

Clerk's stamp:

COURT/ESTATE FILE NUMBER 24-2878531

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 (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  
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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 8, 2022
Time	2:00 pm
Where	Edmonton Courts Centre via Webex
Before Whom	Justice J.S. Little

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. (the "**Company**" or "**Nilex**"), seeks an order substantially in the form attached as Schedule "**A**" hereto, among other things:

- (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 the Company may file a proposal to its creditors pursuant to section 50.4(9) the BIA for a 45-day period from the date following the current deadline to do so, such that the Company may file a proposal up to and including 11:59 pm (local Calgary time) on January 10, 2023 or such other date as this Honourable Court may order;
- (c) granting an Administration Charge (as defined below) in the amount of \$350,000 as security for the payment of professional fees and disbursements incurred and to be incurred by counsel for the Company, the Proposal Trustee and the Proposal Trustee's counsel;
- (d) approving the Company's ability to continue to use the Central Cash Management system currently in place (as defined below) or any similar alternative cash management system, and granting the Lender Priority Charge (defined below) in the principal amount of \$20,000,000 plus interest, fees and expenses, in respect of the same;
- (e) granting the D&O Charge (defined below) in the amount of \$925,000 as security for the Company's obligations to indemnify its directors and officers for obligations and liabilities they may be subject to in carrying out their duties in the NOI Proceedings;
- (f) approving the key employee retention plan (the "**KERP**") as described in the First Report of the Proposal Trustee dated October 31, 2022 (the "**First Report**") and granting the KERP Charge (as defined below) in the amount of \$800,000 in respect of the same;
- (g) approving the Company's ongoing Sale Process, and authorizing and directing the Company to continue implementing and performing the Sale Process;
- (h) directing the release to the Company of the Garnished Funds (as defined below) held by the Court of King's Bench of Alberta in Court file number 1903-07838;

- (i) sealing confidential appendix "1" (the "**Confidential Appendix**") to the First Report; and
- (j) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

**Grounds for making this application:**

*Background*

2. Nilex is a private company incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9.
3. Nilex USA Inc. ("**Nilex USA**") is a wholly owned subsidiary of the Company, incorporated in Colorado, United States. Nilex USA is a much smaller business than the Company and is not subject to these proceedings.
4. The Company has been a leader in the geosynthetics industry providing civil environmental products and technologies since 1977. The Company provides environmental solutions which are used in road building, erosion and sediment control, water management and containment.
5. The Company leases and organizes its operations into seven branches spread out across four Canadian provinces and two American states consisting of approximately 70 full-time employees and 44 seasonal employees.
6. In Canada, Nilex has on-site locations in Calgary, Edmonton, Saskatoon and Toronto. Nilex's registered office is in Calgary.
7. The Company's revenues have exhibited a consistent seasonal pattern over time. Due to the nature of the Company's operations, winter is usually the slowest season, with revenues gradually increasing in the later months of spring and peaking in the summer.
8. Factors outside of the Company's control have caused liquidity challenges for the Company, including rising inventory costs.

### *The CIBC Credit Agreement and Demand*

9. The Company and Nilex USA, as borrowers, have a revolving credit facility and term loan with the Canadian Imperial Bank of Commerce ("**CIBC**"), as lender, pursuant to a credit agreement dated as of June 1, 2018, as amended (collectively, the "**Credit Agreement**").
10. The obligations of Nilex under the Credit Agreement are secured pursuant to, among other things, a general security agreement from Nilex in favour of CIBC, granting CIBC security over all present and after-acquired personal property of Nilex.
11. On September 15, 2022, CIBC served Nilex with a demand for payment and notice of intention to enforce on its security pursuant to section 244 of the BIA.
12. As of October 17, 2022, the Company owes CIBC \$17,846,493.07 under the Credit Agreement. Nilex is not able to repay the amounts owing under the Credit Agreement.
13. On October 17, 2022, CIBC and Nilex entered into a forbearance agreement (the "**Forbearance Agreement**") in which CIBC has agreed, subject to the terms and conditions of the Forbearance Agreement, to continue to make certain credit facilities under the Credit Agreement available to the Company to allow the Company to meet its working capital requirements while the Company carries out the Sale Process. CIBC has also agreed to temporarily forbear from enforcing on its rights.

