



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
NILEX INC.

AND IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED

APPLICANT NILEX 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. 2 OF JEFF ALLEN

Sworn on November 21, 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 the Applicant, Nilex Inc. (the "**Company**" or the "**Applicant**"). In this capacity, I am responsible for overseeing the financial operations of the Company and its wholly owned subsidiary, Nilex USA Inc. ("**Nilex USA**", together with

CLERK'S STAMP

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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 the Applicant, Nilex Inc. (the "**Company**" or the "**Applicant**"). In this capacity, I am responsible for overseeing the financial operations of the Company and its wholly owned subsidiary, Nilex USA Inc. ("**Nilex USA**", together with

- 2 -

the Company, the “**Companies**” or the “**Applicants**”), including their liquidity management. I have also been assisting in a sale process (the “**Sale Process**”) (as discussed below) and preparing for the NOI Proceeding (as defined below).

2. I have previously sworn an affidavit in these proceedings on October 31, 2022 (the “**First Allen Affidavit**”) in support of the November 8 Order (as defined below). 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 Company’s board of directors, senior management team, and financial and legal advisors.

INTRODUCTION

4. As noted in the First Allen Affidavit, on October 27, 2022, the Company filed a notice of intention to make a proposal (the “**NOI**”) under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). The NOI was filed in consultation with the Company’s professional advisors to attempt to restructure or sell the Company as a going concern for the benefit of its stakeholders and after identifying no viable alternative process due to the Company’s insolvency (the “**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, the Sale Process described in the Proposal Trustee’s first report to the Court dated October 31, 2022 (the “**First Report**”).
6. Nilex USA intends to commence proceedings under section 50.4(1) of the BIA by filing an NOI in advance of the hearing of this application, as discussed in greater detail below.
7. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.
8. All capitalized terms that are used but not defined herein are as defined in the First Allen Affidavit or the APA (defined below).

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

9. This Affidavit is made in support of the Companies' application returnable on November 28, 2022 (the "**Application**"), before the Court for orders, 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) extending the time by which the Company and Nilex USA may file proposals to their creditors pursuant to section 50.4(9) of the BIA for a maximum 45-day period following the current deadlines to do so;
 - (c) extending to Nilex USA the relief granted by the Honourable Justice J.S. Little in the November 8 Order, including (i) approving the Sale Process as described in the First Report, (ii) expanding the stay of proceedings under the BIA as set out in paragraphs 3 and 4 of the November 8 Order, and (iii) granting the Administrative Charge, Lender Priority Charge, D&O Charge and KERP Charge (each as defined therein) 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) of Nilex USA in the same manner as set out in the November 8 Order;
 - (d) continuing and procedurally consolidating the Company's NOI Proceeding with those expected to be commenced by Nilex USA (each individually, a "**Proceeding**" and together, the "**Consolidated Proceeding**") for administrative purposes;
 - (e) approving the purchase and sale transaction (the "**Transaction**") contemplated in the asset purchase agreement dated November 18, 2022 (the "**APA**") between the Companies, as vendors (the "**Vendors**") and Terrafix Geosynthetics Inc. and Hanes Companies, Inc., as purchasers (the "**Purchasers**"), on the terms set forth in the APA and ordering the assignment of certain Assumed Contracts (as defined in the APA) to the Purchasers, as necessary (the "**Sale Approval and Vesting Order**");
 - (f) authorizing the Companies to take such corporate and other actions necessary, including any necessary filings and steps required, to complete the Transaction,

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including entering into the transition services agreement attached to the APA as Exhibit "E" (the "TSA");

- (g) ordering that upon delivery of the Proposal Trustee's certificate by the Proposal Trustee to the applicable Purchaser, all of the applicable Vendor's right, title, and interest in and to the purchased assets shall vest absolutely in the applicable Purchaser, free and clear of all interests, liens, claims, and encumbrances (except Permitted Encumbrances as defined in the APA);
- (h) ordering that the style of cause be amended to include Nilex USA as an Applicant;
- (i) 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 in the United States of America pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**US Proceedings**");
- (j) authorizing the Proposal Trustee to make an interim distribution as described in the second report of the Proposal Trustee dated November 21, 2022 (the "**Second Report**");
- (k) sealing the confidential appendices to the Second Report; and
- (l) 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

Operations and Organization

- 11. The Company is privately owned and incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9. The Company's registered office is located at 855-2 Street SW, Suite 3500, Calgary, Alberta, and the Company is headquartered in Edmonton, Alberta.
- 12. As noted in the First Allen Affidavit, Nilex USA is a wholly owned subsidiary of the Company, incorporated in Colorado, United States.

