



Clerk's stamp:

COURT/ESTATE FILE NUMBER 24-2878531  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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 **FOURTH REPORT OF THE PROPOSAL TRUSTEE**  
**January 30, 2023**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT Proposal Trustee  
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File Ref.: 50505-7



**Fourth Report to Court of  
KSV Restructuring Inc.  
as Proposal Trustee of  
Nilex Inc. and Nilex USA Inc.**

January 30, 2023

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Court File No.: 24-2878531

**COURT OF KING'S BENCH OF ALBERTA**

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

**FOURTH REPORT OF KSV RESTRUCTURING INC.  
AS PROPOSAL TRUSTEE OF  
NILEX INC. AND NILEX USA INC.**

**JANUARY 30, 2023**

## **1.0 Introduction**

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV"), in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOI") filed on October 27, 2022 by Nilex Inc. ("Nilex Canada") and on November 24, 2022 by Nilex USA Inc. ("Nilex USA", and together with Nilex Canada, the "Nilex Debtors") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".
2. Pursuant to an order of the Court of King's Bench of Alberta (the "Court") granted on November 28, 2022 (the "Ancillary Order"), among other things, (i) the Nilex Debtors' NOI proceedings were procedurally consolidated; and (ii) the Proposal Trustee was appointed as foreign representative (the "Foreign Representative") for the purpose of commencing recognition proceedings in the United States Court for the District of Colorado (the "US Court") pursuant to chapter 15 ("Chapter 15") of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "US Code"). On December 2, 2022, the Proposal Trustee, as Foreign Representative, filed a petition for US Court recognition of Nilex USA's NOI proceedings as a foreign main proceeding.
3. Pursuant to a sale approval and vesting order (the "SAVO") granted on November 28, 2022, the Court approved a sale (the "Transaction") of the Nilex Debtors' business and assets pursuant to an Asset Purchase Agreement (the "APA") dated November 18, 2022 between the Nilex Debtors and Terrafix Geosynthetics Inc. (the "Canadian Purchaser") and Hanes Companies, Inc. (the "US Purchaser") (jointly, the Canadian Purchaser and the US Purchaser are defined as the "Purchasers").
4. Pursuant to orders of the US Court entered on January 10, 2023, the US Court recognized Nilex USA's NOI proceeding as a foreign main proceeding and recognized the SAVO as it related to the sale of Nilex USA's business and assets to the US Purchaser.

5. The Transaction with the Canadian Purchaser and the US Purchaser closed on December 19, 2022 (with an effective date of December 16, 2022) and January 27, 2023, respectively.
6. The principal purposes of this proceeding at this time are to:
  - a) create a stabilized environment to allow the Nilex Debtors to complete their post-closing obligations under the APA;
  - b) make distributions to the Nilex Debtors' secured creditors, as previously authorized by the Court; and
  - c) provide the Nilex Debtors the opportunity to file a proposal to creditors pursuant to the provisions of the BIA ("Proposal").

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Nilex Debtors, the Transaction and these proceedings;
  - b) discuss the Nilex Debtors' request for an extension of the deadline to file a Proposal from February 7, 2023 to March 24, 2023;
  - c) report on the Nilex Debtors' weekly cash flow projection for the period January 30, 2023 to March 24, 2023 (the "Cash Flow Forecast");
  - d) provide an overview of the Proposal Trustee's activities since the Proposal Trustee's Third Report to Court dated December 7, 2022 (the "Third Report"), which activities were approved pursuant to a Court order dated December 13, 2022 (the "December 13<sup>th</sup> Order"); and
  - e) recommend that the Court issue the order requested by the Nilex Debtors, among other things:
    - i. extending the date by which the Nilex Debtors are required to file a Proposal from February 7, 2023 to March 24, 2023;
    - ii. approving and ratifying the Proposal Trustee's actions, conduct and activities as set out in this Report;
    - iii. approving the fees and disbursements of the Proposal Trustee for the period commencing on October 1, 2022 and ending on December 31, 2022;
    - iv. approving the fees and disbursements of the Proposal Trustee's legal counsel, Cassels Brock & Blackwell LLP ("Cassels"), for the period commencing on October 6, 2022 and ending December 16, 2022; and

- v. approving the fees and disbursements of the Proposal Trustee's US legal counsel, Lewis Roca Rothgerber Christie LLP ("Lewis Roca"), for the period commencing on November 14, 2022 and ending December 13, 2022.

