

CLERK'S STAMP

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 **AFFIDAVIT OF JEFF ALLEN**

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

AFFIDAVIT NO. 3 OF JEFF ALLEN

Sworn on December 7, 2022

I, Jeff Allen, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SWEAR THAT:**

1. I am the Vice President, Finance of Nilex Inc. ("**Nilex**"). In this capacity, I am responsible for overseeing the financial operations of Nilex and its wholly owned subsidiary, Nilex USA Inc. ("**Nilex USA**", together with Nilex, the "**Companies**"), including their liquidity management.

2. I have previously sworn affidavits in these proceedings on October 31, 2022 (the "**First Allen Affidavit**") and on November 21, 2022 (the "**Second Allen Affidavit**"). I have personal knowledge of the matters in this Affidavit, except where I state that my knowledge is based on information and belief, in which case I believe my statements to be true.
3. In preparing this Affidavit, I have consulted with members of the Companies' board of directors, senior management team, and financial and legal advisors.

INTRODUCTION

4. As noted in the First Allen Affidavit, on October 27, 2022, Nilex filed a notice of intention to make a proposal (the "**NOI**") under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and KSV Restructuring Inc. was appointed Proposal Trustee. The NOI was filed in consultation with Nilex's professional advisors to attempt to restructure or sell Nilex as a going concern for the benefit of its stakeholders and after identifying no viable alternative process due to Nilex's insolvency (the "**Nilex NOI Proceeding**").
5. On November 8, 2022 the Honourable Justice J.S. Little of the Court of King's Bench of Alberta (the "**Court**") granted an Order (the "**November 8 Order**") approving, among other things, certain priority charges, including a Lender Priority Charge (as defined in the November 8 Order), and a sale process as described in the Proposal Trustee's first report to the Court dated October 31, 2022 (the "**First Report**").
6. On November 24, 2022, Nilex USA commenced proceedings under section 50.4(1) of the BIA by filing an NOI.
7. On November 28, 2022, the Honourable Justice M.H. Hollins of the Court granted, among other things:
 - (a) an order (the "**SAVO**") approving the purchase and sale transaction (the "**Transaction**") as described in the second report of the Proposal Trustee dated November 21, 2022 (the "**Second Report**");
 - (b) an order procedurally consolidating Nilex USA proceeding and Nilex NOI Proceeding; and




- (c) an order authorizing KSV Restructuring Inc. in its capacity as proposal trustee of the Companies (the "**Proposal Trustee**") to make an interim distribution or distributions to Canadian Imperial Bank of Commerce ("**CIBC**"), from the proceeds of sale resulting from the Transaction up to the full amount of the Companies' indebtedness to CIBC as set out in the Second Report, subject to the retention of amounts for any priority claims (the "**November 28 Distribution Order**").
8. All references to dollar amounts contained herein are to Canadian dollars unless otherwise stated.

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

9. This Affidavit is made in support of the Companies' application returnable on December 13, 2022 (the "**Application**"), before the Court for an order, among other things:
- (a) abridging time for service of this Application and the supporting materials, if necessary, and deeming service thereof to be good and sufficient;
- (b) authorizing the Proposal Trustee to make an interim distribution or distributions to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**") as described in the third report of the Proposal Trustee dated December 7, 2022 (the "**Third Report**");
- (c) declaring that Nilex meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-22 ("**WEPPR**"), such that former employees are entitled to receive payments under the Wage Earner Protection Program Act, SC 2005, c 47, ("**WEPPA**"); and
- (d) such further and other relief as counsel may request and this Honourable Court may deem appropriate.
10. I have been advised by the Proposal Trustee that it supports this Application.

BACKGROUND

The Credit Agreement

11. As set out in the First Allen Affidavit and the First Report, the Companies, as borrowers, and CIBC, as lender, entered into a credit agreement dated June 1, 2018, whereby CIBC
- 

made a revolving credit facility and term loan available to the Companies (as amended, collectively, the "**Credit Agreement**").

