accordance with historical practices having due regard to the interests of the Purchasers under this Agreement;
- (b) cause the Equipment and Leased Equipment to be maintained in accordance with historical practices;
- (c) not, directly or indirectly, do or permit to occur any of the following:
 - (i) acquire any assets (excluding Inventory in the ordinary course) having an acquisition cost of more than fifty thousand dollars (\$50,000) individually or in the aggregate;
 - (ii) sell, lease, assign, transfer, abandon or otherwise dispose of any of the Purchased Assets, excluding Inventory in the ordinary course of business;
 - (iii) make or commit to make any capital expenditures of more than fifty thousand dollars (\$50,000) individually or in the aggregate;
 - (iv) agree to assume any new obligation or commitment respecting the Purchased Assets or encumber, pledge, grant or create a security interest over the Purchased Assets, if the result is an Encumbrance against the Purchased Assets in excess of fifty thousand dollars (\$50,000);
 - (v) amend or agree to amend or terminate any of the Assumed Contracts or enter into an agreement in respect of the Purchased Assets;
 - (vi) agree to, authorize, approve, accept, propose or acquiesce to any release, waiver, surrender, cancellation, relinquishment or restriction of any material right or entitlement relating to the Purchased Assets or the Business, whether under contract or otherwise; or

- (vii) transfer or consent to the transfer of any material right or entitlement that may be exercised against a Vendor, which relates to the Purchased Assets or the Business;
- (d) preserve intact the Business and the Purchased Assets and use reasonable commercial efforts in the circumstances to preserve for Purchasers the goodwill of suppliers, customers and others having business relations with the Business;
- (e) use reasonable commercial efforts to perform and comply with the covenants contained in the Assumed Contracts to be performed or complied with by the Vendors prior to Closing;
- (f) promptly provide the Purchasers with:
 - (i) any material communication, notice, report, schedule or other document delivered, filed or received by the Vendors in connection with the Business or Purchased Assets or any filings under Applicable Law relating to the Business or Purchased Assets; and
 - (ii) full particulars of any Claim or any proceeding against, involving or affecting Vendors, the Business or Purchased Assets or any current or former employee, agent or other Representative of Vendors of which the Vendors shall receive written notice, including copies of any documentation relating thereto;
- (g) use reasonable commercial efforts to maintain any Permits currently in effect related to the Business until Closing;
- (h) use reasonable commercial efforts to maintain any insurance currently in effect respecting the Purchased Assets until Closing; and
- (i) use reasonable commercial efforts to pay and discharge all liabilities or obligations of the Vendors in the ordinary and usual course of the Business consistent with past practice, except for such liabilities or obligations: (i) as may be contested by the Vendors in good faith; or (ii) that existed prior to the date of the Proposal Proceedings.

6.2 Access

- (a) Until the Closing Date, the Vendors shall provide the Purchasers and their Representatives with all access to the Purchased Assets (including the Vendors' yards, corporate offices or other places where any of the Purchased Assets are located as well as to the Books and Records) and personnel of the Vendors reasonably required by the Purchasers in order to allow for and assist the Purchasers with the inspection of, and the integration and transition of, the Purchased Assets into the Purchasers' overall operations and business and in order to allow for an orderly passing of the Purchased Assets to the Purchasers following Closing in accordance herewith.
- (b) Notwithstanding Section 6.2(a), the Purchasers acknowledge that the Vendors will be continuing to operate the Purchased Assets until Closing and, accordingly, that

the Purchasers' access to the Purchased Assets before Closing will only be allowed on reasonable notice to the Vendors and on the condition that such access does not interfere with or interrupt the operation of the Purchased Assets and is consistent with Applicable Law.

- (c) Following the Closing Date, the Purchasers is required to hold all Books and Records and make the same available to the Vendors for six (6) years from the Closing Date. If the Purchasers want to dispose of any Books and Records prior to the six (6) year period from the Closing Date, they must notify the Vendors and provide the Vendors with an opportunity to take possession of the same.
- (d) The access to the Purchased Assets to be afforded to the Purchasers and their Representatives pursuant to this Section 6.2 will be subject to the Assumed Contracts, all of the Vendors' health, safety and Environmental rules, policies and procedures and any and all restrictions imposed by a Governmental Authority. Further, the Purchasers acknowledge and agree that they shall:
 - (i) be solely liable and responsible for any and all Losses and Liabilities which the Vendors or their Representatives may suffer, sustain, pay or incur; and
 - (ii) as a separate covenant, indemnify and save harmless the Vendors and their Representatives harmless from any and all Claims or Losses and Liabilities whatsoever which may be brought against, suffered by or incurred by the Vendors or their Representatives;

arising out of, resulting from, attributable to or in any way connected with any access provided to the Purchasers or their Representatives pursuant to this Section 6.2(c).

6.3 Agreement Not to Sell and Opposition to any Competing Offers

The Vendors and their agents will not, nor will the Vendors permit any of their respective officers, employees or agents (including investment bankers, attorneys and accountants) directly or indirectly to, solicit, discuss, encourage or accept any competing offers for the purchase of the Business and/or the Purchased Assets, whether as a primary or back-up offer, or to take any other action with the intention or reasonably foreseeable effect of leading to any commitment or agreement to sell the Business and/or the Purchased Assets. In addition, the Vendors and their agents shall actively oppose any application for the approval of any other competing offers for the purchase of the Business and/or the Purchased Assets.

6.4 Possession of Purchased Assets and Expenses for Removal

- (a) If the Closing occurs, the applicable Purchaser shall be responsible for and shall take possession of the Purchased Assets at (i) their location(s) as at the date of Closing or (ii) such other location as the Parties may agree in writing at the applicable Purchaser's sole cost and expense (the "**Delivery Locations**"). For reference, the location(s) of the Purchased Assets as at the date of this Agreement are specified in Schedule 1.1(gg). The Purchasers acknowledge that the locations disclosed by the Vendors in Schedule 1.1(gg) may not be the Delivery Locations and the Vendors may, prior to Closing, transport any Purchased Asset to a new location and, in the event of such transport, the Vendors will deliver an updated version of Schedule 1.1(gg) to the Purchasers (which reflects and confirms the

Delivery Locations) as soon as reasonably practicable prior to the Closing Date. In addition, the applicable Purchaser shall be responsible and pay as and when required:

- (i) any and all costs of dismantling or removing Purchased Assets from the applicable Delivery Location(s) and/or transporting them to a new location; and
 - (ii) the cost of repairing any damage caused by dismantling or removal of any of the Purchased Assets from the applicable Delivery Location(s) and/or transporting to a new location.
- (b) The applicable Purchaser shall be liable for any and all Claims, Losses and Liabilities whatsoever caused by or in any way arising out of any dismantling or removal of any Purchased Assets from the designated Delivery Locations or any failure to dismantle or remove any Purchased Assets from the designated Delivery Locations. The Purchasers shall indemnify and save harmless the Vendors, the Proposal Trustee, their Representatives and their respective officers, directors, employees or other Representatives in respect of and from any and all Claims, Losses and Liabilities that any of them may incur or suffer by reason of any dismantling or removal of any Purchased Assets from the designated Delivery Location, or any failure to dismantle or remove any Purchased Assets from the designated Delivery Location, including any and all costs relating to repairing any damage caused by the applicable Purchaser to any premises when removing the Purchased Assets.

6.5 Personal Information

Each Vendor and each Purchaser shall at all times:

- (a) use and disclose the Personal Information under their or its control solely for the purposes for which the Personal Information was collected or such additional purposes as are permitted or authorized by Applicable Law;
- (b) protect the Personal Information using security safeguards that meet or exceed industry standards, taking into account the sensitivity of the Personal Information; and
- (c) give effect to any withdrawal of consent by the individual to whom the Personal Information relates where the Personal Information was collected with consent.

6.6 Employee Matters

- (a) Each Vendor agrees that, during the period between execution of this Agreement and the Effective Time, the applicable Purchaser shall have the right, but not the obligation, to meet with and engage in discussions with the Employees regarding potential employment with the applicable Purchaser following the Effective Time. If the applicable Purchaser elects to meet with any of such Employees, the Vendors will, subject to Section 6.7, promptly provide to the applicable Purchaser any necessary information in the Vendors' possession as the applicable Purchaser

may reasonably request relating to potential employment of such Employees following the Effective Time.

- (b) At least ten (10) Business Days prior to the Effective Time, the Purchasers shall deliver to the Vendors the form of written offer of employment that is to be provided to Employees in accordance with Section 6.6(c), and agrees to act reasonably in considering any comments provided by the Vendors on such form. Such form of written offer of employment shall be:
 - (i) conditional upon Closing;
 - (ii) effective as of the Effective Time;
 - (iii) recognize each Employee's prior years of service with the Vendors for all purposes, including but not limited to calculation of notice of termination (or pay in lieu thereof), severance, vacation, benefits and any other employment-related entitlements; and
 - (iv) provide employment on substantially similar terms and conditions of employment in the aggregate as provided by the Vendors (other than certain alterations to the commission programs of the sales personnel) to the Employees immediately prior to Closing, having regard to the terms and conditions of employment relating to salary, wages, incentive-based compensation, benefits, vacation pay and entitlements upon termination of employment.
- (c) The applicable Purchaser shall make offers of employment, using the form of written offer of employment outlined in Section 6.6(b), to all Employees listed in Schedule 6.6, which Schedule may be reasonably amended by the applicable Purchaser prior to Closing.
- (d) At least two (2) Business Days prior to the Effective Time, the Purchasers shall deliver to the Vendors a list of the Employees who have accepted the written offers of employment provided pursuant to Section 6.6(c) (the "**Transferred Employees**"). Following the Effective Time, the Purchasers shall employ each of the Transferred Employees on the terms and conditions set forth in the accepted written offers of employment pursuant to Section 6.6(c).
- (e) Prior to the Effective Time, the Vendors shall be responsible and indemnify the Purchasers, on a joint and several basis, for all Losses and Liabilities, Claims, penalties and assessments relating to the employment or termination thereof of all Employees. On and after the Effective Time, and conditional upon Closing, the Vendors shall be responsible, on a joint and several basis, for all Losses and Liabilities, Claims, penalties and assessments relating to the employment or termination thereof of all Employees who are not Transferred Employees.
- (f) On or after the Effective Time, the Purchasers shall be responsible for and indemnify the Vendors, on a joint and several basis, in respect of all Losses and Liabilities, Claims, penalties and assessments relating to the employment or termination thereof of all Transferred Employees.