## 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Nilex Debtors' representatives, the books and records of the Nilex Debtors and discussions with the Nilex Debtors' advisors and representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Nilex Debtors' financial information presented herein. An examination of the Cash Flow Forecast as outlined in the *Chartered Professional Accountants Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Nilex Debtors' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

## 1.4 Court Materials

1. Court materials filed in these proceedings are available on the Proposal Trustee's website at: <https://www.ksvadvisory.com/experience/case/nilex-inc>.

## 2.0 Background

1. Since 1977, Nilex Canada has operated in the geosynthetics industry providing civil environmental products and technologies. Nilex Canada provided environmental solutions used in road building, erosion and sediment control, water management and containment. Nilex Canada also offered conversion and fabrication options, customization of standard products to site and project-specific requirements. Pursuant to the Transaction, the Canadian Purchaser acquired the business and certain assets of Nilex Canada.
2. Nilex Canada is the 100% shareholder of Nilex USA. Nilex USA operated from leased premises in Utah and Colorado. Pursuant to the Transaction, the US Purchaser acquired the business and certain assets of Nilex USA.

3. PEF 2010 Nilex Investment Limited Partnership (“Fulcrum”) is Nilex Canada’s controlling shareholder. Nilex Canada’s registered office is in Calgary and it operated from leased premises in Edmonton, Calgary, Saskatoon, Surrey and Toronto.
4. At the commencement of these proceedings and at the closing date of the Transaction with the Canadian Purchaser, Canadian Imperial Bank of Commerce (“CIBC”) and Fulcrum were the principal secured creditors of the Nilex Debtors. Pursuant to a Court order dated November 28, 2022, and subject to the assignment<sup>1</sup> of a portion of CIBC’s debt and security to Fulcrum, CIBC was fully repaid from the proceeds of the Transaction with the Canadian Purchaser.
5. As of the date of this Report, Fulcrum was owed approximately \$48 million plus interest and costs which continue to accrue (which includes the outstanding \$3 million debt assigned to Fulcrum from CIBC). The December 13th Order authorized the Proposal Trustee to make distributions to Fulcrum. The Proposal Trustee anticipates making a first interim distribution to Fulcrum in the near term.
6. Additional background information about the Nilex Debtors and these proceedings was included in the Proposal Trustee’s First Report dated October 31, 2022, the Second Report dated November 21, 2022 (the “Second Report”), the Third Report and the affidavits of Jeff Allen, the Nilex Debtors’ Vice President, Finance, sworn October 31, 2022, November 21, 2022, December 7, 2022 and January 30, 2023, and accordingly, that information is not repeated in this Report.

### 3.0 The Transaction

1. The Transaction was approved pursuant to the SAVO on November 28, 2022. The portion of the SAVO relating to Nilex USA was recognized by the US Court pursuant to a US Court order entered January 10, 2023. The terms of the APA and the basis for the Proposal Trustee’s support for the Transaction were provided in the Second Report, and accordingly, are not repeated in this Report. A copy of the Second Report, without appendices, is attached as Appendix “B”.
2. The Transaction with the Canadian Purchaser and the US Purchaser closed on December 19, 2022 and January 27, 2023, respectively. Immediately following closing of the Transaction with the Canadian Purchaser, the Proposal Trustee made a distribution to CIBC of approximately \$11.5 million, which repaid in full the Nilex Debtors’ obligations owing to CIBC (after taking into account the \$3 million assignment from CIBC to Fulcrum).
3. The Nilex Debtors are presently working with the Purchasers to carry out their obligations under a Transition Services Agreement (the “TSA”) between the Nilex Debtors and the Purchasers that was negotiated pursuant to the APA and approved pursuant to the SAVO. The purpose of the TSA is for the Nilex Debtors to maintain in good standing, during these proceedings, certain contracts and real property lease agreements until those locations can be vacated and leases disclaimed by the Nilex

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<sup>1</sup> On December 7, 2022, CIBC assigned to Fulcrum \$3 million of the amounts owed by the Nilex Debtors to CIBC.