12. The Companies' obligations under the Credit Agreement are secured pursuant to, among other things, general security agreements between the Companies and CIBC dated June 1, 2018 (the "**GSAs**"). The GSAs grant CIBC security over all present and after-acquired personal property of the Companies.
13. CIBC has registered its security interests against the personal property of Nilex in the Alberta personal property security registry.
14. As set out in the First Allen Affidavit, on October 17, 2022, CIBC and the Companies entered into a forbearance agreement wherein CIBC agreed, subject to the terms and conditions therein, to allow the Companies to access the credit facilities under the Credit Agreement to meet their working capital throughout the NOI Proceeding. As a result, pursuant to the November 8 Order, CIBC was granted a lender priority charge, which shall not exceed an aggregate principal amount of \$20,000,000, as security for advances made under the Credit Agreement. A copy of the Order dated November 8, 2022 is attached hereto as Exhibit "**A**".
15. As of December 6, 2022, the Companies owe CIBC approximately \$12.3 million. Of this amount, approximately \$4.2 million is secured by the Lender Priority Charge (as defined in the November 8 Order, defined below) and approximately \$8.1 million is secured by the security granted to CIBC by the Companies prior to the commencement of the Nilex NOI Proceeding.

The Fulcrum Loan

16. As described in the First Allen Affidavit, in addition to the Credit Agreement, Nilex and its predecessor, 1739349 Alberta Ltd., have granted certain subordinated promissory notes to Fulcrum, in the aggregate principal amount of \$28,183,150.
17. Predecessors of Nilex have, by way of amalgamation, granted general security agreements in favour of Fulcrum giving Fulcrum security over all present and after-acquired personal property of Nilex.



18. As of November 30, 2022, Nilex owes Fulcrum approximately \$45.1 million plus interest and costs, which continue to accrue.
19. The Companies, CIBC, and Fulcrum have entered into a subordination and postponement agreement dated June 1, 2018, whereby, among other things, Fulcrum has agreed to subordinate the priority of its secured indebtedness owing to it by Nilex to the indebtedness owing to CIBC by the Companies.

THE TRANSACTION

20. On November 18, 2022, the Companies, as vendors, entered into an agreement of purchase and sale (the "**APA**") with Terrafix Geosynthetics Inc. (the "**Canadian Purchaser**") and Hanes Companies, Inc., as purchasers (collectively the "**Purchasers**") for substantially all of the assets of the Companies. The overall consideration from the Transaction is greater than the secured debt of CIBC.
21. The APA contains an outside closing date of February 28, 2023, though the Companies anticipate closing the sale of the Canadian assets and operations by mid-December, 2022, and closing the sale of the US assets and operations in January 2023, subject to recognition of the SAVO by the United States Bankruptcy Court, District of Colorado.
22. Following closing of the sale of the Canadian assets, it is anticipated that the Proposal Trustee will make one or more distributions to CIBC pursuant to the November 28 Distribution Order.

FULCRUM INTERIM DISTRIBUTION

23. On December 7, 2022, CIBC entered into a lender assignment agreement (the "**Assignment Agreement**") with the Companies and Fulcrum, wherein CIBC has consented, subject to certain conditions, to the proposed distribution to Fulcrum, notwithstanding CIBC has not been repaid in full to facilitate the assignment of CIBC's right, interest and benefit in and to (a) \$3,000,000 of the loans owing by the Companies to CIBC under the Credit Agreement (the "**Assigned Debt**"), which Assigned Debt shall not include any portion of the BCAP Loan (as defined in the Credit Agreement); and (b) the benefit of any security granted to CIBC pursuant to the security documents more particularly described in the Assignment Agreement to the extent securing obligations

under the Assigned Debt to Fulcrum. A copy of the lender assignment agreement is attached hereto as Exhibit "B".

24. As described in the First Report, the Proposal Trustee's independent counsel has opined that Fulcrum's security is valid and enforceable, subject to the customary assumptions and qualifications.
25. I believe the proposed interim distribution or distributions to Fulcrum are appropriate and reasonable. CIBC has agreed to the distribution or distributions, and I do not believe that any creditor will suffer material prejudice as a result of the distribution or distributions to Fulcrum.

WEPPA

26. I am advised by Kelly Bourassa of Blake, Cassels & Graydon LLP, counsel to Nilex, that recent amendments to the WEPPA give the Court discretion, in NOI proceedings, to order that a former employer meets the criteria prescribed by regulation where the former employer is a former employer all of whose employees in Canada have been terminated other than any retained to wind-down business operations.
27. At the commencement of the Nilex NOI Proceeding, Nilex had approximately 70 full-time employees and 40 seasonal employees. In connection with the closing of the sale of the Canadian assets, it is anticipated that the employment of all employees (other than those required to provide transitional services) will be terminated in the near term. These employees will be paid their outstanding wages and vacation pay but will not receive any amounts for termination pay or severance (which obligations have not been assumed by the Purchasers).
28. I believe that it is appropriate for the Court to make an Order to confirm that Nilex meets the criteria pursuant to WEPPA to enable any employees whose employment has been or may be terminated during the Nilex NOI Proceeding to access their statutory entitlements with respect to unpaid termination and severance pay.