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13. The Company was established in 1977. For the first 13 years of its existence, it operated only in Canada. In 1990, the business expanded into the United States and, in 2013, Nilex USA was incorporated.
14. As noted in the First Allen Affidavit, the Company has approximately 77 full time employees and 44 seasonal employees. Nilex USA has approximately 8 full time employees.

The Integrated Business of the Companies and Centre of Main Interest (“COMI”) of Nilex USA

15. Nilex USA cannot operate independently of the Company. The Companies' business is fully integrated, with all executive level and strategic decision making for the business made in Edmonton.
16. The senior management team of the Companies consists of:

Name	Role	Location
Trevor Derksen	President & CEO	Edmonton, Alberta
Jeff Allen	Vice President Finance	Edmonton, Alberta
Scott Cahoon	Director of Supply Chain	Edmonton, Alberta
Stephanie Tremblay	Director of Human Resources	Edmonton, Alberta
Slade van Rooyen	Director of Technical Services	Edmonton, Alberta
Corey Piche	Sales Director (Ontario/Prairies)	Calgary, Alberta
Paul Berry	Sales Director (Pacific/USA)	Surrey, British Columbia

(collectively, the “**Management Team**”).

17. The Management Team develops all corporate strategies for the Companies. Additionally, as reflected in the table above, almost all members of the Management Team are residents of Edmonton and perform their duties out of the Edmonton head office.
18. The directors of Nilex USA and the Company (the “**Directors**”) are the same, and as listed in the First Allen Affidavit. All Directors reside in Canada. The Management Team reports to a board of directors that effectively controls both of the Companies.
19. The only managers of the Companies who are not Canadian residents are Alan Strecker (Regional Sales Manager) and Christy Burton (Office Manager), both of whom report to Paul Berry in Canada, who reports to the president and CEO, Trevor Derksen, based in Edmonton.

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20. All capital allocation decisions across the Companies are developed 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.
21. Trevor Derksen, the president and CEO of the Company, 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.
22. The material terms of all major contracts require approval by the Management Team, as do all major spending decisions. For example, the regional sales manager (referenced in para 19) has an authorization limit for purchase order and invoices of \$10,000 and the office manager (referenced in para 19) has an authorization limit for purchase order and invoices of \$5,000. Any expenditures in excess of these limits must be approved by the Management Team in Canada.
23. Furthermore, most major clients in the United States are supported by a sales manager in Colorado and Paul Berry, who is based in British Columbia.
24. As discussed in the First Allen Affidavit, the Companies use the Cash Management System to fund operations. Despite the fact that the Company and Nilex USA are both borrowers under the Credit Agreement, which is governed by Canadian Law:
 - (a) the availability of liquidity to the Companies is derived from combining the net borrowings of the Company and net cash from Nilex USA against the borrowing base calculated under the Credit Agreement;
 - (b) all disbursements paid out by the Companies must be signed or electronically released by a member of the treasury team, including myself, in the Edmonton head office (except for petty cash disbursements); and
 - (c) while some cash receipts are deposited at the locations where they are received, they are all reported to the treasury group in the Edmonton head office and then administered as part of the Cash Management System.
25. As discussed in the First Allen Affidavit, the Companies' obligations under the Credit Agreement are secured pursuant to, among other things, a general security agreement among the Company, Nilex USA, and Canadian Imperial Bank of Commerce ("CIBC")

dated June 1, 2018 (the "GSA"). The GSA grants CIBC security over all present and after-acquired personal property of the Companies.

26. CIBC is the first lien secured creditor of the Companies. The only other significant indebtedness of Nilex USA is owed to the Company pursuant to intercompany transactions.
27. The books and records of the Companies are prepared and maintained in Edmonton. I have responsibility for the Companies' accounting and all administrative oversight. Payroll services for the Companies are administered by a payroll professional of the Company, located in the Edmonton Head Office.
28. The following policies, procedures, operating manuals and practices are developed, updated and administered in the Edmonton head office and are applied across the Companies:
 - (a) human resources – including employee policies and procedures, benefits, wellness, confidentiality and privacy policies;
 - (b) corporate accounting policies;
 - (c) code of ethics;
 - (d) corporate standards;
 - (e) information and telecommunications policies and procedures;
 - (f) marketing and communications policies and procedures; and
 - (g) delegation of authority matrix.
29. The following programs are created and refined in Canada at the Edmonton head office:
 - (i) health, safety and environment and quality control functions of the Companies;
 - (ii) all corporate and employee training for all the employees of the Companies;
 - (iii) all training and development programs for operational personnel throughout the Companies; and

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(iv) all leadership development programs.