6.7 Privacy Laws

- (a) Each Party shall, and shall ensure that its Representatives shall, comply with Applicable Privacy Law in the course of their collection, use and disclosure of Transaction Personal Information pursuant to this Agreement.
- (b) Each Party agrees that the collection, use and disclosure of Transaction Personal Information is necessary for the purposes of determining if the Parties will proceed with the Transaction and completing the Transaction.
- (c) The Purchasers shall, and shall ensure that their Representatives shall, not use Transaction Personal Information for any purposes other than those related to evaluation of the Transaction and/or the completion of the Transaction.
- (d) If the Transaction proceeds, neither the Purchasers nor any of their Representatives shall, after Closing, without the consent of the individuals to whom such Personal Information relates, or as otherwise permitted or required by Applicable Law, use or disclose Transaction Personal Information for purposes other than those for which such Transaction Personal Information was originally collected prior to Closing.
- (e) In the event of the successful completion of the Transaction, the Purchasers, if and only to the extent required by Applicable Privacy Law that governs the Personal Information of individuals whose Personal Information has become Transaction Personal Information, shall notify such individuals that a business transaction has taken place and that their Personal Information was disclosed by the Vendors to the Purchasers for the purposes of this Agreement.
- (f) If this Agreement is terminated as provided herein, the Purchasers shall promptly deliver to the Vendors all Transaction Personal Information in their possession or in the possession of their Representatives, including all copies, reproductions, summaries or extracts thereof.
- (g) The Purchasers shall use all reasonable efforts to protect and safeguard the Transaction Personal Information including to protect the Transaction Personal Information from loss or theft, or unauthorized access disclosure, copying, use, modification, disposal or destruction and promptly advise the Vendors should any such loss, theft or unauthorized activity occur prior to the completion of the transactions contemplated herein.

ARTICLE 7 CONDITIONS OF CLOSING

7.1 Mutual Conditions

The respective obligations of the Parties to complete the Transaction contemplated in respect of the Purchased Assets and Business of each of Nilex Canada and Nilex USA (each, an “**Applicable Transaction**”) are subject to the following conditions being fulfilled or performed at or prior to the Closing Time on the applicable Closing Date:

- (a) in respect of the Canadian Closing, the Court has granted the Sale Approval and Vesting Order;
- (b) in respect of the US Closing, the US Court has granted both the Recognition Order and the Vesting Recognition Order and such orders shall be Final Orders;
- (c) all necessary waivers, consents and/or approvals of Governmental Authority, if any, for completion of the Applicable Transaction have been obtained;
- (d) no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable order or law which has the effect of: (i) making the Applicable Transaction illegal; or (ii) otherwise prohibiting, preventing or restraining the consummation the Applicable Transaction; and
- (e) the applicable Closing is not otherwise prohibited by Applicable Law.

The foregoing conditions are for the mutual benefit of the Vendors and the Purchasers and may be asserted by the Vendors or the Purchasers regardless of the circumstances and may be waived only with the written agreement of each of the Vendors and the Purchasers. The Parties agree that any inability to complete or delay in the US Closing will not affect or inhibit the Parties ability or obligation to complete the Canadian Closing.

7.2 Conditions for the Benefit of the Purchaser

The obligation of the applicable Purchaser to complete the Applicable Transaction is subject to the following conditions being fulfilled or performed as at or prior to the Closing Time on the applicable Closing Date:

- (a) the US Closing shall not take place unless the Canadian Closing is completed prior thereto or simultaneously therewith;
- (b) all representations and warranties of the Vendors contained in this Agreement, relating to the Applicable Transaction shall be true and correct in all material respects as at the Closing Time with the same force and effect as if made at and as of such time, and the applicable Vendor shall have delivered to the applicable Purchaser a certificate to that effect substantially similar in form to that attached hereto as Exhibit A;
- (c) the Vendors have complied with and performed, in all material respects, all of its covenants and obligations contained in this Agreement relating to the Applicable Transaction;

- (d) the Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchasers at the Closing all the documents contemplated in Section 8.2 relating to the Applicable Transaction.

The foregoing conditions are for the exclusive benefit of the Purchasers and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Purchasers may have. If any of the said conditions have not been complied with or waived by the Purchasers at or before the applicable Closing Time, the Purchasers may terminate this Agreement by written notice to the Vendors in accordance with Article 10.

7.3 Conditions for the Benefit of the Vendor

The obligation of the Vendors to complete the Applicable Transaction is subject to the following conditions being fulfilled or performed as at or prior to the Closing Time on the applicable Closing Date:

- (a) all representations and warranties of the Purchasers contained in this Agreement relating to the Applicable Transaction shall be true and correct in all material respects as at the Closing Time with the same force and effect as if made at and as of such time, and the applicable Purchaser shall have delivered to the applicable Vendor a certificate to that effect substantially similar in form to that attached hereto as Exhibit B;
- (b) the Purchasers have complied with and performed in all material respects all of its covenants and obligations contained in this Agreement relating to the Applicable Transaction;
- (c) the Purchasers shall have executed and delivered or caused to have been executed and delivered to the applicable Vendor at the Closing all the documents contemplated in Section 8.3 relating to the Applicable Transaction.

The foregoing conditions are for the exclusive benefit of the Vendors and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Vendors may have. If any of the said conditions have not been complied with or waived by the Vendors at or before the Closing Time, the Vendors may terminate this Agreement by written notice to the Purchasers in accordance with Article 10.

7.4 Satisfaction of Conditions

Each of the Parties shall proceed diligently and in good faith and use all commercially reasonable efforts to fulfil and assist in the fulfillment of the conditions set forth in Sections 7.1, 7.2 and 7.3. In addition, each of the Parties agrees not take any action that could reasonably be expected to preclude, delay or have an adverse effect on the Transaction or would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect.

7.5 Payment of Taxes

Except as otherwise provided in this Agreement, the applicable Purchaser shall pay all Transfer Taxes applicable to, or resulting from the transactions contemplated by, this Agreement (other than Transfer Taxes payable by the Vendors under Applicable Law) and any filing, registration,

recording or transfer fees payable in connection with the instruments of transfer provided for in this Agreement.

7.6 Co-operation in Filing of Tax Returns

The Purchasers agrees to provide to the Vendors all reasonable co-operation following the Closing Date in connection with the filing of Tax Returns of the Vendors in respect of which the Books and Records delivered to the Purchasers pursuant to this Agreement are relevant.

ARTICLE 8 CLOSING

8.1 Closing Date and Place of Closing

Subject to the conditions set out in this Agreement, the applicable Closing shall close and be completed on the applicable Closing Date. The applicable Closing shall take place at the Closing Time at the Calgary, Alberta offices of the Vendors' Solicitors, or at such other time or such other location as the Parties may agree in writing.

8.2 Deliveries on Closing by the Vendors

The applicable Vendor shall deliver to the applicable Purchaser at the Closing Time:

- (a) in respect of the Canadian Closing, a copy of the Sale Approval and Vesting Order and in respect of the US Closing, copies of both the Vesting Recognition Order and the Recognition Order;
- (b) a certified resolution of the Vendor authorizing the Agreement and the sale of the Purchased Assets;
- (c) a certificate of status of the Vendor;
- (d) the Assignment and Assumption Agreement, duly executed by the Vendor;
- (e) the General Conveyance, duly executed by the Vendor;
- (f) the certificate of the Vendor referred to in Section 7.2(b);
- (g) any Specific Conveyances, requested by the applicable Purchaser, acting reasonably, each in form and substance satisfactory to the Parties, acting reasonably, duly executed by the Vendor;
- (h) the Books and Records;
- (i) the Transition Services Agreement duly executed by the Vendors;
- (j) proof satisfactory to the Purchasers, acting reasonably (which, for certainty, could include appropriate covenants from the Vendors to the Purchaser regarding their intention to make such proof available within a reasonable period of time following Closing), of payment by the Vendors of all amounts due to any Employee or former Employee of either Vendor in the form of Accrued Vacation and Wages (but

excluding, for certainty, payment of termination and severance amounts), including in respect of the Transferred Employees;

- (k) a statement of Cure Costs owing; and
- (l) such further and other documents as is referred to in this Agreement or as the applicable Purchaser may reasonably require to give effect to this Agreement.

8.3 Deliveries on Closing by the Purchasers

The applicable Purchaser shall deliver to the applicable Vendor at the Closing Time:

- (a) the applicable Closing Payment as contemplated by Section 3.3;
- (b) a certified resolution of the Purchaser authorizing the Agreement and the purchaser of the Purchased Assets;
- (c) a certificate of status of the Purchaser;
- (d) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (e) the General Conveyance, duly executed by the Purchaser;
- (f) the certificate of the Purchaser referred to in Section 7.3(a);
- (g) any Specific Conveyances, requested by the Vendor, acting reasonably, each in form and substance satisfactory to the Parties, acting reasonably, duly executed by the Purchaser;
- (h) the Transition Services Agreement, duly executed by the Purchaser; and
- (i) such further and other documents as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

8.4 Risk and Insurance

The risk of loss of the applicable Purchased Assets shall remain with the Vendors until the applicable Closing. Upon such Closing, all title and risk in respect of the Purchased Assets shall pass to the applicable Purchaser effective as of the Effective Time. Any property, liability and other insurance maintained by the Vendors shall not be transferred as of the Closing Time, but shall remain the responsibility of the Vendors until the Closing Time. The applicable Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after the Closing Time.

ARTICLE 9 INDEMNITY

9.1 Indemnification Given by Purchasers

If Closing occurs, the Purchasers shall, on a joint and several basis, without any further necessary action on the part of the Vendors or the Purchasers:

- (a) be liable to the Vendors for; and
- (b) as a separate covenant, save and hold harmless and indemnify the Vendors and their Representatives from and against

all Losses and Liabilities suffered, sustained, paid or incurred by any of them to the extent arising or accruing on or after the Effective Time and which relate to the Purchased Assets, including all Losses and Liabilities attributable to the ownership, operation, use, construction or maintenance of the Purchased Assets arising or accruing on or after the Effective Time. The Purchasers' indemnity obligation set forth in this Section 9.1 shall survive the Closing Date indefinitely.

9.2 Third Party Claims

- (a) If a Vendor receives notice of the commencement or assertion of any Third Party Claim for which the Purchasers may be liable pursuant to this Agreement, the Vendor shall give the Purchasers reasonably prompt notice thereof, but in any event no later than fourteen (14) days after receipt of such notice of such Third Party Claim. Such notice to the Purchasers shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount (or the method of computation of the amount) of the Loss that has been or may be sustained by the Vendor, and a reference to the provisions of this Agreement upon which such claim is based.
- (b) The Purchasers may participate in the defence of any Third Party Claim by giving notice to that effect to the Vendor not later than seven (7) days after receiving notice of that Third Party Claim so long as: (i) the Purchasers first acknowledge to the Vendor, in writing, liability to the Vendor under this Agreement with respect to such Third Party Claim and that the outcome of such Third Party Claim does not alter or diminish the Purchasers' obligation to indemnify the Vendor pursuant to this Agreement, subject to the Purchasers' right to contest in good faith the Third Party Claim; (ii) the Purchasers have the financial resources to defend against the Third Party Claim and fulfill any indemnification obligations and has provided the Vendor with evidence thereof; and (iii) the Purchasers participate in the defence of the Third Party Claim actively and diligently. The Purchasers' right to do so shall be subject to the rights of any insurer or other Third Party who has potential liability in respect of that Third Party Claim. The Purchasers shall pay all of its own expenses of participating in or assuming such defence. The Vendors shall cooperate in good faith in the defence of each Third Party Claim and may participate in such defence assisted by counsel of its own choice at its own expense.
- (c) If the Vendor has not received notice within the notice period that the Purchasers have elected to participate in the defence of such Third Party Claim, or if the Purchasers have given such notice but thereafter fail to conduct such defence of such Third Party Claim actively and diligently, the Vendor may, at its option, elect to settle or compromise the Third Party Claim on terms of its choosing, or assume such defence assisted by counsel of its own choosing, and the Purchasers shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Vendor with respect to such Third Party Claim.