CONCLUSION

29. I swear this Affidavit in support of the Application and for any other proper purpose in connection with the Nilex NOI Proceeding.

SWORN BEFORE ME on the 7th day of December 2022 at the City of Edmonton, Alberta.

A Commissioner for Oaths in and for Alberta



Jeff Allen



This is Exhibit "A" referred to in the Affidavit of
Jeff Allen sworn before me this 7th day of
December 2022

A COMMISSIONER FOR OATHS IN AND FOR
ALBERTA



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.
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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



This is Exhibit "B" referred to in the Affidavit of
Jeff Allen sworn before me this 7th day of
December 2022

A COMMISSIONER FOR OATHS IN AND FOR
ALBERTA



LENDER ASSIGNMENT AGREEMENT

This Lender Assignment Agreement is effective upon the Effective Date (as defined below) and is entered into by and between Canadian Imperial Bank of Commerce (the “**Assignor**”) and PEF 2010 Nilex Investment Limited Partnership (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement dated as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Borrowers, the guarantors from time to time party thereto, and Canadian Imperial Bank of Commerce, as Lender (as amended, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee.

The Standard Terms and Conditions set forth in Schedule “A” attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Lender Assignment Agreement as if set forth herein in full.

Upon payment by the Assignee to the Assignor in the amount of \$3,000,000 (the “**Purchase Price**”), the Assignor irrevocably sells and assigns to the Assignee, and the Assignee irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions, as of the Effective Date:

- a) all of the Assignor’s right, interest and benefit in and to \$3,000,000 of the Loans owing by the Borrowers to the Assignor under the Credit Agreement (the “**Assigned Debt**”), which Assigned Debt shall not include any portion of the BCAP Loan; and
- b) the benefit of any security granted to the Assignor pursuant to the security documents more particularly described in Schedule “B” hereto, to the extent securing obligations under the Assigned Debt;

(collectively, as the “**Assigned Interest**”).

Such assignment is without recourse to the Assignor and, except as expressly provided in this Lender Assignment Agreement, without representation or warranty by the Assignor.

Solely for the purpose of permitting a repayment by the Borrowers of Shareholder Subordinated Debt in an amount equal to the Purchase Price (the “**Subordinated Distribution**”) and the subsequent payment of the Purchase Price by the Assignee to the Assignor, the Assignor hereby agrees that, notwithstanding the terms of the Subordination and Postponement Agreement between the Assignor, the Assignee and the Borrowers, dated June 1, 2018 or the Lender Priority Charge created by the order of the Honourable Justice J.S. Little granted on November 8, 2022, the Borrowers shall be permitted to repay and the Assignee shall be permitted to receive the Subordinated Distribution prior to repayment in full of the Obligations. The foregoing consent by the Assignor to the Subordinated Distribution is provided solely on the condition that the Borrowers, or KSV Restructuring Inc., in its capacity as proposal trustee of the Borrowers (the “**Proposal Trustee**”), on their behalf, are directed by the Assignee to pay over the Subordinated Distribution to the Assignor in satisfaction of the Purchase Price.

The agreements, consents, sales, assignments and assumptions herein are subject to satisfaction of the following conditions, which are for the exclusive benefit of the Assignor and may be waived by the Assignor in its sole discretion, in whole or in part, at any time:

- a) an Order of the Court of Kings Bench of Alberta in proceedings under Court File No. 24-2878531 (the “**Nilex Insolvency Court**”) shall have been granted authorizing the Borrowers or the Proposal Trustee, on behalf of the Borrowers, to make the Subordinated Distribution; and
- b) the Borrowers or the Proposal Trustee, on behalf of the Borrowers, shall have made distributions pursuant to the Order of the Nilex Insolvency Court granted on November 28, 2022 to the Assignor in satisfaction of all Obligations owing to the Assignor as of the date thereof other than the Assigned Debt.

The date that the foregoing conditions are satisfied or waived shall be the “**Effective Date**”. If the Effective Date has not occurred on or prior to December 31, 2022, this Lender Assignment Agreement and all obligation hereunder shall be terminated.


The Assignee and the Borrowers agree and confirm that the assignment of the Assigned Interest shall not result in a release by the Assignor of its rights, benefits and interests under the Credit Agreement, the Loan Documents or any Security Documents, or of any charges granted in favour of the Assignor by the Nilex Insolvency Court other than to the extent of the Assignor’s partial assignment of claims for the Assigned Debt.

