



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

APPLICANT NILEX INC.

DOCUMENT **APPLICATION (sale approval and vesting order,
procedural consolidation and ancillary relief)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
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

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	November 28, 2022
Time	3:00 p.m.
Where	Calgary, Alberta (via Webex)
Before Whom	The Honourable Justice M.H. Hollins

Go to the end of this document to see what else you can do and when you must do it.

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

APPLICANT NILEX INC.

DOCUMENT **APPLICATION (sale approval and vesting order,
 procedural consolidation and ancillary relief)**

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
 Barristers and Solicitors
 3500 Bankers Hall East
 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

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	November 28, 2022
Time	3:00 p.m.
Where	Calgary, Alberta (via Webex)
Before Whom	The Honourable Justice M.H. Hollins

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, Nilex Inc. ("**Nilex**") together with its wholly owned subsidiary Nilex USA Inc. ("**Nilex USA**" and together with Nilex, the "**Companies**"), seek, among other things, a sale approval and vesting order substantially in the form attached hereto as Schedule "**A**"; a procedural consolidation order substantially in the form attached hereto as Schedule "**B**"; and a sealing order substantially in the form attached hereto as Schedule "**C**":
 - (a) abridging the 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 Nilex and Nilex USA may file a proposal 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 insolvency proceeding with those expected to be commenced prior to the return of this Application 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, including entering into the transition services agreement attached to the APA as Exhibit “E” to complete the Transaction;
- (g) ordering that upon delivery of the Proposal Trustee’s certificate by the Proposal Trustee (as defined herein) to the applicable Purchaser, all of the applicable Vendor’s right, title and interest in and to the Purchased Assets (as defined in the APA) 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;
- (j) authorizing the Proposal Trustee to make an interim distribution or distributions 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.

2. Capitalized terms used but not defined in this Application shall have the meanings ascribed to them in the affidavit of Jeff Allen sworn November 21, 2022 (the “**Second Allen Affidavit**”) or the APA.

Grounds for making this application:

Background

3. On October 27, 2022 Nilex filed a notice of intention (“**NOI**”) to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (**BIA**) and KSV Restructuring Inc. was appointed Proposal Trustee.
4. 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 a sale process (the “**Sale Process**”) described in the Proposal Trustee’s first report to the Court dated October 31, 2022 (the “**First Report**”).
5. Nilex, with the assistance of Valitas Capital Partners (“**Valitas**”), commenced the Sale Process in January 2022. The Sale Process included the assets and undertakings of both Nilex and Nilex USA.
6. Nilex USA intends to commence insolvency proceedings pursuant to section 50.4(1) of the BIA in advance of the hearing of this application.

Extension of Time to File a Proposal

7. The Companies have acted in good faith and with due diligence in pursuing the Transaction to maximize value for their creditors and other stakeholders.
8. Unless the Companies receive extensions of time to file a proposal, Nilex’s deadline to file a proposal with the official receiver expires on January 10, 2023, and Nilex USA’s deadline expires 30 days from the date on which Nilex USA files an NOI.
9. The proposed extension of time to file a proposal will allow the Companies to restructure their affairs, including completing the Sale Process and closing the Transaction under the APA. It is a material component of the Consolidated Proceeding.

10. Since the filing of 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 creditors;
 - (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.
11. No creditors will be materially prejudiced by the requested extension.

Approval and Vesting Order

12. In the months leading up to the granting of the November 8 Order, Nilex, with the assistance of Valitas, and the oversight of KSV Advisory Inc., pursued a number of initiatives to market and sell its assets, including the business and assets of Nilex USA.
13. The Sale Process was designed to thoroughly canvas the market to solicit, explore, assess and negotiate possible transactions for the sale of the assets or business of the Companies, with a view to the best interests of the Companies and its stakeholders.
14. Details of the conduct of the Sale Process by Valitas and Nilex are set out in the First Report.
15. The bid deadline under the Sale Process was November 8, 2022 (the "**Bid Deadline**").