9.3 Failure to Give Timely Notice

A failure to give timely notice as provided in this Article 9 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under any applicable insurance coverage or was otherwise prejudiced as a result of such failure.

9.4 No Merger

There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

ARTICLE 10 TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to the applicable Closing:

- (a) by the mutual written consent of the Parties hereto and the Proposal Trustee;
- (b) by the Purchasers upon written notice to the Vendors, if a Vendor breaches any of the material obligations, covenants, representations and warranties under this Agreement, and such breach not having been cured within three (3) Business Days of written notice of such material breach being given by the Purchasers to the Vendors;
- (c) by the Vendors, with the consent of the Proposal Trustee, upon written notice to the Purchasers, if the Purchasers breach any of the material obligations, covenants, representations and warranties under this Agreement, and such breach not having been cured within three (3) Business Days of written notice of such material breach being given by the Vendors to the Purchasers;
- (d) by the Purchasers upon written notice to the Vendors if the conditions for the benefit of the Purchasers pursuant to the provisions of Section 7.2 are not satisfied or waived by or on the applicable Closing Date;
- (e) by the Vendors, with the consent of the Proposal Trustee, upon written notice to the Purchasers if the conditions for the benefit of the Vendors pursuant to the provisions of Section 7.3 are not satisfied or waived by or on the applicable Closing Date;
- (f) by either the Vendors or Purchasers, with the consent of the Proposal Trustee, upon written notice if Closing does not occur on or before February 28, 2023 (the "**Outside Date**");

- (g) with respect to the portions of this Agreement that address sale of the Purchased Assets by Nilex USA and the US Closing only, by Purchasers or Vendors, upon:
 - (i) denial of the Recognition Order or Vesting Recognition Order or (ii) dismissal or conversion of the Chapter 15 Proceedings if they occur prior to approval of the Recognition Order or the Vesting Recognition Order;
- (h) with respect to the portions of this Agreement that address sale of the Purchased Assets by Nilex USA and the US Closing only, by Purchasers or Vendors, if after Proposal Proceedings are granted, the Vesting Recognition Order is stayed, vacated or varied without Purchasers' prior written consent;
- (i) with respect to the portions of this Agreement that address sale of the Purchased Assets by Nilex USA and the US Closing only, by Purchasers or Vendors, if after the Recognition Order is granted, the Sale Approval and Vesting Order is stayed, vacated or varied without Purchasers' prior written consent; or
- (j) by the either Party upon written notice to the other Party if the conditions for the benefit of the Parties pursuant to the provisions of Section 7.1 are not satisfied or waived by or on the applicable Closing Date

provided that a Party shall not be permitted to exercise or purport to exercise any right of termination pursuant to this Section 10.1 if the event or circumstances giving rise to that right is due to a breach of this Agreement by that Party.

10.2 Effect of Termination

Notwithstanding any termination of this Agreement by the Vendors or the Purchasers as permitted under Section 10.1, the provisions of Sections 3.2, 9.1, 9.2, 9.3, 10.2, 11.1, 11.4, 11.5, 11.11 and 11.14 shall remain in full force and effect following any such permitted termination of this Agreement. In addition and notwithstanding anything to the contrary in this Agreement, but subject at all times to Section 7.2(a) to the extent this Agreement is terminated pursuant to the terms of this Agreement following: (i) the Canadian Closing but prior to the US Closing, such termination shall only be in respect of the US Closing, and shall not affect the consummation of the Transaction pursuant to the Canadian Closing and (ii) the US Closing but prior to the Canadian Closing, such termination shall only be in respect of the Canadian Closing, and shall not affect the consummation of the Transaction pursuant to the US Closing; it being the express intent of the Parties that each Closing may happen independently of the other.

ARTICLE 11 MISCELLANEOUS

11.1 Public Announcements

- (a) Subject to Section 11.1(b) and 11.1(c), if a Party intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the Transaction, the disclosing Party shall provide the other Party with an advance copy of any such press release or public disclosure with sufficient time to enable the other Party to review such press release or other public disclosure and provide any comments. The disclosing Party shall not issue such press release or other public disclosure without the prior written consent of the other Party, such consent not to be unreasonably withheld.

- (b) Notwithstanding Section 11.1(a), this Agreement may be filed by the Vendors and/or the Proposal Trustee with the Court, and the Transaction may be disclosed by the Vendors and/or the Proposal Trustee to the Court, subject to redacting confidential/sensitive information and seeking Court Approval for the temporary sealing of such confidential/sensitive information as permitted by Applicable Law and rules. The Parties further agree that:
 - (i) the Vendors may file evidence, and the Proposal Trustee may prepare and file reports and other documents with the Court containing references to the Transaction and the terms of such Transaction; and
 - (ii) the Vendors and the Proposal Trustee and their Representatives may prepare and file such evidence or reports, as applicable, and other documents with the Court containing references to the Transaction contemplated by this Agreement and the terms of such Transaction as may reasonably be necessary to obtain the Court Approval and to complete the Transaction contemplated by this Agreement or to comply with their respective obligations to the Court.

- (c) Notwithstanding Section 11.1(a), where public disclosure of this Agreement, the terms hereof or the Transaction is required by Applicable Law or a Governmental Authority, except where compliance with Applicable Laws or stock exchange rules would not permit the Party required to make the disclosure to do so, the Party required to make the disclosure shall:
 - (i) use commercially reasonable efforts to provide the other Parties with a draft of any such proposed public, announcement or press release at least twenty four (24) hours prior to the proposed release thereof; and
 - (ii) to the extent reasonably possible, incorporate any reasonable amendments to the proposed public announcement or press release that one or more of the other Parties request sufficiently prior to the release thereof in order for the Party making such public announcement or press release to review and evaluate such proposed amendments.

11.2 Specific Conveyances

No Specific Conveyance shall confer or impose upon a Party any greater right or obligation than contemplated in this Agreement. The Purchasers may prepare Specific Conveyances which they reasonably wishes to have executed and shall provide same to the Vendors for their review and execution in a timely fashion prior to the Closing Time. The Purchasers shall, as applicable, register and/or distribute all Specific Conveyances and all costs and fees, including making all deposits and providing all assurances and security of every nature and kind required in connection with the distribution and registration of the Specific Conveyances and the conveyance, transfer and assignment of the Purchased Assets to the applicable Purchaser and the recognition of the applicable Purchaser as the holder thereof shall be for the account of the applicable Purchaser.

11.3 Obligations to Survive

With the exception of the representations and warranties of the Parties contained in Section 5.1 and 5.2 (which shall not survive the Closing of the purchase and sale of the Purchased Assets

pursuant to this Agreement and shall expire and be terminated and extinguished upon Closing), notwithstanding the Closing contemplated hereunder or the delivery of documents pursuant to this Agreement, the obligations, covenants, representations and warranties of the Parties set out in this Agreement shall survive Closing, shall remain in full force and effect, shall not merge as a result of Closing and shall be binding on the Parties thereafter.

11.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta, and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party irrevocably submits to the exclusive jurisdiction of the Court with respect to the resolution of any dispute arising from this Agreement.

11.5 Consequential Damages

Under no circumstance shall any Party, their Representatives or their respective directors, officers, employees or agents be liable for any punitive, exemplary, consequential or indirect damages (including for greater certainty, any loss of profits) (collectively, "**Consequential Damages**") that may be alleged to result in connection with, arising out of, or relating to this Agreement or the Transaction.

11.6 Further Assurances

Each of the Parties from and after the date hereof shall, from time to time, and at the request and expense of the Party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested to complete the Transaction and for more effectually carrying out the true intent and meaning of this Agreement.

11.7 No Assignment by Purchasers

The Purchasers shall not, without the Vendors' prior written consent, assign any right or interest in this Agreement, which consent may be withheld in the Vendors' sole and absolute discretion, except that the Purchasers shall have the right to assign any or all of their rights, interests or obligations hereunder to one or more Affiliates of the Purchasers, provided that such Affiliate agrees to be bound by the terms of this Agreement and provided that the Purchasers shall remain liable hereunder for any breach of the terms of this Agreement by such Affiliate. The Vendors shall not assign any right or interest in this Agreement.

11.8 Waiver

No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. No waiver by any Party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

11.9 Amendment

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized Representative of each Party and approved by the Proposal Trustee.

11.10 Time of the Essence

Time is of the essence in this Agreement.

11.11 Costs and Expenses

Except as expressly set forth in this Agreement, each Party shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisors) incurred by it in connection with this Agreement and the Transaction.

11.12 Notices

Any notice, demand or other communication required or permitted to be given to any Party shall be given in writing and addressed as follows:

- (a) in the case of the Vendors:

c/o Nilex Inc.
6810 8 Street NW
Edmonton, AB T6P 0C5

Attention: Jeff Allen
Email: jeff.allen@nilex.com

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

Blake, Cassels & Graydon LLP
Suite 3500, 855 – 2nd Street SW
Calgary, AB T2P 4J8

Attention: Kelly J. Bourassa
Email: kelly.bourassa@blakes.com

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

KSV Restructuring Inc.
in its capacity as Proposal Trustee

Attention: Bobby Kofman/David Sieradzki
Email: bkofman@ksvadvisory.com / dsieradzki@ksvadvisory.com

- (b) In the case of the Canadian Purchaser or US Purchaser:

c/o Leggett & Platt Incorporated

No. 1 Leggett Road, Carthage, Missouri 64836

Attention: Ryan Kleiboeker, Corporate Development; Scott Lowery, Legal
Department

Email: ryan.kleiboeker@leggett.com; scott.lowery@leggett.com

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

Fasken Martineau DuMoulin LLP
Suite 3400, 350 7 Ave SW
Calgary, Alberta T2P 3N9

Attention: Constantinos Ragas
Email: cragas@fasken.com

A notice is deemed to be given and received if: (i) sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (prevailing local time in place of receipt) and otherwise on the next Business Day; or (ii) sent by email, on the date of transmission if it is a Business Day and the transmission was made prior to 4:00 p.m. (prevailing local time in place of receipt), and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a notice will be assumed not to be changed. Sending a copy of a notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice to that Party. The failure to send a copy of a notice to legal counsel does not invalidate delivery of that notice to a Party.

11.13 Enurement

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

11.14 Third Party Beneficiaries

Except as otherwise provided for in Section 2.3 each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns.

11.15 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision validity or enforceability in any other jurisdiction.

11.16 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancel and supersede all prior agreements, understandings, negotiations and

discussions, whether oral or written, between the Parties with respect to the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, whether oral or written, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof other than those contained in this Agreement.

11.17 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF this Agreement has been properly executed by the Parties as of the date first above written.

NILEX INC.

Per: DocuSigned by:
Trevor Derksen

Name: Trevor Derksen
Title: President & CEO

NILEX USA INC.