[SIGNATURE PAGE FOLLOWS]



The terms set forth in this Lender Assignment Agreement are hereby agreed to as of this 7th day of December, 2022:

ASSIGNOR
**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: 
Name: Anthony Tsuen
Title: Authorized Signatory

By: 
Name: Mauricio Echeverri
Title: Authorized Signatory

ASSIGNEE
**PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP by its general partner
FCPI NILEX GP INC.**

By: _____
Title: _____

Agreed and consented to by:

NILEX INC.

By: _____
Title: _____

NILEX USA INC.

By: _____
Title: _____




The terms set forth in this Lender Assignment Agreement are hereby agreed to as of this 7th day of December, 2022:

ASSIGNOR
CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Title:

ASSIGNEE
PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP by its general partner
FCPI NILEX GP INC.

By: 
Title: Johan Lemmer, CFO & Partner

Agreed and consented to by:

NILEX INC.
By: 
Title: Vice President, Finance

NILEX USA INC.
By: 
Title: Vice President, Finance



Schedule "A" to Lender Assignment Agreement

STANDARD TERMS AND CONDITIONS FOR
LENDER ASSIGNMENT AGREEMENT

1. Representations and Warranties.

1.1 Assignor.

The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Lender Assignment Agreement and to consummate the transactions contemplated hereby; and (b) assumes no responsibility and provides no representations or warranties with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, perfection, priority, genuineness, sufficiency or value of the Loan Documents or any collateral or security interest thereunder, (iii) the financial condition of the Borrowers, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document; (iv) the performance or observance by the Borrowers, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document, or (v) the collection or ability collect upon the Assigned Debt or the Assigned Interest.

1.2 Assignee.

The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Lender Assignment Agreement and to consummate the transactions contemplated hereby, and (ii) it has received a copy of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Lender Assignment Agreement and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Assignor.

2. General Provisions.

This Lender Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Lender Assignment Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Lender Assignment Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Lender Assignment Agreement. This Lender Assignment Agreement shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

Schedule "B" to the Lender Assignment Agreement

SECURITY

1. Canadian law governed General Security Agreement, dated as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
2. US law governed Security Agreement made and entered into as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
3. Guarantee Agreement entered into as of June 1, 2018 by and among each of Nilex Inc. and Nilex USA Inc, as guarantors, in favour of Canadian Imperial Bank of Commerce, as Lender.
4. Intellectual Property Security Agreement dated as of June 1, 2018 by Nilex Inc. and Nilex USA Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
5. Deposit Account Control Agreement (Pledged Account with Activation), dated as of June 27, 2018, among CIBC Bank USA, Nilex USA Inc. and Canadian Imperial Bank of Commerce, as Lender.
6. Blocked Accounts Agreement dated June 27, 2018 between Nilex Inc. and Canadian Imperial Bank of Commerce, as account bank and as Lender.
7. Intellectual Property Security Agreement dated as of March 7, 2019 by Nilex Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
8. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts or Security under Section 427 of the Bank Act (Canada), dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.
9. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated June 1, 2018, from Nilex Inc. to Canadian Imperial Bank of Commerce.
10. Special Security In Respect of Specified Property or Classes of Property described in Section 427 of the Bank Act (Canada) dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.



CLERK'S STAMP

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 **AFFIDAVIT OF JEFF ALLEN**

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

AFFIDAVIT NO. 3 OF JEFF ALLEN

Sworn on December 7, 2022

I, Jeff Allen, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SWEAR THAT:**

1. I am the Vice President, Finance of Nilex Inc. ("**Nilex**"). In this capacity, I am responsible for overseeing the financial operations of Nilex and its wholly owned subsidiary, Nilex USA Inc. ("**Nilex USA**", together with Nilex, the "**Companies**"), including their liquidity management.

2. I have previously sworn affidavits in these proceedings on October 31, 2022 (the "**First Allen Affidavit**") and on November 21, 2022 (the "**Second Allen Affidavit**"). I have personal knowledge of the matters in this Affidavit, except where I state that my knowledge is based on information and belief, in which case I believe my statements to be true.
3. In preparing this Affidavit, I have consulted with members of the Companies' board of directors, senior management team, and financial and legal advisors.