30. As described above, the Companies' business is fully integrated such that Nilex USA cannot operate independently of the Company. I believe that the restructuring of the Companies can be administered most efficiently through a single, coordinated restructuring process. This will reduce the costs of the process and also the time necessary to complete the process, which is intended to increase recoveries to all stakeholders. It will also facilitate completion of the Transaction.

Nilex USA Assets and Liabilities

31. As set out in the First Allen Affidavit and the First Report, Nilex USA's business is not material by comparison to that of the Company. The financial trends that have affected the Company over the past two years have also affected Nilex USA's business.
32. As of October 31, 2022, inventory was Nilex USA's largest asset, followed by accounts receivable.
33. Nilex USA's fixed assets represent approximately 1.8% of its total assets. The book value of its assets as at October 31, 2022 (in USD) is as set out in the chart below:

Description	Book Value (<i>\$000s</i>)
Inventory	1,222
Accounts receivable	548
Cash	469
Fixed Assets	42
Other Assets	20
Total	2,301

34. As noted in the First Allen Affidavit, Nilex USA is a borrower under the Credit Agreement and has granted security to CIBC, by way of the GSA attached as Exhibit E to the First Allen Affidavit, to secure its obligations thereunder. CIBC has registered a financing statement in respect of its security in the State of Colorado. Additionally, Nilex USA owes the Company more than C\$5,000,000 as a result of certain intercompany loans. The Company is by far the largest unsecured creditor of Nilex USA. Nilex USA's other unsecured creditors were owed approximately US\$950,000 as of October 31, 2022, excluding off-balance sheet obligations such as certain employee obligations and future

amounts owing under real property and equipment leases. A copy of the State of Colorado search report is attached and marked as Exhibit "A".

THE SALE PROCESS

Marketing Period

35. As set out in the First Allen Affidavit beginning at paragraph 48, on October 11, 2021, the Company retained Valitas Capital Partners ("**Valitas**") to conduct the Sale Process. On December 20, 2021, the Company retained KSV Advisory Inc. ("**KSV Advisory**") to provide financial advisory services in consultation with Valitas. KSV Advisory's initial mandate was limited. Its involvement increased in the summer of 2022.
36. The Company commenced the Sale Process in January 2022. It was designed to be flexible, such that any proposed transaction structure would be considered, whether it be for shares, or assets of the Companies, or any combination of these transactions.
37. As detailed in the First Report, Valitas compiled a comprehensive list of over 400 prospective purchasers based on geography and industry. Sixteen of these prospective purchasers were selected as strong acquisition candidates based on their strategic fit.
38. Interested parties were requested to submit non-binding letters of intent in March 2022; however, none of the offers received by that deadline were acceptable to the Companies.
39. Based on the Companies' expectations of improved financial results in the spring and summer of 2022, Valitas re-engaged interested parties in respect of the Sale Process in August 2022. Interested parties were provided 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.

Results of the Sale Process

40. On or around October 8, 2022, Valitas sent interested parties a process letter setting out the sale process timelines (the "**Process Letter**"). The Process Letter required interested parties 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 mark-up to a template form of asset purchase agreement that had been made available to interested parties. The Process Letter also

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indicated the Companies' objectives to enter into a binding agreement of purchase and sale by no later than November 15, 2022. A copy of the Process Letter is attached and marked as Exhibit "B".

41. Four parties submitted binding offers by the Bid Deadline (each, a "**Binding Offer**"). Following receipt of the Binding Offers, the Companies, with the assistance of Valitas and the Proposal Trustee determined that the Binding Offer submitted by the Purchasers provides the greatest recovery to stakeholders with the least closing risk.
42. Between November 8, 2022 and November 18, 2022, the Companies with the assistance of Valitas, the Proposal Trustee, and legal advisors, negotiated and entered into the APA with the Purchasers for the Purchased Assets, subject to Court approval. A copy of the APA will be attached as a confidential appendix to the second report of the Proposal Trustee, to be filed.