Per: DocuSigned by:
Trevor Derksen

Name: Trevor Derksen
Title: President & CEO

TERRAFIX GEOSYNTHETICS INC.

Per: _____
Name:
Title:

HANES COMPANIES, INC.

Per: _____
Name:
Title:

IN WITNESS WHEREOF this Agreement has been properly executed by the Parties as of the date first above written.

NILEX INC.

Per: _____
Name:
Title:

NILEX USA INC.

Per: _____
Name:
Title:

TERRAFIX GEOSYNTHETICS INC.

Per: John Dowdell
Name: JOHN DOWDELL
Title: VICE PRESIDENT

HANES COMPANIES, INC.

Per: John Dowdell
Name: JOHN DOWDELL
Title: SENIOR VICE-PRESIDENT

TRANSITION SERVICES AGREEMENT

THIS AGREEMENT is made as of the ● day of ●, 2022

BETWEEN:

**NILEX INC. (“Nilex Canada”) AND NILEX USA INC.
 (“Nilex USA”)**

(collectively, the “**Debtor**”)

- and -

**TERRAFIX GEOSYNTHETICS INC. AND HANES
 COMPANIES, INC.**

(collectively, the “**Purchaser**”)

WHEREAS:

- A. On October 27, 2022, Nilex Canada commenced proceedings (the “**Nilex Canada Proposal Proceedings**”) under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) by filing a Notice of Intention to Make a Proposal under Division I of Part III of the BIA with the official receiver;
- B. Nilex USA commenced proceedings under Section 50.4(1) of the BIA by filing a Notice of Intention to Make a Proposal under Division I of Part III of the BIA with the official receiver;
- C. KSV Restructuring Inc. has consented to act as proposal trustee (the “**Proposal Trustee**”) of the Debtor in the Nilex Canada Proposal Proceedings and the Nilex USA Proposal Proceedings (collectively, the “**Proposal Proceedings**”) and as the foreign representative for the Debtor in the Chapter 15 Proceedings;
- D. On November [●], 2022, the Debtor received authorization from the Court: (i) for the procedural consolidation of the Proposal Proceedings; and (ii) for the Debtor or the Proposal Trustee to apply for recognition of the Proposal Proceedings, including, without limitation, to apply for an order under Chapter 15 of the United States Bankruptcy Code, including an order for recognition of the Proposal Proceedings as “foreign main” proceedings in the United States of America in respect of which the Debtor or the Proposal Trustee shall be the foreign representative of the Debtor;
- E. The Debtor sought Chapter 15 Proceedings in the United States Bankruptcy Court: District of Colorado (“**US Court**”) under the US Bankruptcy Code, including recognition of the Proposal Proceedings and recognition of the Sale Approval and

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Vesting Order in the US Court in respect Nilex USA, following the application before the Court on November [●], 2022;

- F. The Debtor is the lessee of certain premises (the “**Premises**”) pursuant to the leases set out on Schedule A hereto (the “**Leases**”);
- G. Certain employees of the Debtor as set out on Schedule B hereto (the “**Transition Employees**”) continue to provide certain services to the Debtor as are currently performed in their employment with the Debtor (the “**Services**”) as set out in Schedule C hereto;
- H. The Debtor is a party to certain contracts as for the operation of the Debtor’s business which were not part of the Purchased Assets as defined in or pursuant to an asset purchase agreement between the Debtor and the Purchaser (the “**APA**”) and which are necessary for the Employees to provide the Services under this Transition Services Agreement (the “**Transition Contracts**”);
- I. The Leases and Transition Contracts are not Purchased Assets as defined in or pursuant to the APA nor was the employment of the Transition Employees assumed by the Purchaser;
- J. The Debtor has agreed, subject to the terms of this Transition Services Agreement, to facilitate closing of the Transaction, on behalf of the Debtor to: (i) cause the Debtor to remain in possession and control of the Premises pursuant to the Leases; (ii) cause the Debtor to provide the benefit of the Transition Contracts to the Purchaser; and (iii) cause the Debtor to provide the Services of the Transition Employees to the Purchaser for a transition period; and
- K. Capitalized terms used but not defined in this Agreement have the meanings ascribed to such terms in the APA.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Occupation.** The Debtor agrees to cause the Debtor to remain in occupation of each of the Premises during the period (the “**Occupation Period**”) from 12:01 a.m. (prevailing Calgary, Alberta time) on the applicable Closing Date, being the date of Closing of the Applicable Transaction (as defined in the APA) (the “**Effective Time**”) until the earlier of (i) 7 days following receipt of notice of termination from the Purchaser for any or all of the Premises; or (ii) three months from the date of this Transition Services Agreement (the “**Outside Date**”), in accordance with the terms of the Leases and subject to the terms and conditions set out herein. For certainty, each time “**Effective Time**” is used in this Agreement, such term shall be interpreted by the parties hereto to reference the time that a specific Lease, Service or Transition Contract that forms part of the Business of Nilex Canada or Nilex US, respectively, is made available to the Purchaser (such that the applicable Occupation Period, Services Period or Contract Period with respect to a specific Lease, Service or Transition Contract commences following the Closing of the Applicable Transaction to which such Lease, Service or Transition Contract relates).

2. **Services of Transition Employees.** The Debtor agrees to cause the Debtor to provide the Purchaser with the Services of each of the Transition Employees during the period (the “**Services Period**”) from the Effective Time until the earlier of (i) 7 days following receipt of notice of termination from the Purchaser for any or all of the Transition Employees; or (ii) six months from the date of this Transition Services Agreement. The Debtor shall direct the Transition Employees during the Services Period to provide the Services, provided such direction is consistent with the terms of the relevant employment agreements.

3. **Provision of Transition Contracts.** The Debtor agrees to cause the Debtor to provide the Purchaser with the benefit of the Transition Contracts during the period (the “**Contract Period**”) from the Effective Time until the earlier of (i) 7 days following receipt of notice of termination from the Purchaser; or (ii) six months from the date of this Transition Services Agreement.

4. **Payment of Rent, Contracts and for Services etc.** The Purchaser shall be responsible to pay to the Debtor to the account of the Debtor for all costs and expenses of every kind from and after the Effective Time (i) directly related to the Leases and the Premises during the Occupation Period including without limitation rents and all charges under the Leases, utility charges and phone bills, associated with the occupation of the Premises by the Debtor (the “**Lease Costs**”); (ii) the costs incurred by the Debtor for the employment of the Transition Employees (which costs shall not include any vacation accrual, retention or other bonuses, severance or termination pay at the end of the Service Period for any Transition Employee) and the provisions of the Services during the Services Period in accordance with existing employment contracts (“**Services Costs**”); and (iii) related to the Transition Contracts during the Contract Period in accordance with the terms thereof (the “**Contract Costs**”).

5. **Payment of Debtor Costs; Sales Taxes.** The Purchaser shall be responsible for all reasonable and documented fees and out-of-pocket disbursements, costs and expenses of the Debtor and its legal counsel incurred from and after the Effective Time in connection with preparing, entering into, or carrying out this Transition Services Agreement (the “**Debtor’s Costs**”). The Purchaser shall be responsible for and shall pay all applicable goods and services, harmonized sales, value added, sales, use, transfer and other similar taxes (“**Sales Taxes**”) in relation to the Lease Costs, Services Costs, Contract Costs, Debtor’s Costs and other amounts payable under this Agreement. All payments under this Agreement shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law requires the deduction or withholding of any Tax from any payment to the Debtor, then Purchaser shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law, and, with the exception of any amounts required by Applicable Law to be deducted or withheld in relation to Employees, the amount payable to the Debtor shall be increased as necessary for such amount deducted or withheld to the relevant Governmental Entity so that after such deduction or withholding has been made, the Debtor receives an amount equal to the amount it would have received had no such deduction or withholding been made.

6. **Deposit and Payment Terms.** Upon execution of this Transition Services Agreement, the Purchaser shall pay to the Debtor the amount of CDN\$100,000 (the “**Deposit**”), which Deposit shall be approximately equal to one month’s estimated costs for the services provided by the Debtor to the Purchaser under this Agreement, plus applicable Sales Taxes. The Purchaser shall promptly pay to the Debtor from time to time within seven days of receiving an invoice from the Debtor of such amounts as may be due under this Transition Services Agreement. If the Debtor has not received payment of such amounts within the seven days referred to in the preceding sentence, the Debtor shall be entitled to satisfy such amounts, at any time upon seven days prior notice to the Purchaser, from the Deposit. The Purchaser shall thereafter provide funds to replenish the Deposit unless otherwise agreed to with the Debtor. If at any time the amounts owing to the Debtor pursuant to this agreement exceed the amount of the Deposit then held by the Debtor, the Debtor is entitled, despite any other provision of this agreement, to immediately terminate the Occupation Period, the Services Period or the Contract Period or any of them. Following the Termination Date (as defined below), the Debtor shall provide a reconciliation of the amounts paid by the Purchaser, the Deposit, the Lease Costs, the Services Costs, the Contract Costs and the Debtor’s Costs to the Purchaser. The Purchaser shall pay any amount owing to the Debtor on two business days notice and, if applicable, the Debtor shall refund to the Purchaser any unused portion of the Deposit.

7. **Acknowledgement of Limited Liability and Indemnity.** The Purchaser shall accept the Services at its own risk and in no event shall the Debtor be responsible or liable to the Purchaser or any person, corporation, association, government, authority or entity whatsoever (collectively, “**Persons**”) for any loss, damage, injury, harm, death or destruction to such Persons or in respect of the Services, Leases, Premises or property however caused during the Occupation Period, Services Period, or Contract Period, as applicable, save and except for any liability arising from the gross negligence or willful misconduct of the Debtor. The Purchaser hereby indemnifies the Debtor against all claims, liabilities, costs, suits, actions or damages of any nature or kind brought against the Debtor by any Persons in connection with the Services, the Leases or the Premises for any loss damage, injury, harm, death or destruction, to such Persons or in respect of the Services, Leases, Premises or property however caused save and except for any liability arising from the gross negligence or willful misconduct of the Debtor. For clarity, the Purchaser shall not be responsible to indemnify the Debtor for any unpaid rent under the Leases, provided that the Purchaser has fulfilled its obligations under this Agreement.

8. **Representations.** The Purchaser agrees that it will accept the Services on an “as is, where is” basis without representations or warranties and that the Debtor shall be under no obligation to maintain or repair the Premises. The Debtor makes no representation or warranty as to the status or terms of the Leases, the Premises, the Transition Employees, the Services or the Transition Contracts.

9. **Insurance.** The Debtor shall cause the Debtor to maintain comprehensive general liability insurance coverage and such other insurance coverage as is typically maintained by the Debtor for leased premises, with respect to the Premises during the Occupation Period and such costs shall be a Lease Cost.