### *The Fulcrum Loan*

14. In addition to the Credit Agreement, Nilex (or its predecessor) has granted certain subordinated promissory notes to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**") in the aggregate principal amount of \$28,183,150 (the "**Fulcrum Promissory Notes**").
15. As of September 30, 2022, the amounts owing by Nilex to Fulcrum under the Fulcrum Promissory Notes was approximately \$44,981,769 plus interest and costs which continue to accrue.
16. The obligations of Nilex under the Fulcrum Promissory Notes are secured by, among other things, a general security agreement, granting Fulcrum security over all present and after-acquired personal property of Nilex.

### *Civil Enforcement Proceedings against Nilex*

17. Nilex is a judgment debtor in certain civil actions, including in Court of King's Bench Court File Nos. 1903-07838 (the "**Watt Action**") and 2203-04447 (the "**Wilson Action**").
18. The judgment creditor in the Watt Action has taken certain steps to enforce on his judgment, including garnishing certain accounts receivable of the Company from its customers.
19. As a result of these enforcement steps, the Court is holding certain funds, or may have further funds paid into Court (the "**Garnished Funds**") belonging to Nilex.
20. The Court has provided notices that it intends to make distributions of the Garnished Funds to, among others, the judgment creditors in the Watt Action and Wilson Action.
21. CIBC has provided the Court with notices of objection to the proposed distribution of the Garnished Funds pursuant to section 101(1)(d) of the *Civil Enforcement Act*, RSA 2000, c C-15 on account of the Garnished Funds being subject to CIBC's priority security interest (the "**CIBC Objection**").
22. CIBC has filed an application in the Watt Action returnable November 18, 2022 before the Court, in the Judicial District of Edmonton, in respect of the CIBC Objection.

### *Nilex's Insolvency and the Filing of the NOI*

23. Given the forgoing, the Company is insolvent. As a result, Nilex filed a Notice of Intention to Make a Proposal ("**NOI**") with the official receiver on October 27, 2022 (the "**Filing Date**"), and KSV Restructuring Inc. has consented to act as the Proposal Trustee.
24. Nilex seeks to restructure its affairs for the general benefit of its creditors and other stakeholders.

### *The Sale Process and Nilex's Restructuring Efforts*

25. 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, including consulting with

Valitas to oversee a going-concern Sale Process. The Sale Process was commenced by the Company in January 2022.

26. Interested parties were initially requested to submit non-binding letters of intent in March 2022; however, none of the offers received by that deadline were acceptable to the Company.
27. Based on Nilex's expectation of improved financial results in the spring and summer of 2022, Valitas re-engaged interested parties in respect of the Sale Process. The Sale Process has since resulted in several letters of intent from potential purchasers or investors in Nilex.
28. It is clear from the letters of intent that any transaction with the Company will need to be completed through a Court process.
29. Nilex, with the assistance of the Proposal Trustee and Valitas, seeks to complete the Sale Process in these proceedings, and to later return to this Court for approval of a transaction or transactions pursuant to the Sale Process.
30. Nilex's secured creditors, CIBC and Fulcrum, support the continuation of the Sale Process in these proceedings.

*Extension of Time to File a Proposal*

31. The Company is acting in good faith and with due diligence in pursuing the Sale Process for the general benefit of its creditors and other stakeholders.
32. Unless the Company receives an extension of time for filing a proposal, the deadline for Nilex to file a proposal with the official receiver expires on November 26, 2022.
33. The proposed extension of time to file a proposal will give Nilex time to complete the Sale Process and bring an application before this Court for approval of a transaction or transactions derived from the Sale Process.
34. No creditors will be materially prejudiced by the requested extension.

*Administration Charge*

35. The Company, the Proposal Trustee, and their respective counsel seek a charge over the property and assets of Nilex, which shall not exceed an aggregate amount of \$350,000, as security for payment of their respective professional fees and disbursements in respect of this proceeding (the "**Administration Charge**").
36. The Administration Charge is necessary in order to ensure that counsel to the Company, the Proposal Trustee, and the Proposal Trustee's counsel have security for their fees and disbursements.
37. The Company, after consultation with the Proposal Trustee, is of the view that the quantum of the Administration Charge is appropriate given the anticipated complexity of this proceeding.