INTRODUCTION

4. As noted in the First Allen Affidavit, on October 27, 2022, Nilex filed a notice of intention to make a proposal (the "**NOI**") under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and KSV Restructuring Inc. was appointed Proposal Trustee. The NOI was filed in consultation with Nilex's professional advisors to attempt to restructure or sell Nilex as a going concern for the benefit of its stakeholders and after identifying no viable alternative process due to Nilex's insolvency (the "**Nilex NOI Proceeding**").
5. On November 8, 2022 the Honourable Justice J.S. Little of the Court of King's Bench of Alberta (the "**Court**") granted an Order (the "**November 8 Order**") approving, among other things, certain priority charges, including a Lender Priority Charge (as defined in the November 8 Order), and a sale process as described in the Proposal Trustee's first report to the Court dated October 31, 2022 (the "**First Report**").
6. On November 24, 2022, Nilex USA commenced proceedings under section 50.4(1) of the BIA by filing an NOI.
7. On November 28, 2022, the Honourable Justice M.H. Hollins of the Court granted, among other things:
 - (a) an order (the "**SAVO**") approving the purchase and sale transaction (the "**Transaction**") as described in the second report of the Proposal Trustee dated November 21, 2022 (the "**Second Report**");
 - (b) an order procedurally consolidating Nilex USA proceeding and Nilex NOI Proceeding; and



- (c) an order authorizing KSV Restructuring Inc. in its capacity as proposal trustee of the Companies (the "**Proposal Trustee**") to make an interim distribution or distributions to Canadian Imperial Bank of Commerce ("**CIBC**"), from the proceeds of sale resulting from the Transaction up to the full amount of the Companies' indebtedness to CIBC as set out in the Second Report, subject to the retention of amounts for any priority claims (the "**November 28 Distribution Order**").
8. All references to dollar amounts contained herein are to Canadian dollars unless otherwise stated.

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

9. This Affidavit is made in support of the Companies' application returnable on December 13, 2022 (the "**Application**"), before the Court for an order, among other things:
- (a) abridging time for service of this Application and the supporting materials, if necessary, and deeming service thereof to be good and sufficient;
- (b) authorizing the Proposal Trustee to make an interim distribution or distributions to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**") as described in the third report of the Proposal Trustee dated December 7, 2022 (the "**Third Report**");
- (c) declaring that Nilex meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-22 ("**WEPPR**"), such that former employees are entitled to receive payments under the Wage Earner Protection Program Act, SC 2005, c 47, ("**WEPPA**"); and
- (d) such further and other relief as counsel may request and this Honourable Court may deem appropriate.
10. I have been advised by the Proposal Trustee that it supports this Application.

BACKGROUND

The Credit Agreement

11. As set out in the First Allen Affidavit and the First Report, the Companies, as borrowers, and CIBC, as lender, entered into a credit agreement dated June 1, 2018, whereby CIBC

made a revolving credit facility and term loan available to the Companies (as amended, collectively, the "**Credit Agreement**").

12. The Companies' obligations under the Credit Agreement are secured pursuant to, among other things, general security agreements between the Companies and CIBC dated June 1, 2018 (the "**GSAs**"). The GSAs grant CIBC security over all present and after-acquired personal property of the Companies.
13. CIBC has registered its security interests against the personal property of Nilex in the Alberta personal property security registry.
14. As set out in the First Allen Affidavit, on October 17, 2022, CIBC and the Companies entered into a forbearance agreement wherein CIBC agreed, subject to the terms and conditions therein, to allow the Companies to access the credit facilities under the Credit Agreement to meet their working capital throughout the NOI Proceeding. As a result, pursuant to the November 8 Order, CIBC was granted a lender priority charge, which shall not exceed an aggregate principal amount of \$20,000,000, as security for advances made under the Credit Agreement. A copy of the Order dated November 8, 2022 is attached hereto as Exhibit "**A**".
15. As of December 6, 2022, the Companies owe CIBC approximately \$12.3 million. Of this amount, approximately \$4.2 million is secured by the Lender Priority Charge (as defined in the November 8 Order, defined below) and approximately \$8.1 million is secured by the security granted to CIBC by the Companies prior to the commencement of the Nilex NOI Proceeding.

The Fulcrum Loan

16. As described in the First Allen Affidavit, in addition to the Credit Agreement, Nilex and its predecessor, 1739349 Alberta Ltd., have granted certain subordinated promissory notes to Fulcrum, in the aggregate principal amount of \$28,183,150.
17. Predecessors of Nilex have, by way of amalgamation, granted general security agreements in favour of Fulcrum giving Fulcrum security over all present and after-acquired personal property of Nilex.