10. **Termination.** This Agreement shall terminate on the expiry of the latest of the Occupation Period, Services Period or the Contract Period or such other date as agreed to in writing between the Debtor and the Purchaser, each in their sole discretion (the “**Termination Date**”); provided, however, that sections 4, 5, 6 and 7 hereof shall survive such termination. Notwithstanding the foregoing, (A) the Debtor may terminate this Agreement or suspend performance of its obligations hereunder upon notice to the Purchaser if the Purchaser: (i) fails to pay any amounts owing to the Debtor in accordance with this Agreement (including section 6 hereof); or (ii) materially breaches this Agreement (other than as covered by the foregoing (i) above) and fails to cure such breach within five Business Days after the Debtor provides the Purchaser with notice of such breach, and (B) the Purchaser may terminate this Agreement or suspend performance of its obligations hereunder upon notice to the Debtor if the Debtor materially breaches this Agreement and fails to cure such breach within five Business Days after the Purchaser provides the Debtor with notice of such breach.

11. **Disclaimer of Leases.** Subject to terms of paragraph 6 hereof, the Debtor shall not cause the Debtor to surrender possession or disclaim, or otherwise terminate any interest the Debtor may have in, each of the Leases prior to the termination of the Occupation Period with respect to such Lease without the prior written consent of the Purchaser, provided however that the Purchaser acknowledges and agrees that the Debtor shall be entitled, in its sole discretion and without further notice to or consent of the Purchaser, to surrender possession or disclaim, or otherwise terminate any interest it may have in, any Lease following the termination of the Occupation Period in respect of such Lease.

12. **Disclaimer of Contracts.** Subject to terms of paragraph 6 hereof, the Debtor shall not cause the Debtor to surrender possession or disclaim, or otherwise terminate any interest the Debtor may have in, each of the Transition Contracts prior to the termination of the Contract Period with respect to such Transition Contract without the prior written consent of the Purchaser, provided however that the Purchaser acknowledges and agrees that the Debtor shall be entitled, in its sole discretion and without further notice to or consent of the Purchaser, to disclaim, or otherwise terminate any interest it may have in, any Transition Contract following the termination of the Contract Period in respect of such Transition Contract.

13. **General Limitations.** Nothing contained in this Agreement shall require the Debtor to provide (or cause the provision of) any services (i) that are not set out on Schedule C hereto, (ii) that would constitute the provision of any legal, financial, accounting or tax advice or regulated activity, (iii) that are in support of any business or operations other than the Business as conducted immediately prior to the date hereof, (iv) at a level of quantity or volume in excess of the levels provided by the Debtor to the Business immediately prior to the date hereof, (v) that exceed the scope of the services provided by the Debtor to the Business immediately prior to the date hereof, or (vi) for the benefit of any Person other than Purchaser and its Affiliates. Further, in no event shall the Debtor be: (i) obligated to provide (or cause the provision of) any Services if the provision of such Services violate any law, order (including the Order of the Court of King’s Bench of Alberta dated November 8, 2022 (the “**Order**”)), Contract (including any Transition Contract), license or permit to which the Debtor is subject; (ii) obligated to provide any Services that in the

Debtor's reasonable determination will create deficiencies in the Debtor's controls over financial information or adversely affect the maintenance of the Debtor's financial books and records; (iii) obligated to hire any additional employees to perform the Services unless the Purchaser agrees to bear all related costs and expenses thereof; (iv) obligated to hire replacements for Transition Employees who resign, retire or are terminated; (v) obligated to maintain the employment of any specific Transition Employee, enter into retention agreements with Transition Employees or otherwise provide any incentive beyond payment of regular salary and benefits; (vi) prevented from determining, in its sole discretion, the individual Transition Employees who will provide Services; (vii) obligated to purchase, lease or license any additional equipment or software or licenses for provision of the Services; (viii) obligated to create or supply any documentation or information not currently existing or reasonably available (subject to any requirements or obligations hereunder to provide any documentation or information); or (ix) obligated to enter into new or additional contracts with third parties or change the scope of current contracts (including the Transition Contracts) with third parties or take any actions that would result in the breach of any contracts of the Debtor with third parties. In connection with the receipt and use of the Services and as applicable, Purchaser shall, and shall cause its Affiliates and representatives to, comply with the Debtor's then-current work processes, policies and procedures of which Purchaser has been made aware, and Purchaser acknowledges that the Debtor's ability to provide the Services is dependent on such compliance by the Purchaser and its Affiliates and representatives.

14. **Force Majeure.** If the Debtor or any third-party provider of the Debtor is wholly or partially prevented from, or delayed or restricted in, providing one or more Services, or one or more Services are interrupted or suspended, by reason of events beyond the Debtor's or third party providers' reasonable control (including failure by Purchaser or its Affiliates or representatives to comply with the terms and conditions of this Agreement, failure by any third party to comply with the terms and conditions of any contract with the Debtor or its Affiliates (including any Transition Contract), acts of God, acts of nature, acts, decrees or orders of governmental, regulatory or military authorities, fire, explosion, lack of utilities, accident, embargoes, disruption or delay in transportation, epidemics, pandemics, war, acts of terrorism, infrastructure failure, IT systems or software failure, nuclear disaster, labour strikes, work stoppages or slowdowns, changes in law (or changes in the interpretation or enforcement thereof) or legal or regulatory actions, including restraining orders and injunctions, civil unrest and/or riots or disruption of internet access (including access disruptions as a result of any virus, worm, Trojan horse, etc.), or any other type of similar event), the Debtor shall: (i) give notice of suspension of Services as soon as reasonably practicable to the Purchaser stating the date and extent of such suspension and its cause; (ii) not be obligated to deliver, or cause to be delivered, the affected Services during such period; and (iii) resume the performance of its obligations as soon as reasonably practicable after the removal of the cause, provided that following receipt by the Purchaser of a notice pursuant to (i), Purchaser shall have the right in its sole discretion to immediately terminate this Agreement.

15. **Services.** Subject to terms of paragraph 6 hereof, the Debtor shall not, on behalf of the Debtor terminate the employment of the Transition Employees prior to termination of the Services Period for such Transition Employee without the prior written consent of the

Purchaser, provided however that the Purchaser acknowledges and agrees that the Debtor shall be entitled, in its sole discretion and without further notice to or consent of the Purchaser, to terminate any such employment contracts, on behalf of the Debtor following the termination of the Services Period for such Transition Employee.

16. **No Assignment of Lease.** The Debtor and the Purchaser each hereby acknowledge and agree that nothing in this Agreement is intended to, or shall be construed to, create a lease, sublease or assignment of lease in favour of the Purchaser or otherwise impose on the Purchaser any obligations as a lessee, sublessee or assignee of the Lease.

17. **Independent Contractors; No Employer Relationship.** The relationship between the Debtor, on the one hand, and the Purchaser, on the other hand, is that of independent contractors, not partners or joint venturers. The Debtor and the Purchaser each hereby acknowledge and agree that nothing in this Agreement is intended to, or shall be construed to, create or deem the Purchaser to be the employer of the Transition Employees. For greater certainty, nothing in this Transition Services Agreement deems or causes the Debtor to become the employer of the Transition Employees and nothing herein modifies in any way the protections provided to the Debtor pursuant to the Order. For the avoidance of doubt, the Transition Employees will at all times remain under the control or direction of the Debtor and will not be, nor deemed to be, under the common control or direction of the Purchaser, nor will such Transition Employees have any entitlement to receive payment of compensation from the Purchaser or otherwise participate in, or accrue or receive benefits in respect of, any retirement, employee benefit or incentive plan sponsored or maintained by the Purchaser or its Affiliates.

18. **Confidential Information.** Each party hereto shall, in its performance of this Agreement, be bound by the confidentiality provisions set out in the APA.

19. **Successors and Assigns.** This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

20. **Capacity.** The Purchaser acknowledges that the Debtor is acting in its capacity as court-appointed Debtor of the Debtor, with no personal or corporate liability.

21. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

22. **Further Assurances.** Each of the parties hereto will, from time to time, execute and deliver all such further documents, and instruments and do all acts and things as any other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

23. **Counterparts.** This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

24. **Amendment.** This Agreement may be amended or supplemented only by a written agreement signed by each party.

25. **Assignment.** This Agreement may be assigned by a party only with the prior written consent of the other parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day and year first written above.

NILEX INC.

By: _____
Name:
Title:

NILEX USA INC.

By: _____
Name:
Title:

TERRAFIX GEOSYNTHETICS INC.

By: _____
Name:
Title:

HANES COMPANIES, INC.

By: _____
Name:
Title:

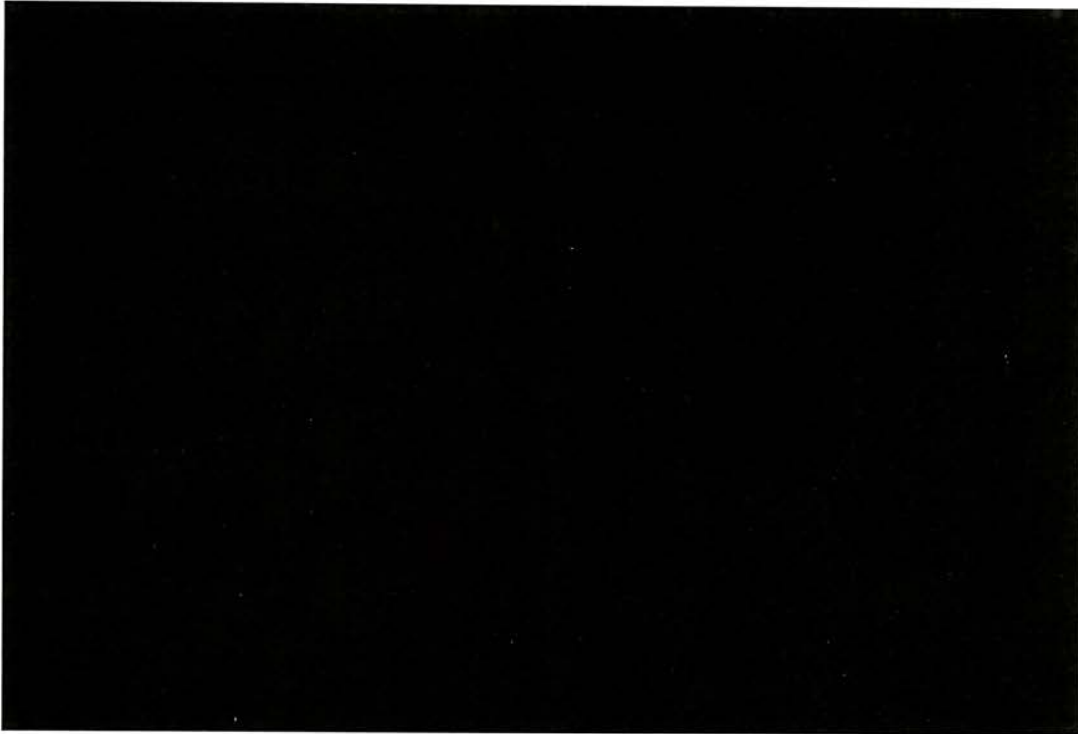
Schedule A
Leases

1. Industrial Lease dated December 20, 2013 between Stellarbridge Management Inc. and Nilex Inc. in respect of Unit 2, 40 Audia Court, Concord, Ontario, as amended by Lease Renewal Agreement dated December 12, 2021.
2. Lease Agreement dated December 3, 2019 between 1010003967 Saskatchewan Ltd. and Nilex Inc. in respect of Bay 4, 3003 Millar Avenue, Saskatoon, Saskatchewan.
3. Premises Lease dated February 14, 2015 between Satt Management LLC and Nilex USA Inc. in respect of 425 North Neil Armstrong Rd, Salt Lake City, Utah 84116, as amended by a Mutual Agreement to Extend Lease dated November 19, 2020.
4. Outdoor Storage Rental Agreement dated November 20, 2020 between 15253 E. Fremont DR LLC and Nilex USA Inc. in respect of 15253 E. Fremont Drive, Centennial, Colorado.¹
5. Commercial Lease dated November 1, 2020 between 15354 E Hinsdale LLC and Nilex USA Inc. in respect of 15354 E. Hinsdale Circle, Centennial, Colorado.