16. A summary of the Sale Process results is provided in the Second Report. As a result of the marketing and sales efforts carried out pursuant to the Sale Process, four (4) parties submitted binding offers by the Bid Deadline (each, a “**Binding Offer**”).
17. Following receipt of the Binding Offers, the Companies, with the assistance of Valitas, the Proposal Trustee and their legal advisors, negotiated and entered into the APA with the Purchasers for the Purchased Assets, subject to Court approval.
18. The APA:
 - (a) was submitted in compliance with the requirements of the Sale Process;
 - (b) is the highest and best overall bid received for the Purchased Assets in terms of purchase price;
 - (c) is unconditional except for approval of the Court for the sale of the business and assets of Nilex and by the United States Bankruptcy Court for the District of Colorado for the business and assets of Nilex USA;
 - (d) is in the best interests of all stakeholders of the Companies;
 - (e) provides the opportunity for continued employment for a large majority of the Companies’ employees; and
 - (f) is more beneficial to the stakeholders of the Companies than would be a liquidation of the Companies assets in bankruptcy or an alternative insolvency process.
19. The Sale Approval and Vesting Order should be granted and the Transaction approved for the following reasons, among others:
 - (a) the Transaction is the result of a thorough Sale Process, approved by the Court, that broadly canvassed the market and was conducted in accordance with its terms, resulting in participation from potential purchasers and competition among same;

- (b) the Transaction is the result of extensive negotiations and represents the highest and best offer for the Purchased Assets;
 - (c) the Transaction is in the best interests of all the stakeholders of the Companies; and
 - (d) there has been no unfairness in carrying out the Sale Process.
20. The Proposal Trustee 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 sufficient effort was made to get the best price for the Purchased Assets and that further marketing efforts are not required.

Consolidation of Proceedings

21. Nilex USA is a wholly owned subsidiary of Nilex. It is incorporated in Colorado, United States. Nilex is the largest unsecured creditor of Nilex USA.
22. An Order procedurally consolidating the Proceedings will provide greater administrative efficiency and will allow the Companies to complete the Sale Process in the most expedient and efficient manner for the benefit of all stakeholders.
23. The purpose of this consolidation is to avoid duplicative steps across the proceedings, which will add efficiency to the proceedings, conserve resources, and will not prejudice any stakeholder.
24. The style of cause should also be amended to include Nilex USA as a party and reflect the consolidation of the Proceedings.
25. Because Nilex has operations and assets in the United States, substantially all of which will be purchased pursuant to the APA, the Proposal Trustee, as Foreign Representative, intends to initiate a case in the United States Bankruptcy Court for the District of Colorado under Chapter 15 of the United States Bankruptcy Code 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.

Sealing Order

26. The confidential appendices contain confidential and commercially sensitive information.
27. An order sealing the confidential appendices is appropriate given the commercially sensitive information contained therein and the potential negative impact that disclosure of such information may have on these proceedings and a future sale process in the event that the Transaction does not close.

Material or evidence to be relied on:

28. The Companies intend to rely upon the following materials:
 - (a) the November 8 Order;
 - (b) the First Allen Affidavit and the Second Allen Affidavit, filed;
 - (c) the First Report, filed;
 - (d) the Second Report, to be filed;
 - (e) a bench brief of the Companies; and
 - (f) such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

29. The Companies will rely upon and refer to the *Alberta Rules of Court* during the making of the Application.

Applicable Acts and Regulations:

30. The Companies will rely upon and refer to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, during the making of the Application.
31. *The Bankruptcy and Insolvency General Rules*, CRC, c 368.
32. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

33. None.

How the Application is proposed to be heard or considered:

34. Virtually, an application via WebEx before the Honourable Justice M.H. Hollins.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to Applicants.

Schedule "A"

Form of Sale Approval and Vesting Order

(see attached)

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

Clerk's Stamp

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

APPLICANTS NILEX INC. and NILEX USA INC.

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

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

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

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

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

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

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

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

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

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

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITIONS

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

SERVICE

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

APPROVAL OF TRANSACTION

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

VESTING OF PROPERTY

4. Upon delivery of a Proposal Trustee's certificate to the Purchasers (or either of them, or their nominee), pursuant to the Canadian Closing or the US Closing (as defined in the APA), substantially in the form set out in Schedule "A" hereto (each respectively a "**Proposal Trustee's Certificate**"), all of the respective Company's right, title, and interest in and to the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, shall vest absolutely in the name of the applicable Purchaser (or its nominee), free and clear of and from any and all caveats, security interests (whether contractual, statutory, or otherwise), hypothecs, pledges, mortgages, liens, trusts or deemed trusts (whether contractual, statutory, or otherwise), reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by, (i) the Order of Justice J.S. Little of this Court in these proceedings dated November 8, 2022, and (ii) any other orders in these proceedings, in the event future orders modify or create additional charges;
- (ii) all charges, liens, security interests or claims, whether evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), the Uniform Commercial Code (United States) or any other personal property registry system, or otherwise; and
- (iii) those Claims listed in Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the encumbrances, caveats, interests, easements and restrictive covenants listed in Schedule "C" (collectively, "**Permitted Encumbrances**"))