18. As of November 30, 2022, Nilex owes Fulcrum approximately \$45.1 million plus interest and costs, which continue to accrue.
19. The Companies, CIBC, and Fulcrum have entered into a subordination and postponement agreement dated June 1, 2018, whereby, among other things, Fulcrum has agreed to subordinate the priority of its secured indebtedness owing to it by Nilex to the indebtedness owing to CIBC by the Companies.

THE TRANSACTION

20. On November 18, 2022, the Companies, as vendors, entered into an agreement of purchase and sale (the "**APA**") with Terrafix Geosynthetics Inc. (the "**Canadian Purchaser**") and Hanes Companies, Inc., as purchasers (collectively the "**Purchasers**") for substantially all of the assets of the Companies. The overall consideration from the Transaction is greater than the secured debt of CIBC.
21. The APA contains an outside closing date of February 28, 2023, though the Companies anticipate closing the sale of the Canadian assets and operations by mid-December, 2022, and closing the sale of the US assets and operations in January 2023, subject to recognition of the SAVO by the United States Bankruptcy Court, District of Colorado.
22. Following closing of the sale of the Canadian assets, it is anticipated that the Proposal Trustee will make one or more distributions to CIBC pursuant to the November 28 Distribution Order.

FULCRUM INTERIM DISTRIBUTION

23. On December 7, 2022, CIBC entered into a lender assignment agreement (the "**Assignment Agreement**") with the Companies and Fulcrum, wherein CIBC has consented, subject to certain conditions, to the proposed distribution to Fulcrum, notwithstanding CIBC has not been repaid in full to facilitate the assignment of CIBC's right, interest and benefit in and to (a) \$3,000,000 of the loans owing by the Companies to CIBC under the Credit Agreement (the "**Assigned Debt**"), which Assigned Debt shall not include any portion of the BCAP Loan (as defined in the Credit Agreement); and (b) the benefit of any security granted to CIBC pursuant to the security documents more particularly described in the Assignment Agreement to the extent securing obligations

A handwritten signature in black ink, appearing to be 'JM', is located in the bottom right corner of the page.

under the Assigned Debt to Fulcrum. A copy of the lender assignment agreement is attached hereto as Exhibit "B".

24. As described in the First Report, the Proposal Trustee's independent counsel has opined that Fulcrum's security is valid and enforceable, subject to the customary assumptions and qualifications.
25. I believe the proposed interim distribution or distributions to Fulcrum are appropriate and reasonable. CIBC has agreed to the distribution or distributions, and I do not believe that any creditor will suffer material prejudice as a result of the distribution or distributions to Fulcrum.

WEPPA

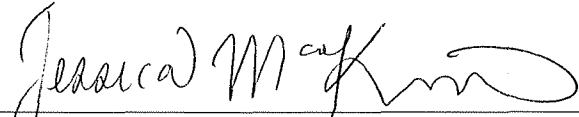
26. I am advised by Kelly Bourassa of Blake, Cassels & Graydon LLP, counsel to Nilex, that recent amendments to the WEPPA give the Court discretion, in NOI proceedings, to order that a former employer meets the criteria prescribed by regulation where the former employer is a former employer all of whose employees in Canada have been terminated other than any retained to wind-down business operations.
27. At the commencement of the Nilex NOI Proceeding, Nilex had approximately 70 full-time employees and 40 seasonal employees. In connection with the closing of the sale of the Canadian assets, it is anticipated that the employment of all employees (other than those required to provide transitional services) will be terminated in the near term. These employees will be paid their outstanding wages and vacation pay but will not receive any amounts for termination pay or severance (which obligations have not been assumed by the Purchasers).
28. I believe that it is appropriate for the Court to make an Order to confirm that Nilex meets the criteria pursuant to WEPPA to enable any employees whose employment has been or may be terminated during the Nilex NOI Proceeding to access their statutory entitlements with respect to unpaid termination and severance pay.

A handwritten signature in black ink, appearing to be 'JMN', located in the bottom right corner of the page.

CONCLUSION

29. I swear this Affidavit in support of the Application and for any other proper purpose in connection with the Nilex NOI Proceeding.

SWORN BEFORE ME on the 7th day of December 2022 at the City of Edmonton, Alberta.