¹ Lease is being terminated December 31, 2022; notice was provided by landlord to remove product. Nilex plans to move all inventory out by November 30, 2022.

Schedule B
Transition Employees

Available on request, subject to confidentiality restrictions.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix “E”

Nilex Inc. and Nilex USA Inc.
Projected Cash Flow Statement
 For the period ending February 24, 2023
 (Unaudited; \$CAD Thousands)

Note	Week ending													Total		
	18-Nov-22	25-Nov-22	2-Dec-22	9-Dec-22	16-Dec-22	23-Dec-22	30-Dec-22	6-Jan-23	13-Jan-23	20-Jan-23	27-Jan-23	3-Feb-23	10-Feb-23		17-Feb-23	24-Feb-23
Receipts																
2	1,261	1,254	1,328	1,054	1,295	1,495	1,144	1,000	1,000	1,250	1,250	1,000	1,000	1,000	1,000	17,330
Disbursements																
Operating Disbursements																
3	(865)	(865)	(700)	(650)	(700)	(650)	(700)	(650)	(700)	(650)	(700)	(650)	(700)	(650)	(700)	(10,530)
	(275)	(161)	(250)	(41)	(370)	(41)	(370)	(41)	(370)	(41)	(370)	(41)	(370)	(41)	(370)	(3,149)
	-	-	(181)	-	-	-	-	(181)	-	-	-	(181)	-	-	-	(544)
	(20)	-	(65)	-	(20)	-	(55)	(65)	-	-	(55)	-	-	-	-	(280)
	(90)	-	(451)	(14)	(70)	(20)	(250)	(451)	(20)	(20)	(20)	(380)	(20)	(20)	(20)	(1,845)
	(1,250)	(1,025)	(1,647)	(705)	(1,160)	(711)	(1,375)	(1,388)	(1,090)	(711)	(1,145)	(1,252)	(1,090)	(711)	(1,090)	(16,347)
Other Disbursements																
			(80)				(80)					(80)				(240)
			(20)				(20)					(20)				(60)
			(83)													(83)
4	(175)	-	-	-	(175)	-	-	(175)	-	-	-	-	-	-	-	(700)
	(1,425)	(1,025)	(1,830)	(705)	(1,335)	(711)	(1,375)	(1,488)	(1,265)	(711)	(1,145)	(1,352)	(1,265)	(711)	(1,090)	(17,430)
	(164)	229	(502)	350	(41)	784	(231)	(488)	(265)	540	105	(352)	(265)	290	(90)	(100)
Consolidated Revolver																
	13,101	13,285	13,036	13,538	13,189	13,229	12,445	12,676	13,163	13,428	12,889	12,784	13,135	13,400	13,111	13,101
	(164)	229	(502)	350	(41)	784	(231)	(488)	(265)	540	105	(352)	(265)	290	(90)	(100)
	13,265	13,036	13,538	13,189	13,229	12,445	12,676	13,163	13,428	12,889	12,784	13,135	13,400	13,111	13,201	13,201
Pre-Filing Revolver																
	5,524	4,263	3,009	1,681	627											5,524
	1,261	1,254	1,328	1,054	628											5,525
	4,263	3,009	1,681	627	(0)											(0)
Post-Filing Revolver																
	7,576	9,001	10,027	11,857	12,561	13,229	12,445	12,676	13,163	13,428	12,889	12,784	13,135	13,400	13,111	7,576
	-	-	-	-	667	1,495	1,144	1,000	1,000	1,250	1,250	1,000	1,000	1,000	1,000	11,806
	(1,425)	(1,025)	(1,830)	(705)	(1,335)	(711)	(1,375)	(1,488)	(1,265)	(711)	(1,145)	(1,352)	(1,265)	(711)	(1,090)	(17,430)
	9,001	10,027	11,857	12,561	13,229	12,445	12,676	13,163	13,428	12,889	12,784	13,135	13,400	13,111	13,201	13,201

The above financial projections are based on management's assumptions detailed in Appendix "1-1".
 The note references correspond to the assumption numbers shown in Appendix "1-1".

KSY RESTRUCTURING INC.
 IN ITS CAPACITY AS TRUSTEE UNDER THE
 NOTICE OF INTENTION TO MAKE A PROPOSAL AND NOT
 IN ITS PERSONAL CAPACITY



NILEX INC.
 Per: _____
 Date: **November 18, 2022**

Per: _____
 Date: **Nov 18, 2022**

Nilex Inc. and Nilex USA Inc.

Appendix "1-1"

Projected Statement of Cash Flows

For the period ending February 24, 2023

(Unaudited; \$CAD)

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the cash flow of Nilex Inc. (the "Company") for the period November 14, 2022 to February 24, 2023 in respect of its proposal proceedings under the *Bankruptcy and Insolvency Act*.

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Hypothetical

2. Represents projected accounts receivable collections based on the payment practice of the Company's customers.

Most Probable

3. Reflects payments to trade vendors in respect of the Company's continuing operations.
4. Represents estimated professional fees of the Company's legal counsel, the Proposal Trustee and its legal counsel and CIBC's legal counsel.

**Report on Cash Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA)**

The management of Nilex Inc. (the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of the Company for the period ending February 24, 2023.

The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 4.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 4. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 18th day of November, 2022.

NILEX INC.



Per: Jeff Allen, Vice President, Finance

Appendix “F”

Clerk's stamp:

COURT/ESTATE FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-
3, AS AMENDED
APPLICANT: NILEX INC.
DOCUMENT **ORDER (approving extension of time to file a
proposal, administration charge, and other relief)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP
3500, 855 – 2nd Street S.W.
Calgary, AB T2P 4J8
Attn: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Facsimile: 403-260-9700
E-mail: kelly.bourassa@blakes.com /
alexia.parente@blakes.com
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 8, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta (via Webex)

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice J.S. Little

UPON THE APPLICATION by Nilex Inc. (the "**Company**"), for an order, among other things: (a) extending the time for the Company to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**"); (b) approving an Administration Charge (defined below); (c) approving the Sale Process (defined below) and its continuation; (d) approving the continued use of the Cash Management System (defined below); and (e) approving the distribution of the Garnished Funds (defined below) out of Court to the Company and directing any future Garnished Funds to be paid to the Company;

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn October 31, 2022 (the "**First Allen Affidavit**"), the First Report of KSV Restructuring Inc. in its capacity as proposal trustee of the Company (in such capacity, the "**Proposal Trustee**") dated October 31, 2022 (the "**First Report**"), and the Affidavit of Service of Lindsay Farr sworn November 3, 2022;

AND UPON HEARING the submissions of counsel for the Company, the Proposal Trustee, the Canadian Imperial Bank of Commerce ("**CIBC**"), and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

EXTENSION OF TIME TO FILE A PROPOSAL

2. Pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal is hereby extended to January 10, 2023 (as that date may be extended by further order of the Court, the "**Proposal Extension Date**").

NO INTERFERENCE WITH RIGHTS

3. Until and including the Proposal Extension Date, no individual, firm, corporation, governmental body, or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, or take any further action to issue or enforce any garnishee summons, except with the written consent of the Company and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

4. Until and including the Proposal Extension Date, all Persons having:
 - (a) statutory or regulatory mandates for the supply of goods and/or services; or

- (b) oral or written agreements or arrangements with the Company, including without limitation all purchase orders, supply agreements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company or exercising any other remedy provided under such agreements or arrangements. The Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Company in accordance with the payment practices of the Company, or such other practices as may be agreed upon by the supplier or service provider and each of the Company and the Proposal Trustee or as may be ordered by this Court.

ADMINISTRATION CHARGE

5. The Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Administrative Professionals on a bi-weekly basis, or as they may otherwise agree.
6. The Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$350,000 (before GST), as security for payment of their respective professional fees and disbursements incurred at their normal rates and charges, both before and after the making of this Order, in respect of this proceeding.
7. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

CASH MANAGEMENT SYSTEM AND LENDER PRIORITY CHARGE

8. The Company's execution and performance under the forbearance agreement dated as of October 17, 2022 between the Company and CIBC (among others), as may be amended from time to time (the "**Forbearance Agreement**") is hereby approved.
9. The Company shall be entitled to continue to utilize the credit facilities (the "**Cash Management System**") granted by CIBC under the Credit Agreement, as defined and described in the First Allen Affidavit (the "**Credit Agreement**"). For greater certainty, (i) the Company is authorized to borrow, repay and re-borrow such amounts from time to time as the Company may consider necessary or desirable under the Credit Agreement, subject to the terms and conditions of the Forbearance Agreement; and (ii) CIBC is authorized to apply receipts and deposits made to the Company's bank accounts, whether directly or through blocked accounts, against the indebtedness of the Company to CIBC in accordance with the Forbearance Agreement, whether such indebtedness arose before or after the date of this Order; provided, however that no advances made by CIBC to the Company under the Credit Agreement on or after the date hereof shall be used to pay the Company's obligations that were owing to CIBC prior to the date hereof.
10. The Cash Management System will be governed by the terms of the Credit Agreement and the Forbearance Agreement and such other documentation applicable to the Cash Management System. CIBC shall be an unaffected creditor in these proceedings, and the rights and remedies of CIBC shall be unaffected by paragraphs 3 and 4 of this Order or any other stay of proceedings that may be granted in these proceedings.
11. CIBC shall be entitled to the benefit of and is hereby granted a charge (the "**Lender Priority Charge**") on the Property, which charge shall not exceed an aggregate principal amount of 20,000,000 plus interest, fees and expenses, as security for any advances made under the Credit Agreement from and after the filing of the NOI.
12. The Lender Priority Charge shall have the priority set out in paragraphs 21 and 23 hereof.
13. The payments made by the Company pursuant to this Order, the Credit Agreement and the Forbearance Agreement, and the granting of the Lender Priority Charge shall not constitute or be deemed to be a preference, fraudulent conveyance or transfer at undervalue or other challengeable or reviewable transaction under the BIA or any

applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law. The rights of CIBC under this Order, including without limitation the Lender Priority Charge, shall be enforceable in any bankruptcy, interim receivership, or receivership or in any proceedings under the *Companies' Creditors Arrangement Act* (Canada) of the Company or Property.