Debtors. Also pursuant to the TSA, the Nilex Debtors agreed to retain certain employees during the transition period to assist the Nilex Debtors and the Purchasers with transition issues related to the Transaction. Pursuant to the terms of the TSA, the Purchasers are required to fund any costs incurred by the Nilex Debtors in providing the transition services contemplated under the TSA. The maximum term of the TSA is six months. Accordingly, the TSA could terminate as late as June 16, 2023 and July 27, 2023 as it relates to the Transaction with the Canadian Purchaser and US Purchaser, respectively. It is presently expected that the Purchasers will not require transition services after mid-April, 2023, although that is subject to change based on the progress of the transition.

4. The purchase price under the Transaction is subject to adjustment, which is to be settled in accordance with the APA within 60 days of closing the Transaction. The relevant dates are as follows: the Nilex Canada adjustment is to be settled by February 17, 2023 and the Nilex USA adjustment is to be settled by March 28, 2023.

#### **4.0 Cash Flow**

1. As reflected in the Cash Flow Forecast, as at January 30, 2023, the Nilex Debtors' cash on deposit in their bank accounts, including the funds in the Proposal Trustee's bank accounts, was approximately \$8.7 million.
2. Pursuant to the BIA, the Nilex Debtors are required to prepare a cash flow forecast for the stay extension period. The Cash Flow Forecast for the period ending March 24, 2023, together with Management's Report on the Cash-Flow Statement, as required by subsection 50.4(2)(c) of the BIA, is provided in Appendix "C".
3. The Cash Flow Forecast was prepared with the assistance of the Proposal Trustee. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Cash Flow Statement as required by subsection 50.4(2)(b) of the BIA is attached as Appendix "D".

#### **5.0 The Nilex Debtors' Extension Request**

1. The Nilex Debtors are seeking an extension of the time required to file a Proposal from February 7, 2023 to March 24, 2023. The Proposal Trustee supports the extension request for the following reasons:
  - a) the Nilex Debtors are acting in good faith and with due diligence;
  - b) it will provide the Nilex Debtors with additional time to carry out their obligations under the APA, particularly as it relates to the TSA and to settle the purchase price adjustment with the Purchasers in accordance with the APA;
  - c) it will enhance the likelihood of the Nilex Debtors being able to file a Proposal; and
  - d) the extension will not adversely affect or prejudice any group of creditors as the Nilex Debtors are projected to have sufficient funding to pay post-filing services and supplies in the amounts contemplated by the Cash Flow Forecast.



## 6.0 Overview of Proposal Trustee's Activities

1. The Proposal Trustee's activities from the commencement of these proceedings to the date of the Third Report (being December 7, 2022) were approved pursuant to the December 13<sup>th</sup> Order. Since that time, the Proposal Trustee's activities have included the following:
  - a) working with the Nilex Debtors, the Purchaser and Valitas Capital Partners (the investment banker retained by the Nilex Debtors to run the sales process in these proceedings) to complete the Transaction, including reviewing and commenting on closing documents and the interim statement of adjustments;
  - b) corresponding with CIBC and its legal counsel, including in connection with a payout of the Nilex Debtors' indebtedness;
  - c) working with the Proposal Trustee's US legal counsel to have Nilex USA's Canadian restructuring proceedings recognized by the US Court under Chapter 15 of the US Code;
  - d) assisting the Nilex Debtors with certain operational issues, including dealings with certain vendors;
  - e) reviewing and commenting on all court materials filed with the US Court and attending by videoconference the preliminary injunction hearing before the US Court on December 9, 2022;
  - f) assisting the Nilex Debtors to coordinate TSA matters, including to deal with landlord and employee issues;
  - g) administering the employee claims process in accordance with the *Wage Earner Protection Program Act* ("WEPPA"), as authorized under the December 13<sup>th</sup> Order<sup>2</sup>, including:
    - completing the online data entry process for the Trustee/Receiver Information Form on Service Canada's website for the 15 former Nilex Canada employees who are eligible for WEPPA claims;
    - preparing and mailing a statutory WEPPA package to the former Nilex Canada employees, including the Notice of WEPPA, completed Trustee/Receiver Information Form, WEPPA Application form and Proof of Claim form; and
    - responding to enquiries from former employees regarding the WEPPA claims process and the WEPPA package;

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<sup>2</sup> Section 5(5) of the WEPPA provides that, on application by any person in proceedings under Division I of Part III of the BIA, a court may determine that a former employee meets the criteria prescribed by WEPPA. The December 13<sup>th</sup> Order granted this relief.