The Transaction

43. The key terms of the APA are as follows:
 - (a) substantially all of the assets of the Companies will be purchased, including substantially all of the assets of Nilex USA,
 - (b) the Proposal Trustee, as Foreign Representative, will forthwith initiate the US Proceedings in the United States Bankruptcy Court for the District of Colorado to seek recognition of the Nilex USA NOI proceedings as foreign main proceedings and to seek recognition of the Sale Approval and Vesting Order, if granted;
 - (c) the Purchasers will offer employment to the majority of the Company's employees, certain other of the Companies' employees will continue to provide services to the Companies pursuant to the TSA;
 - (d) on closing of the Transaction, the Companies will enter into the TSA with the Purchasers whereby the Companies will agree to provide the benefit of certain leases, services and employees to the Purchasers at the Purchaser's expense for up to six months following closing;
 - (e) the business of the Companies shall be operated post-closing as a going concern;

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- (f) the overall consideration is greater than the secured debt of CIBC, the Companies' first secured creditor and operating lender and will result in a distribution or distributions available to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**"), whose security interest in the Company's business and assets, has been subordinated to that of CIBC;
- (g) the Proposed Transaction is not conditional upon financing;
- (h) although the APA contemplates both an NOI filing of Nilex USA and the recognition by the United States Bankruptcy Court of the Sale Approval and Vesting Order, if granted, the sale of the Canadian business and assets is not conditional on the closing of the sale of the Nilex USA business and assets; and
- (i) the parties anticipate closing the sale of the Canadian assets and operations by mid-December, with closing of the sale of the US assets and operations in January. In any event, the outside date in the APA is February 28, 2023;

44. The Company requests that the Court approve the Transaction for the following reasons:

- (a) the APA was submitted in compliance with the requirements of the Court-approved Sale Process;
- (b) the Transaction is the result of extensive negotiations and represents the highest and best offer for the Purchased Assets;
- (c) the Transaction will provide the opportunity for continued employment for a large majority of the Companies' employees;
- (d) the Companies' customers will continue to have a source of supply through the Purchasers' acquisition of the business, and vendors will have a customer that is better capitalized than the Companies; and
- (e) the Purchased Assets, which consist of all or substantially all of the property used by the Companies in carrying on their business, including continuing all operations in Alberta and British Columbia, as well as some operations in Ontario, Colorado, and Utah under management of new owners, the Purchasers.

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45. The Proposal Trustee was kept apprised of and was involved in the progress and status of the Sale Process and the subsequent negotiations of the APA, is supportive of the Transaction contemplated by the APA, and is satisfied that sufficient effort was made to get the best price for the Purchased Assets and that further marketing efforts are not required.
46. CIBC and Fulcrum have been apprised of the progress and status of the Sale Process and the subsequent negotiations of the APA and are supportive of the Applicant entering into the APA and moving forward with closing the Transaction. Fulcrum is expected to suffer a significant shortfall on the amounts owing to it by the Company.

EXTENSION OF TIME TO FILE A PROPOSAL

47. An extension of the time for the Companies to file a proposal or proposals is a material component of the Consolidated Proceeding to allow the Companies to restructure their affairs, including completing the Sale Process and closing the Transaction under the APA.
48. Since filing the NOI (in respect of the Company) and in anticipation of filing an NOI (in respect of Nilex USA), the Companies have been diligently complying with various requirements under the BIA including:
 - (a) preparing and analyzing the list of creditors;
 - (b) providing the Proposal Trustee with access to the Companies' senior employees and books and records;
 - (c) completing cash flow forecasts;
 - (d) reporting to CIBC in accordance with a Forbearance Agreement dated October 17, 2022; and
 - (e) working with the Proposal Trustee and Valitas to review and analyse binding offers submitted in the Sale Process and to negotiate and enter into the APA.
49. The Companies are working in good faith with a view to maximize value for the Companies' creditors and other stakeholders.

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50. I understand that in order to continue to work toward the formulation and filing of a proposal or proposals, the Companies will require an extension of the time period within which they may file a proposal or proposals to their creditors. In this regard:
- (a) the Company, whose board of directors and Management Team effectively control the operations of Nilex USA, has acted and is acting in good faith and with due diligence both in the period prior to and since the filing of the NOI; and
 - (b) an extension will enhance the Companies' abilities to make a viable proposal or proposals following the completion of the Transaction.
51. An extension of time for the Companies to file a proposal or proposals is a material component in these proceedings to allow the Companies to restructure their affairs, including completing the Transaction and fulfilling the terms of the TSA following closing of the Transaction.