D&O CHARGE

14. The Company shall indemnify the directors and officers against obligations and liabilities that they may incur in their role as directors and officers after the filing of the NOI, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's and officer's gross negligence or wilful misconduct.
15. Each of the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on all of the Property, which charge shall not exceed an aggregate amount of \$925,000, as security for the indemnity provided in this Order.
16. The D&O Charge shall have the priority set out in paragraphs 21 and 23 hereof.
17. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
 - (b) the Company's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy.

KERP

18. The Company's key employee retention plan (the "**KERP**") described in the First Report is hereby approved and the Company is authorized and directed to make the payments contemplated thereunder should the beneficiaries become entitled thereto in accordance with the terms and conditions of the KERP.

19. The beneficiaries of the KERP are hereby granted a charge (the "**KERP Charge**") on the Property which charge shall not exceed an aggregate amount of \$800,000, as security for all obligations under the KERP.
20. The KERP Charge shall have the priority set out in paragraphs 21 and 23 hereof.

PRIORITY OF CHARGES

21. The priorities of the Administration Charge, the Lender Priority Charge, the D&O Charge, and the KERP Charge, as between them, shall be as follows:
 - (a) First – Administration Charge;
 - (b) Second – Lender Priority Charge;
 - (c) Third – D&O Charge; and
 - (d) Fourth – KERP Charge.(collectively, the "**Charges**").
22. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
23. The Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
24. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the other beneficiaries of the Charges affected thereby, or further order of this Court.

SALE PROCESS

25. The sale process (the "**Sale Process**") commenced prior to the filing of the notice of intention to file a proposal by the Company in this proceeding, as described in the First Report, is commercially reasonable and is hereby ratified and approved.
26. The Company, with the assistance of the Proposal Trustee and Valitas Capital Partners, is hereby authorized and directed to continue the Sale Process, and do all things reasonably necessary to conduct and give full effect to the Sale Process and carry out the obligations thereunder, including taking any additional steps or executing additional documents as may be necessary or desirable in order to carry out and complete the Sale Process and a transaction or transactions thereunder.
27. The Company is authorized to apply to this Honourable Court for advice and directions in connection with the Sale Process.

FUNDS PAID OUT OF COURT

28. The Clerk of the Court of the King's Bench of Alberta is hereby directed to release to the Company all funds currently being held by it, or which may be paid into Court subsequent to this Order, pursuant to garnishee summons issued in Court of King's Bench File Number 1903-07838 (the "**Garnished Funds**").
29. The Company shall deposit the Garnished Funds in the Company's accounts with CIBC and they shall be applied in accordance with the provisions of the Credit Agreement and the Cash Management System to reduce the amounts outstanding to CIBC as first priority secured creditor.
30. Any Person who has received a garnishee summons directing it to pay funds to the Clerk of the Court is hereby directed to pay any such funds directly to the Company to be deposited by the Company into its accounts with CIBC and applied in accordance with the provisions of the Credit Agreement and the Cash Management System.

SEALING

31. Notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, confidential appendix 1 ("**Confidential Appendix**") of the First Report shall until further

Order of this Honourable Court, be sealed on the Court file and kept confidential to be shown only to a Justice of the Court of King's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Appendices in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 24-2878531. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE C.M. JONES ON NOVEMBER 9, 2022.

32. The Company and the Proposal Trustee are empowered and authorized, but not directed, to provide the Confidential Appendix (or any portion thereof, or information contained therein) to any interested party, entity or person that the Company or Proposal Trustee considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Company or the Proposal Trustee.
33. Any party may apply to set aside paragraph 31 of this order upon providing the Company, Proposal Trustee and all other interested parties with 5 days notice of such application.

MISCELLANEOUS MATTERS

34. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Proposal Trustee will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Proposal Trustee's reports shall be filed by the Clerk of the Court notwithstanding that they do not include an original signature.
35. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist the Proposal Trustee 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 order and to provide such assistance to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

36. Each of the Company or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
37. Any interested party (including the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SERVICE OF ORDER

38. Service of this Order shall be deemed good and sufficient:
- (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (b) by posting a copy of this Order on the Proposal Trustee's website at: [Nilex Inc. \(ksvadvisory.com\)](http://Nilex.Inc.(ksvadvisory.com)).
39. Service of this Order on any other person is hereby dispensed with.
40. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

COURT FILE NUMBER 24-2878531

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (procedural consolidation and ancillary relief)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Blake, Cassels & Graydon LLP
Barristers and Solicitors
3500 Bankers Hall East Tower
855 – 2 Street SW
Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON THE APPLICATION by Nilex Inc. and Nilex USA Inc. (each a “**Company**” and, collectively, the “**Companies**”) for an order, among other things: (i) procedurally consolidating the bankruptcy proceeding of Nilex Inc. (Estate No. 24-2878531) and Nilex USA Inc. (Estate No. 24-2887527) (each individually, a “**Proceeding**” and together, the “**Consolidated Proceeding**”) for administrative purposes; (ii) extending to Nilex USA Inc. certain relief granted previously to Nilex Inc.; (iii) ordering the style of cause in the within proceedings be amended to include Nilex USA Inc. as an applicant; (iv) authorizing KSV Restructuring Inc. (the “**Proposal Trustee**”), to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the Companies for the purpose of having these Proceedings recognized and approved in the United States of America pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-

1532; and (v) authorizing the Proposal Trustee to make an interim distribution to Canadian Imperial Bank of Commerce ("**CIBC**");

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn on November 21, 2022, the second report of the Proposal Trustee dated November 21, 2022, the confidential appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, CIBC and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

EXTENSION OF TIME TO FILE A PROPOSAL

1. Pursuant to Section 50.4(9) of the BIA, the time for the Companies to file their respective proposals is hereby extended to February 7, 2023 (as that date may be extended by further order of the Court).

PROCEDURAL CONSOLIDATION

2. The bankruptcy estates of the Proceedings shall, subject to further order of the Court, be procedurally consolidated into one proceeding and shall continue under Estate No. 24-287853 (the "**Consolidated Proceeding**").
3. The procedural consolidation of the Proceedings pursuant to this Order shall not:
 - (a) affect the legal status or corporate structure of the Companies; or
 - (b) cause either Company to be liable for any claim for which they are otherwise not liable, or cause either Company to have an interest in an asset to which it otherwise would not have.
4. The Proceedings are not substantively consolidated, and nothing in this Order shall be construed to that effect.

5. A copy of this Order shall be filed by the Companies in the Court file for each of the Proceedings but any subsequent document required to be filed hereafter will only be required to be filed in the Consolidated Proceeding.
6. For avoidance of doubt, any motion, application or action, including the herein application, in respect of the Companies shall be brought and filed in the Consolidated Proceeding and if so brought and filed it shall be deemed brought and filed in each of the Proceedings as appropriate, without prejudice to any rules of court or otherwise that are applicable.
7. The Style of Cause in the within proceedings is hereby amended and shall be assigned to the Consolidated Proceeding:

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC
1985, c B-3, AS AMENDED

APPLICANTS

NILEX INC. and NILEX USA INC.

8. The relief granted by the Honourable Justice J.S. Little of this Court on November 8, 2022 (the "**November 8 Order**"), among other things, (i) approving a sale process as described in the Proposal Trustee's first report to the Court dated October 31, 2022; (ii) expanding the stay of proceedings under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3, as amended, as set out in paragraphs 3 and 4 of the November 8 Order; and (iii) granting the Administration Charge, Lender Priority Charge, D&O Charge and KERP Charge (each as defined in the November 8 Order) and, in respect of the Charges (as defined in the November 8 Order) ordering that each shall constitute a charge on the Property (as defined in the November 8 Order), is hereby extended to Nilex USA Inc. and all of its present and future assets, undertakings and property of every nature and kind whatsoever and wherever in situate, including all proceeds thereof, in the same manner as set out in the November 8 Order.

FOREIGN REPRESENTATIVE

9. The Proposal Trustee is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for recognition of this Order (and other orders in the Consolidated Proceeding) and for assistance in carrying out the terms

of these orders and the Proposal Trustee is authorized and empowered to act as the Foreign Representative of the Companies or either Company in respect of the Consolidated Proceeding or either Proceeding for the purpose of having the Consolidated Proceeding or either Proceeding recognized in a jurisdiction outside Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

INTERIM DISTRIBUTION

10. The Proposal Trustee is hereby authorized, at such time as it determines appropriate, to make an interim distribution or interim distributions to CIBC from amounts received from the Transaction up to the full amount of the Company's indebtedness to CIBC, as set out in the Second Report, subject to the retention of amounts for any priority claims. Such interim distribution or interim distributions shall be free and clear of all claims and encumbrances and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of either of the Companies and shall not be void or voidable by creditors of the Companies, nor shall any such interim distribution 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 any such interim distribution constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
11. The interim distribution or interim distributions authorized in paragraph 10 of this Order shall be without prejudice to any rights of subrogation or marshaling that any subordinate creditors may have to amounts received from the Transaction following the interim distribution or interim distributions to CIBC.

MISCELLANEOUS MATTERS

12. The Companies, the Proposal Trustee, and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

13. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories, or in any foreign jurisdiction including specifically, the United States of America, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order and other orders in the Consolidated Proceeding. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies or the Proposal Trustee, as an officer of this Court and Foreign Representative, as may be necessary or desirable to give effect to this Order and other orders in the Consolidated Proceeding, to grant representative status to the Proposal Trustee in any foreign proceeding of the Companies or either Company, or to assist the Companies and the Proposal Trustee and their agents in carrying out the terms of this Order and other orders in the Consolidated Proceeding.

SERVICE OF ORDER

14. Service of this Order shall be deemed good and sufficient:
- (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (ii) by posting a copy of this Order on the Proposal Trustee's website at:
<https://www.ksvadvisory.com/experience/case/nilex-inc>.
15. Service of this Order on any other person is hereby dispensed with.
16. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (sale approval and vesting)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON the application of Nilex Inc. and Nilex USA Inc. (the "**Companies**") for an order, among other things: (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement dated November 18, 2022 (the "**APA**") between the Companies, as vendors, and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and appended as confidential appendix "3" (the "**Confidential Appendix**"), to the second report of KSV Restructuring Inc. in its capacity as proposal trustee ("**Proposal Trustee**"), dated November 21, 2022 (the "**Second Report**"); (ii) approving the transition services agreement attached to the APA as Exhibit "E"; and (iii) vesting in the Purchasers the Companies' right, title, and interest in and to the assets described in the APA (the "**Purchased Assets**") in accordance with the terms of the APA;

AND UPON HAVING READ the Application, the affidavit of Jeff Allen sworn on November 21, 2022 (the "**Second Allen Affidavit**"), the Second Report, the Confidential Appendix and other confidential appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON NOTING in the Second Report that, among other things, in the Proposal Trustee's view, the Sale Process was commercially reasonable, the value of the Transaction was the highest of any going concern offers received in the Sale Process and materially exceeds the liquidation value of the Companies' business, and that the Companies are acting in good faith and with due diligence;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, Canadian Imperial Bank of Commerce ("**CIBC**") and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITIONS

1. Capitalized terms not defined in this Order shall have the meanings attributed to them in the Second Allen Affidavit or the APA.