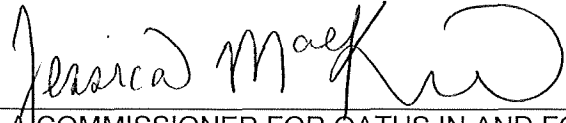
A Commissioner for Oaths in and for Alberta

Jessica MacKinnon
Barrister & Solicitor

Jeff Allen



This is Exhibit "A" referred to in the Affidavit of
Jeff Allen sworn before me this 7th day of
December 2022



COMMISSIONER FOR OATHS IN AND FOR
ALBERTA

Jessica Mackinnon
Barrister & Solicitor



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

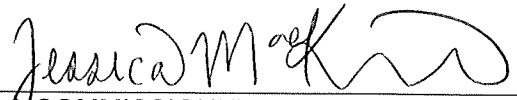
38. Service of this Order shall be deemed good and sufficient:
- (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (b) by posting a copy of this Order on the Proposal Trustee's website 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



This is Exhibit "B" referred to in the Affidavit of
Jeff Allen sworn before me this 7th day of
December 2022



A COMMISSIONER FOR OATHS IN AND FOR
ALBERTA

Jessica MacKinnon
Barrister & Solicitor



LENDER ASSIGNMENT AGREEMENT

This Lender Assignment Agreement is effective upon the Effective Date (as defined below) and is entered into by and between Canadian Imperial Bank of Commerce (the “**Assignor**”) and PEF 2010 Nilex Investment Limited Partnership (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement dated as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Borrowers, the guarantors from time to time party thereto, and Canadian Imperial Bank of Commerce, as Lender (as amended, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee.

The Standard Terms and Conditions set forth in Schedule “A” attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Lender Assignment Agreement as if set forth herein in full.

Upon payment by the Assignee to the Assignor in the amount of \$3,000,000 (the “**Purchase Price**”), the Assignor irrevocably sells and assigns to the Assignee, and the Assignee irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions, as of the Effective Date:

- a) all of the Assignor’s right, interest and benefit in and to \$3,000,000 of the Loans owing by the Borrowers to the Assignor under the Credit Agreement (the “**Assigned Debt**”), which Assigned Debt shall not include any portion of the BCAP Loan; and
- b) the benefit of any security granted to the Assignor pursuant to the security documents more particularly described in Schedule “B” hereto, to the extent securing obligations under the Assigned Debt;

(collectively, as the “**Assigned Interest**”).

Such assignment is without recourse to the Assignor and, except as expressly provided in this Lender Assignment Agreement, without representation or warranty by the Assignor.

Solely for the purpose of permitting a repayment by the Borrowers of Shareholder Subordinated Debt in an amount equal to the Purchase Price (the “**Subordinated Distribution**”) and the subsequent payment of the Purchase Price by the Assignee to the Assignor, the Assignor hereby agrees that, notwithstanding the terms of the Subordination and Postponement Agreement between the Assignor, the Assignee and the Borrowers, dated June 1, 2018 or the Lender Priority Charge created by the order of the Honourable Justice J.S. Little granted on November 8, 2022, the Borrowers shall be permitted to repay and the Assignee shall be permitted to receive the Subordinated Distribution prior to repayment in full of the Obligations. The foregoing consent by the Assignor to the Subordinated Distribution is provided solely on the condition that the Borrowers, or KSV Restructuring Inc., in its capacity as proposal trustee of the Borrowers (the “**Proposal Trustee**”), on their behalf, are directed by the Assignee to pay over the Subordinated Distribution to the Assignor in satisfaction of the Purchase Price.

The agreements, consents, sales, assignments and assumptions herein are subject to satisfaction of the following conditions, which are for the exclusive benefit of the Assignor and may be waived by the Assignor in its sole discretion, in whole or in part, at any time:

- a) an Order of the Court of Kings Bench of Alberta in proceedings under Court File No. 24-2878531 (the “**Nilex Insolvency Court**”) shall have been granted authorizing the Borrowers or the Proposal Trustee, on behalf of the Borrowers, to make the Subordinated Distribution; and
- b) the Borrowers or the Proposal Trustee, on behalf of the Borrowers, shall have made distributions pursuant to the Order of the Nilex Insolvency Court granted on November 28, 2022 to the Assignor in satisfaction of all Obligations owing to the Assignor as of the date thereof other than the Assigned Debt.

The date that the foregoing conditions are satisfied or waived shall be the “**Effective Date**”. If the Effective Date has not occurred on or prior to December 31, 2022, this Lender Assignment Agreement and all obligation hereunder shall be terminated.

The Assignee and the Borrowers agree and confirm that the assignment of the Assigned Interest shall not result in a release by the Assignor of its rights, benefits and interests under the Credit Agreement, the Loan Documents or any Security Documents, or of any charges granted in favour of the Assignor by the Nilex Insolvency Court other than to the extent of the Assignor’s partial assignment of claims for the Assigned Debt.