CONSOLIDATED PROCEEDING

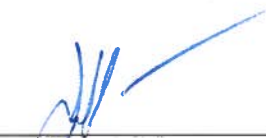
52. The procedural consolidation of the NOI Proceeding and the NOI proceeding of Nilex USA which is expected to be commenced before the hearing of the Application, will provide greater administrative efficiency, as it will permit all applications to be brought before one justice, rather than having multiple proceedings. Additionally, the consolidation sought will allow the Companies to complete the Sale Process previously approved by the Court in the most expedient and efficient manner for the benefit of all stakeholders.

CONCLUSION

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


SWORN BEFORE ME on the 21st day of
November, 2022 at the City of Edmonton,
Alberta.


A Commissioner for Oaths in and for
Alberta


Jeff Allen

Carol Ann Perdue
A Commissioner for Oaths
in and for Alberta
My Commission Expires Nov. 2, 2024

This is Exhibit "A" referred to in the Affidavit of Jeff Allen sworn before me this 21st day of November, 2022.


A Commissioner for Oaths in and for Alberta

Carol Ann Perdue
A Commissioner for Oaths
in and for Alberta
My Commission Expires Nov. 2, 2024

STATE OF COLORADO

Department of State

1700 Broadway Suite 550
Denver, Colorado 80290**Jena Griswold**

Secretary of State of the State of Colorado

Search Report

This report reflects documents delivered on paper through 09/22/2022 and documents delivered electronically through 09/27/2022

Search Criteria:

Debtor Name: Nilex USA Inc.

Normalized org. name: NILEXUSA

This report was created on : Tuesday, September 27, 2022 12:59:06 PM

Record 1 of 2

Record ID #: 20182039557

Record Type: UCC

File Date: 05/02/2018 01:12:24 PM

Filing office: Secretary of State

Lapse date: 05/02/2023

Debtor: Nilex USA Inc.

Address 1: 15253 E Fremont Drive

City: Centennial

State: CO

Zip/Postal Code: 80112

Province:

Country: United States

Comments: Added by: 20182039557

Secured Party: HSBC Bank Canada

Address 1: 9th Floor

Address 2: 10250 - 101 Street NW

City: Edmonton

State: AB

Zip/Postal Code: T5J2P4

Province:

Country: Canada

Comments: Added by: 20182039557

	Document #	File Date	Type
1	20182039557	05/02/2018	UCC financing statement
2	20182049546	06/01/2018	UCC amendment-termination

Record 2 of 2

Record ID #: 20182049545

Record Type: UCC

File Date: 06/01/2018 01:29:45 PM

Filing office: Secretary of State

Lapse date: 06/01/2023

Debtor: Nilex USA Inc.

Address 1: 6810 8 St NW

City: Edmonton

State: AB

Zip/Postal Code: T6P 0C5

Province:

Country: Canada

Comments: Added by: 20182049545

Secured Party: Canadian Imperial Bank of Commerce

Address 1: 199 Bay Street, 4th Floor

City: Toronto

State: ON

Zip/Postal Code: M5L 1A2

Province:

Country: Canada

Comments: Added by: 20182049545

	Document #	File Date	Type
1	20182049545	06/01/2018	UCC financing statement

UCC Financing Statement

Colorado Secretary of State

Date and Time: 05/02/2018 01:12:24 PM

Master ID: 20182039557

Validation Number: 20182039557

Amount: \$8.00

Debtor: (Organization)

Name: Nilex USA Inc.

Address1: 15253 E Fremont Drive

Address2:

City: Centennial

State: CO

ZIP/Postal Code: 80112

Province:

Country: United States

Secured Party: (Organization)

Name: HSBC Bank Canada

Address1: 9th Floor

Address2: 10250 - 101 Street NW

City: Edmonton

State: AB

ZIP/Postal Code: T5J2P4

Province:

Country: Canada

Collateral**Description:**

See Attached Collateral Description

Attachment #: 1

See attached Description of Collateral

File name: COLLATERAL DESCRIPTION.pdf

Uploaded: 05/02/2018 01:11:04 PM

UCC-1 FINANCING STATEMENT:
 DEBTOR: NILEX USA INC.
 SECURED PARTY: HSBC BANK CANADA

DESCRIPTION OF COLLATERAL

All the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all: Accounts, Inventory, Receivables, Equipment, Instruments, Goods, Contract Rights, Intangibles, General Intangibles, Payment Intangibles, Chattel Paper, Money, Fixtures, Deposit Accounts and Proceeds, and more particularly:

- (a) Inventory of whatsoever nature and kind and wheresoever situated;
- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situated, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others;
- (g) all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor; and
- (h) all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situated, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Secured Party, including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets.