SERVICE

2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

3. The Transaction is hereby approved, and the execution of the APA and the TSA by the Companies is hereby authorized and approved, with such minor amendments as the Companies may deem necessary. The Companies are hereby authorized and directed to take such additional steps, perform, consummate, implement, execute and deliver such additional documents, including conveyance documents, bills of sale, assignments, transfers, deeds, indicia of title, tax elections, documents and instructions of whatsoever nature and kind as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchasers (or their nominee).

VESTING OF PROPERTY

4. Upon delivery of a Proposal Trustee's certificate to the Purchasers (or either of them, or their nominee), pursuant to the Canadian Closing or the US Closing (as defined in the APA), substantially in the form set out in Schedule "A" hereto (each respectively a "**Proposal Trustee's Certificate**"), all of the respective Company's right, title, and interest in and to the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, shall vest absolutely in the name of the applicable Purchaser (or its nominee), free and clear of and from any and all caveats, security interests (whether contractual, statutory, or otherwise), hypothecs, pledges, mortgages, liens, trusts or deemed trusts (whether contractual, statutory, or otherwise), reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, 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, (i) the Order of Justice J.S. Little of this Court in these proceedings dated November 8, 2022, and (ii) any other orders in these proceedings, in the event future orders modify or create additional charges;
- (ii) all charges, liens, security interests or claims, whether evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), the Uniform Commercial Code (United States) or any other personal property registry system, or otherwise; and
- (iii) those Claims listed in Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the encumbrances, caveats, interests, easements and restrictive covenants listed in Schedule "C" (collectively, "**Permitted Encumbrances**"))

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets that are the subject of the Canadian Closing or US Closing, as applicable, are hereby expunged, discharged, and terminated as against those Purchased Assets.

5. Upon delivery of a Proposal Trustee's Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby

authorized, requested and directed to accept delivery of such Proposal Trustee's Certificate and copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the applicable Purchaser or its nominee clear title to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, subject only to Permitted Encumbrances.

6. The aid and assistance of the officials of the public registries of any province or territory of Canada or the United States is requested to give effect to this Order; the Registrars of the Alberta Personal Property Registry, the British Columbia Personal Property Registry, the Saskatchewan Personal Property Registry, and the Ontario Personal Property Registry shall and are hereby directed to forthwith cancel and discharge any registrations at its respective Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Companies in any of the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, which are of a kind prescribed by applicable regulations as serial-numbered goods.
7. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and a Proposal Trustee's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
8. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Companies of the APA.
9. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Proposal Trustee) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of a Proposal Trustee's Certificate all Claims, including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, and may only be asserted against the net

proceeds from the sale of those Purchased Assets with the same priority as they had with respect to those Purchased Assets immediately prior to the sale, as if those 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.

CLOSING OF THE SALE TRANSACTION

10. Except as expressly provided for in the APA or by section 5 of the Alberta *Employment Standards Code*, the Purchasers (or their nominee, if any) shall not by completion of the Transaction, have any liability of any kind whatsoever in respect of any Claims against the Companies.
11. Upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), the applicable Company and all persons who claim by, through, or under it in respect of those Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of those Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to those Purchased Assets and, to the extent that any such persons or entities remain in possession or control of any of those Purchased Assets, or any certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to those Purchased Assets, they shall forthwith deliver possession thereof to the applicable Purchaser (or its nominee).
12. Upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), the applicable Purchaser (or its nominee) shall be entitled to enter into and upon, hold, and enjoy the applicable Purchased Assets for its own use and benefit without any interference of or by the Companies, or any person claiming by, through, or against the Companies.
13. Immediately upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), holders of Permitted Encumbrances shall have no claim whatsoever against the applicable Company or the Proposal Trustee.

14. The Proposal Trustee is directed to file with the Court a copy of each Proposal Trustee's Certificate, forthwith after delivery thereof to the applicable Purchaser (or its nominee).
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), section 20(e) of the *Personal Information Protection Act* (Alberta), and any other equivalent provision in any other provincial statute, the Companies are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Companies' records pertaining to the Companies' past and current employees, including personal information of those employees listed in the APA. The Purchasers (or their nominee) 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.

MISCELLANEOUS MATTERS

16. Notwithstanding:
 - (i) the pendency of these proceedings;
 - (ii) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA"), or the United States Bankruptcy Code, in respect of the Companies and any bankruptcy order issued pursuant to any such applications;
 - (iii) any assignment in bankruptcy made in respect of the Companies; and
 - (iv) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchasers (or their nominee) 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 settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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.

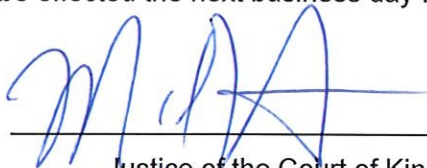
17. The Companies, the Proposal Trustee, the Purchasers (or their nominee), and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may

be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

18. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories or in any foreign jurisdiction including specifically, the United States of America, including the United States Bankruptcy Court, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, and to give effect to this Order and to assist the Companies 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 Companies as may be necessary or desirable to give effect to this Order or to assist the Companies and their agents in carrying out the terms of this Order.
19. Each of the Companies or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SERVICE OF ORDER

20. Service of this Order shall be deemed good and sufficient:
 - (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (ii) by posting a copy of this Order on the Proposal Trustee's website at:
<https://www.ksvadvisory.com/experience/case/nilex-inc>.
21. Service of this Order on any other person is hereby dispensed with.
22. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

Schedule "A"

Form of Proposal Trustee's Certificate

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. AND NILEX USA INC.

DOCUMENT PROPOSAL TRUSTEE'S CERTIFICATE

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 3810, 3500 Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5

Attention: Jane Dietrich / Danielle Maréchal
Telephone: 416-260-5223 / 403-351-2922
Facsimile: 403-648-1151
Email: jdietrich@cassels.com / dmarechal@cassels.com

RECITALS

- A. Pursuant to the filing of notices of intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) on October 27, 2022 by Nilex Inc. and on November 24, 2022 by Nilex USA Inc., KSV Restructuring Inc. consented to act as the Proposal Trustee.
- B. Pursuant to an Order of the Court dated November 28, 2022, the Court approved the Asset Purchase Agreement dated November 18, 2022 (the "**APA**"), between Nilex Inc. and Nilex USA Inc. (the "**Vendors**") and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and provided for the vesting in the Purchasers of the Vendors' right, title and interest in and to the Purchased Assets (the "**Transaction**"), which vesting is to be effective with respect to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, upon the delivery by the Proposal Trustee to the Purchasers of a certificate or certificates confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable; (ii) that the conditions to Canadian Closing or the US Closing, as applicable, as set

out in the APA have been satisfied or waived by the Vendors and the Purchasers; and (iii) the Applicable Transaction (as defined in the APA) has been completed to the satisfaction of the Vendors.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Order (Sale Approval and Vesting).

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Proposal Trustee has received the **[Canadian / US]** Purchase Price for the Purchased Assets payable on the Closing Date **[for the Canadian Closing / US Closing]** pursuant to the APA;
2. The conditions to Closing **[for the Canadian Closing / US Closing]** as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Vendors and the Purchasers (or their nominee);
3. The Applicable Transaction (as defined in the APA) has been completed to the satisfaction of the Vendors and the Vendors have notified the Proposal Trustee of this in writing; and
4. This Certificate was delivered by the Proposal Trustee at **[City], [Province]** on _____**[Date]**, 2022 at _____**[a.m./p.m. Edmonton Time]**.

**KSV RESTRUCTURING INC., IN ITS CAPACITY
AS PROPOSAL TRUSTEE OF NILEX INC. AND
NILEX USA INC. AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: _____
Name:
Title:

Schedule "B"**Encumbrances to be Expunged and Discharged**

The Purchased Assets shall be conveyed to the applicable Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (each as defined in the APA), including without limitation the following:

Canadian Encumbrances to be Expunged and Discharged**Alberta**

Registration Number	Registration Date	Registering Party	Nature of Registration
10010720861	January 7, 2010	Element Fleet Management Inc.	Security Agreement
13042623420	April 26, 2010	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Land Charge
13042623460	April 26, 2010	PEF 2010 Nilex Investment Limited Partnership	Security Agreement
22060620459	June 6, 2022	Ian Wilson	Writ of Enforcement
22062937083	June 29, 2022	Leavitt Machinery Canada Inc.	Security Agreement
22071219384	July 12, 2022	Hugh Watt	Writ of Enforcement

British Columbia

Registration Number	Registration Date	Registering Party	Nature of Registration
314726H	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement
785579K	May 28, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Saskatchewan

Registration Number	Registration Date	Registering Party	Nature of Registration
301015975	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement
301770425	May 28, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Ontario

Registration Number	Registration Date	Registering Party	Nature of Registration
20130426 1704 1462 6168	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement

U.S. Encumbrances to be Expunged and DischargedColorado

Registration Number	Registration Date	Registering Party	Nature of Registration
20182049545	June 1, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Schedule "C"

Permitted Encumbrances

At the closing of the Transaction, the applicable Purchaser will be conveyed clear title to the applicable Purchased Assets subject to the Permitted Encumbrances as set forth in the APA in the definition of "Permitted Encumbrances".

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (sealing confidential appendices)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED November 28, 2022
LOCATION OF HEARING: Calgary, Alberta (via Webex)
NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON THE APPLICATION by Nilex Inc. and Nilex USA Inc. (the "**Companies**"), for an order, among other things, sealing the confidential appendices (collectively, the "**Confidential Appendices**") to the second report of KSV Restructuring Inc. in its capacity as proposal trustee of Nilex Inc. (the "**Proposal Trustee**") dated November 21, 2022 (the "**Second Report**");

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn November 21, 2022, the Second Report, the Confidential Appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON HAVING BEEN ADVISED by counsel to the Companies that the applicable notice pursuant to Rule 6.32 of the *Alberta Rules of Court*, Alta Reg 124/2010 was given;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, CIBC and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITION

1. Capitalized terms not defined in this Order shall have the meanings attributed to them in the Second Allen Affidavit.

SEALING ORDER

2. Notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, the Confidential Appendices shall, until the earlier of the termination of the TSA, or further Order of this Honourable Court, be sealed on the Court file and kept confidential to be shown only to a Justice of the Court of King's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Appendices in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 24-2878531. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE M.H. HOLLINS ON NOVEMBER 28, 2022.

3. The Companies and the Proposal Trustee are empowered and authorized, but not directed, to provide the Confidential Appendices (or any portion thereof, or information contained therein) to any interested party, entity or person that the Companies or Proposal Trustee considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Companies or the Proposal Trustee.
4. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying or varying the terms of this Order, with such application to be brought on five (5) days' notice to the Proposal Trustee

and the Companies and any other affected party in accordance with the *Alberta Rules of Court*, Alta Reg 124/2010 and this Order.

5. This Order must be served only upon those interested parties attending or represented at the within application and service may be affected by facsimile, electronic mail, personal delivery, or courier. Service is deemed to be affected the next business day following the transmission or delivery of such documents.
6. Service of this Order on any party not attending this application is hereby dispensed with.

A handwritten signature in blue ink, consisting of stylized, overlapping letters, positioned above a horizontal line.

Justice of the Court of King's Bench of Alberta