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

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

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

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

proceeds from the sale of those Purchased Assets with the same priority as they had with respect to those Purchased Assets immediately prior to the sale, as if those Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

CLOSING OF THE SALE TRANSACTION

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

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

MISCELLANEOUS MATTERS

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

the vesting of the Purchased Assets in the Purchasers (or their nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
17. The Companies, the Proposal Trustee, the Purchasers (or their nominee), and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may

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

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

SERVICE OF ORDER

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

Justice of the Court of King's Bench of Alberta

Schedule "A"

Form of Proposal Trustee's Certificate

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

Clerk's Stamp

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

APPLICANTS	NILEX INC. AND NILEX USA INC.
------------	-------------------------------

DOCUMENT	PROPOSAL TRUSTEE'S CERTIFICATE
----------	---------------------------------------

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, 3500 Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5

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

RECITALS

- A. Pursuant to the filing of notices of intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) on October 27, 2022 by Nilex Inc. and on November [10], 2022 by Nilex USA Inc., KSV Restructuring Inc. consented to act as the Proposal Trustee.
- B. Pursuant to an Order of the Court dated November [28], 2022, the Court approved the Asset Purchase Agreement dated November [18], 2022 (the "**APA**"), between Nilex Inc. and Nilex USA Inc. (the "**Vendors**") and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and provided for the vesting in the Purchasers of the Vendors' right, title and interest in and to the Purchased Assets (the "**Transaction**"), which vesting is to be effective with respect to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, upon the delivery by the Proposal Trustee to the Purchasers of a certificate or certificates confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable; (ii) that the conditions to Canadian Closing or the US Closing, as applicable, as set

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

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

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

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

Per: _____

Name:

Title:

Schedule "B"

Encumbrances to be Expunged and Discharged

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

Canadian Encumbrances to be Expunged and Discharged

Alberta

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

British Columbia

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

Saskatchewan

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

Ontario

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

U.S. Encumbrances to be Expunged and DischargedColorado

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

Schedule "C"**Permitted Encumbrances**

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

Schedule "B"

Form of Procedural Consolidation Order

(see attached)

COURT FILE NUMBER 24-2878531

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

APPLICANTS NILEX INC. and NILEX USA INC.

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

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Blake, Cassels & Graydon LLP

Barristers and Solicitors
3500 Bankers Hall East Tower
855 – 2 Street SW
Calgary, Alberta T2P 4J8

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

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

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

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

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

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

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

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

IT IS HEREBY ORDERED AND DECLARED THAT:

EXTENSION OF TIME TO FILE A PROPOSAL

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

PROCEDURAL CONSOLIDATION

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

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

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

APPLICANTS

NILEX INC. and NILEX USA INC.

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

FOREIGN REPRESENTATIVE

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

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

INTERIM DISTRIBUTION

10. The Proposal Trustee is hereby authorized, at such time as it determines appropriate, to make an interim distribution or interim distributions to CIBC from amounts received from the Transaction up to the full amount of the Company's indebtedness to CIBC, as set out in the Second Report, subject to the retention of amounts for any priority claims. Such interim distribution or interim distributions shall be free and clear of all claims and encumbrances and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of either of the Companies and shall not be void or voidable by creditors of the Companies, nor shall any such interim distribution constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall any such interim distribution constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MISCELLANEOUS MATTERS

11. The Companies, the Proposal Trustee, and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
12. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories, or in any foreign jurisdiction including specifically, the United States of America, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order and other orders in the Consolidated Proceeding. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies or the Proposal Trustee, as an officer of this

Court and Foreign Representative, as may be necessary or desirable to give effect to this Order and other orders in the Consolidated Proceeding, to grant representative status to the Proposal Trustee in any foreign proceeding of the Companies, or to assist the Companies and the Proposal Trustee and their agents in carrying out the terms of this Order and other orders in the Consolidated Proceeding.

SERVICE OF ORDER

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

Justice of the Court of King's Bench of Alberta

Schedule "C"

Form of Sealing Order

(see attached)

COURT FILE NUMBER 24-2878531

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (sealing confidential appendices)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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

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

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

DATE ON WHICH ORDER WAS PRONOUNCED November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

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

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

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

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

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

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITION

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

SEALING ORDER

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

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

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

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

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

Justice of the Court of King's Bench of Alberta