UCC Financing Statement Amendment

Colorado Secretary of State

Date and Time: 06/01/2018 01:29:50 PM

Master ID: 20182039557

Validation Number: 20182049546

Amount: \$8.00

Initial Financing Statement

File #: 20182039557

File Date: 05/02/2018 01:12:24 PM

Filing office: Secretary of State

This amendment is a termination.

Optional Information

Optional filer reference data/miscellaneous information:

Debtor:Nilex USA Inc. [147200598]

Authorizing Party (Secured Party): (Organization)

Name: HSBC Bank Canada

Address1: 9th Floor

Address2: 10250 - 101 Street NW

City: Edmonton

State: AB

ZIP/Postal Code: T5J2P4

Province:

Country: Canada

UCC Financing Statement

Colorado Secretary of State

Date and Time: 06/01/2018 01:29:45 PM

Master ID: 20182049545

Validation Number: 20182049545

Amount: \$8.00

Debtor: (Organization)

Name: Nilex USA Inc.

Address1: 6810 8 St NW

Address2:

City: Edmonton

State: AB

ZIP/Postal Code: T6P 0C5

Province:

Country: Canada

Secured Party: (Organization)

Name: Canadian Imperial Bank of Commerce

Address1: 199 Bay Street, 4th Floor

Address2:

City: Toronto

State: ON

ZIP/Postal Code: M5L 1A2

Province:

Country: Canada

Collateral**Description:**

All assets of the Debtor, wherever located, whether now owned or existing or hereafter acquired or arising, together with all proceeds thereof.

Optional Information**Optional filer reference data/miscellaneous information:**

[147176273]

This is Exhibit "B" referred to in the Affidavit of Jeff Allen sworn before me this 21st day of November, 2022.



A Commissioner for Oaths in and for Alberta

Carol Ann Perdue
A Commissioner for Oaths
in and for Alberta
My Commission Expires Nov. 2, 2024



Valitas Capital Partners Inc.
100 King Street West, Suite 5600, Toronto, Ontario M5X 1C9
www.valitascapital.com

Reply to:
Paris Aden, (416) 556-0887
paris.aden@valitascapital.com

BY EMAIL, STRICTLY CONFIDENTIAL

October 8th, 2022

Dear ,

Re: Nilex Inc. and Nilex USA Inc. (jointly, the “Company”)

As you know, Valitas Capital Partners (“Valitas”) has been retained by the Company to conduct a sale process for its business. We appreciate the time and effort you have taken to perform due diligence and participate in the process thus far.

Based on interest to date, Valitas and the Company are of the view that it is important to ensure all parties are working to uniform timelines and with the same level of information. Accordingly, the Company, through Valitas, is requesting that all interested parties submit firm and binding offers by no later than 3:00 pm (Mountain Time) on November 8, 2022 (the “Bid Deadline”), using the form of template asset purchase agreement that has now been uploaded to the Company’s data room (the “Template APA”). When submitting your offer, please provide a blackline comparing all changes from your form of offer as against the Template APA so that Valitas and the Company can identify all changes to the Template APA. The principal criteria for selection of the best offer will be the purchase price, conditions, time to closing, and benefits to the Company’s stakeholders, such as employees. Bidders are strongly encouraged to minimize the conditionality of their offers.

The Company’s objective is to enter into a binding agreement of purchase and sale by no later than November 15, 2022.

We have previously uploaded a transition services agreement (the “TSA”) to the data room. To the extent that you require more time to perform due diligence at the time you submit your offer, for example, to determine which employees you wish to offer employment or which locations you wish to lease, we strongly recommend that you mark up the TSA and submit it with your offer.

Valitas and the Company will continue to assist you to perform due diligence until the Bid Deadline. At all times your participation in this process and all information provided to you remain subject to the terms of the non-disclosure agreement you have entered into with the Company. If you have any

Valitas Capital Partners Inc.

questions concerning the process or require any assistance with your due diligence, kindly contact me at your earliest convenience.

We look forward to your continued participation in the process and to receipt of your offer.

Sincerely,

VALITAS CAPITAL PARTNERS INC.

A handwritten signature in black ink that reads "Paris Aden". The signature is written in a cursive, flowing style.

Paris Aden, Partner