*Cash Management System and Lender Priority Charge*

38. As noted above, CIBC continues to make credit facilities available to the Company under the Credit Agreement in order to provide the Company with sufficient liquidity to support its business operations.
39. CIBC has agreed, subject to the terms and conditions of the Forbearance Agreement, to grant Nilex continued use of the credit facilities under the Credit Agreement subject to the Court granting CIBC a charge over all the property and assets of Nilex to secure any advances made under the Credit Agreement from and after the Filing Date in a principal amount not to exceed \$20,000,000 plus interest, fees and expenses (the "**Lender Priority Charge**").

*The D&O Charge*

40. The Company is seeking a directors and officers charge over all the property and assets of Nilex in an amount not to exceed \$925,000 (the "**D&O Charge**").
41. The D&O Charge is required to ensure that the directors and officers of the Company will continue to serve in such capacity and have assurance that they will have indemnification for liabilities which they may incur in the fulfillment of their duties in these NOI proceedings.

42. The D&O Charge would only be in respect of amounts not covered by the Company's directors' and officers' insurance policy.
43. The Company, with the support of the Proposal Trustee, is of the view that the quantum of the D&O Charge is appropriate.

#### *KERP and KERP Charge*

44. In consultation with KSV Advisory, the Company has developed a key employee retention plan (the "**KERP**"). The Company is seeking authorization and direction to make the payments contemplated in the KERP should the beneficiaries become entitled thereto in accordance with the terms and conditions of the KERP together with a charge in favour of the beneficiaries of the KERP (the "**KERP Charge**") on the Property to secure all obligations under the KERP.
45. The KERP and KERP Charge are necessary to retain employees and incentivize executives during these proceedings.

#### *Charge Priorities*

46. The priorities of the charges as among them, as proposed by Nilex with the support of the Proposal Trustee are as follows:
  - (a) First – the Administration Charge;
  - (b) Second – the Lender Priority Charge;
  - (c) Third – the D&O Charge; and
  - (d) Fourth – the KERP Charge.

#### *The Garnished Funds*

47. As noted above, the Court is holding the Garnished Funds pursuant to civil enforcement remedies in the Watt Action.
48. The Garnished Funds are subject to the security granted in favour of CIBC and Fulcrum, in priority to the judgment creditors in the Watt Action and Wilson Action.
49. Nilex is seeking a direction from the Court that the Clerk of the Court distribute the Garnished Funds to it to 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.

50. This will reduce the overall interest charges payable by Nilex to CIBC for the benefit of all stakeholders.
51. CIBC and Fulcrum have agreed to support the distribution of the Garnished Funds to Nilex to be applied as set out above.

***Sealing Order***

52. The Confidential Appendix contains confidential and commercially sensitive information.
53. An order sealing the Confidential Appendix is appropriate given the commercially sensitive information contained therein and the potential negative impact disclosure of such information may have on these proceedings.

**Material or evidence to be relied on:**

54. Nilex intends to rely upon the following materials:
  - (a) the Affidavit of Jeff Allen, sworn on October 31, 2022, to be filed;
  - (b) the First Report, to be filed;
  - (c) a bench brief of the Company; and
  - (d) such further or other material or evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

55. Nilex will rely upon and refer to the *Alberta Rules of Court* during the making of the application, in particular Rules 1.2, 1.3, 3.2(2)(d), 6.10, 11.27 and 13.5.

**Applicable Acts and regulations:**

56. Nilex will rely upon and refer to provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, including Division I of Part III, and in particular, without limitation, sections 50.4, 50.6, and 64.2.

57. The *Bankruptcy and Insolvency General Rules*, CRC, c 368.
58. The *Civil Enforcement Act*, RSA 2000, c C-15, and in particular, without limitation, section 101.
59. 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:**

60. None.

**How the application is proposed to be heard or considered:**

61. Virtually, at an application via WebEx before the Honourable Justice C. M. Jones.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant 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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**Schedule A**

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  
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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 [redacted] sworn [redacted], 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.