[SIGNATURE PAGE FOLLOWS]

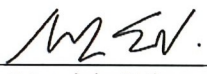
A handwritten signature in black ink, appearing to be the initials 'JM', located in the bottom right corner of the page.

Execution Version

The terms set forth in this Lender Assignment Agreement are hereby agreed to as of this 7th day of December, 2022:

**ASSIGNOR
CANADIAN IMPERIAL BANK OF
COMMERCE**

By: 
Name: Anthony Tsuen
Title: Authorized Signatory

By: 
Name: Mauricio Echeverri
Title: Authorized Signatory

**ASSIGNEE
PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP by its general partner
FCPI NILEX GP INC.**

By: _____
Title:

Agreed and consented to by:

NILEX INC.

By: _____
Title:

NILEX USA INC.

By: _____
Title:




Execution Version

The terms set forth in this Lender Assignment Agreement are hereby agreed to as of this 7th day of December, 2022:

ASSIGNOR
CANADIAN IMPERIAL BANK OF
COMMERCE

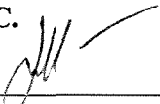
By: _____
Title:

ASSIGNEE
PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP by its general partner
FCPI NILEX GP INC.


By:  _____
Title: Johan Lemmer, CFO & Partner

Agreed and consented to by:

NILEX INC.

By:  _____
Title: Vice President, Finance

NILEX USA INC.

By:  _____
Title: Vice President, Finance



Schedule "A" to Lender Assignment Agreement

STANDARD TERMS AND CONDITIONS FOR
LENDER ASSIGNMENT AGREEMENT

1. Representations and Warranties.

1.1 Assignor.

The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Lender Assignment Agreement and to consummate the transactions contemplated hereby; and (b) assumes no responsibility and provides no representations or warranties with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, perfection, priority, genuineness, sufficiency or value of the Loan Documents or any collateral or security interest thereunder, (iii) the financial condition of the Borrowers, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document; (iv) the performance or observance by the Borrowers, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document, or (v) the collection or ability collect upon the Assigned Debt or the Assigned Interest.

1.2 Assignee.

The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Lender Assignment Agreement and to consummate the transactions contemplated hereby, and (ii) it has received a copy of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Lender Assignment Agreement and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Assignor.

2. General Provisions.

This Lender Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Lender Assignment Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Lender Assignment Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Lender Assignment Agreement. This Lender Assignment Agreement shall be governed by, and construed in accordance with, the law governing the Credit Agreement.



Schedule "B" to the Lender Assignment Agreement

SECURITY

1. Canadian law governed General Security Agreement, dated as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
2. US law governed Security Agreement made and entered into as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
3. Guarantee Agreement entered into as of June 1, 2018 by and among each of Nilex Inc. and Nilex USA Inc, as guarantors, in favour of Canadian Imperial Bank of Commerce, as Lender.
4. Intellectual Property Security Agreement dated as of June 1, 2018 by Nilex Inc. and Nilex USA Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
5. Deposit Account Control Agreement (Pledged Account with Activation), dated as of June 27, 2018, among CIBC Bank USA, Nilex USA Inc. and Canadian Imperial Bank of Commerce, as Lender.
6. Blocked Accounts Agreement dated June 27, 2018 between Nilex Inc. and Canadian Imperial Bank of Commerce, as account bank and as Lender.
7. Intellectual Property Security Agreement dated as of March 7, 2019 by Nilex Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
8. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts or Security under Section 427 of the Bank Act (Canada), dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.
9. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated June 1, 2018, from Nilex Inc. to Canadian Imperial Bank of Commerce.
10. Special Security In Respect of Specified Property or Classes of Property described in Section 427 of the Bank Act (Canada) dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.

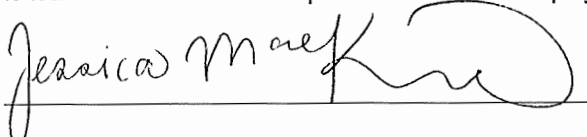


Certificate of Commissioning by Videoconference

I, Jessica MacKinnon, Commissioner of Oaths in and for Alberta, took the affidavit of Jeff Allen via videoconference on December 7, 2022 (the "**Affidavit**").

The affiant and I followed the process outlined by the Alberta Court of Queen's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was unsafe for the deponent and I to be physically present together.

A handwritten signature in black ink, reading "Jessica MacKinnon", written over a horizontal line.

Commissioner of Oaths in and for Alberta

Jessica MacKinnon
Barrister & Solicitor