- h) reviewing and commenting on Court materials filed in these proceedings and the US proceedings, and corresponding with legal counsel to the Nilex Debtors and the Proposal Trustee in respect thereof; and
- i) drafting this Report.

## 7.0 Professional Fees

1. The fees of the Proposal Trustee (excluding disbursements and applicable taxes) from October 1, 2022 to December 31, 2022 total approximately \$294,000.
2. The fees of Cassels (excluding disbursements and applicable taxes) from October 6, 2022 to December 16, 2022 total approximately \$160,000.
3. The fees of Lewis Roca (excluding disbursements and applicable taxes) from November 14, 2022 to December 13, 2022 total approximately US\$76,000.
4. The average hourly rates for KSV, Cassels and Lewis Roca for the referenced billing periods were \$591.28, \$778.70 and US\$583.92, respectively.
5. Detailed invoices in respect of the fees and disbursements of the Proposal Trustee, Cassels and Lewis Roca are provided as exhibits to the affidavits (the "Fee Affidavits") sworn by representatives of KSV, Cassels and Lewis Roca, copies of which Fee Affidavits will be provided to the Court.
6. Fulcrum has reviewed the invoices in respect of the fees and disbursements of the Proposal Trustee, Cassels and Lewis Roca and has no concerns with the fees and disbursements of the Proposal Trustee, Cassels and Lewis Roca.
7. The Proposal Trustee is of the view that the hourly rates charged by Cassels are consistent with the rates charged by law firms practicing in the area of corporate insolvency and restructuring, and that the overall fees charged by Cassels and the Proposal Trustee are reasonable and appropriate in the circumstances. The Proposal Trustee understands that the hourly rates of Lewis Roca are consistent with the hourly rates charged by law firms practicing in the area of corporate insolvency and restructuring in its market.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court grant the relief being sought by the Nilex Debtors.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS TRUSTEE *IN RE* THE PROPOSAL OF  
NILEX INC. AND NILEX USA INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Alberta  
Division No. 01 - Edmonton  
Court No. 24-2878531  
Estate No. 24-2878531

In the Matter of the Notice of Intention to make a proposal of:

**Nilex Inc.**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention:

October 27, 2022

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: October 27, 2022, 10:45

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

**Canada** 



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Alberta  
Division No. 01 - Edmonton  
Court No. 24-2887527  
Estate No. 24-2887527

In the Matter of the Notice of Intention to make a proposal of:

**Nilex USA Inc.**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

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Date of the Notice of Intention:

November 24, 2022

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: November 24, 2022, 10:03

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

**Canada** 

## **Appendix “B”**



Clerk's stamp:

COURT/ESTATE FILE NUMBER 24-2878531  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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 **SECOND REPORT OF THE PROPOSAL TRUSTEE**  
**November 21, 2022**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT Proposal Trustee  
KSV Restructuring Inc.  
150 King Street West, Suite 2308  
Toronto, ON, M5H 1J9

Attn: Bobby Kofman / David Sieradzki  
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Calgary, AB T2P 5C5

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E-mail: jdietrich@cassels.com /  
dmarechal@cassels.com

File Ref.: 50505-7



**Second Report to Court of  
KSV Restructuring Inc.  
as Proposal Trustee of  
Nilex Inc.**

**November 21, 2022**



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Court File No.: 24-2878531

**COURT OF KING'S BENCH OF ALBERTA**  
**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF**  
**NILEX INC.**  
**IN THE CITY OF CALGARY, IN THE PROVINCE OF ALBERTA**

**SECOND REPORT OF KSV RESTRUCTURING INC.**  
**AS PROPOSAL TRUSTEE OF**  
**NILEX INC.**

**November 21, 2022**

## **1.0 Introduction**

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV"), in its capacity as proposal trustee (the "Proposal Trustee") in connection with a Notice of Intention to Make a Proposal ("NOI") filed on October 27, 2022 (the "Filing Date") by Nilex Inc. (the "Company") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in Appendix "A".
2. This Report is also filed in connection with the Company's wholly-owned subsidiary, Nilex USA Inc. ("Nilex USA"), which intends to commence insolvency proceedings in the near term by filing a Notice of Intention to Make a Proposal pursuant to the BIA.
3. The principal purposes of this proceeding are to:
  - a) create a stabilized environment to allow the Company to continue a sale process (the "Sale Process") for its business and assets, including those of Nilex USA, that it commenced prior to these proceedings, which Sale Process was approved pursuant to an order of the Court of King's Bench of Alberta (the "Court") dated November 8, 2022 (the "November 8<sup>th</sup> Order");
  - b) provide the Company and Nilex USA (jointly, the "Companies") with the opportunity to complete a going concern value maximizing transaction, as more fully discussed below; and
  - c) provide the Company the opportunity to file a proposal to creditors pursuant to the provisions of the BIA ("Proposal").

## **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information about the Companies and these proceedings;
  - b) summarize the results of the Sale Process;

- c) summarize an orderly wind-down analysis prepared by the Proposal Trustee (the “Wind-Down Analysis”) that illustrates that the liquidation value of the Companies’ business and assets is significantly less than the value of the Transaction (as defined below);
- d) detail the terms of a going-concern sale of substantially all of the Companies’ business and assets to Terrafix Geosynthetics Inc. (the “Canadian Purchaser”) and Hanes Companies, Inc. (the “US Purchaser”), (jointly, the Canadian Purchaser and the US Purchaser are defined as the “Purchasers”), pursuant to an Asset Purchase Agreement (the “APA”) dated November 18, 2022 (the “Transaction”);
- e) provide the Proposal Trustee’s rationale for recommending that the Court approve the Transaction;
- f) provide the Proposal Trustee’s rationale for supporting the following relief should Nilex USA file a NOI:
  - i. continuing and procedurally consolidating the Companies’ NOI proceedings and ordering that the style of cause be amended to include Nilex USA;
  - ii. extending to Nilex USA the broader stay provisions approved in the November 8<sup>th</sup> Order in respect of the Company;
  - iii. extending the Court-ordered charges approved pursuant to the November 8<sup>th</sup> Order to the business and assets of Nilex USA;
  - iv. appointing the Proposal Trustee as foreign representative (the “Foreign Representative”) for the purpose of commencing recognition proceedings in the United States Court for the District of Colorado (the “US Court”) pursuant to chapter 15 (“Chapter 15”) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, including the reasons that the Proposal Trustee believes that Alberta is the Companies’ centre of main interest (“COMI”);
- g) set out the basis for the Proposal Trustee’s recommendation that it be authorized to make one or more distributions to Canadian Imperial Bank of Commerce (“CIBC”), up to the full amount of the Companies’ indebtedness owing to CIBC, from the proceeds generated by the Transaction;
- h) discuss the Companies’ request for an extension of the deadline to file a Proposal to a date that is 45 days following the initial 30-day stay granted to Nilex USA under its NOI filing;
- i) report on the Company’s weekly cash flow projection for the period November 11, 2022 to February 24, 2023 (the “Cash Flow Forecast”); and

- j) recommend that the Court issue Orders as requested by the Companies, among other things:
  - i. continuing and procedurally consolidating the Companies' NOI proceedings and ordering that the style of cause be amended to include Nilex USA;
  - ii. approving the Transaction, the APA and the Transition Services Agreement between the Companies and the Purchasers (the "TSA");
  - iii. vesting all right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchasers, free and clear of and from any and all claims, liabilities, liens and encumbrances;
  - iv. authorizing the Proposal Trustee to make distributions to CIBC up to the full amount of the Companies' indebtedness owing to CIBC;
  - v. sealing the Confidential Appendices to this Report pending expiry of the TSA or further order of the Court; and
  - vi. extending the date by which the Company is required to file a Proposal to the date that is 45 days following the date by which Nilex USA must file a Proposal (which date will be prescribed in the order sought at the return of this Application).

## 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company's representatives, the books and records of the Companies and discussions with the Companies' advisors and representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Companies' financial information presented herein. An examination of the Cash Flow Forecast as outlined in the *Chartered Professional Accountants Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

## 1.4 Court Materials

1. Court materials filed in these proceedings are available on the Proposal Trustee's website at: <https://www.ksvadvisory.com/experience/case/nilex-inc>.

## 2.0 Background

1. The Company has been operating in the geosynthetics industry providing civil environmental products and technologies since 1977. The Company provides environmental solutions that are used in road building, erosion and sediment control, water management and containment. The Company also offers conversion and fabrication options, customization of standard products to site and project-specific requirements.
2. The Company's registered office is in Calgary. The Company leases its head office premises in Edmonton. It also operates from four other leased premises in Calgary, Saskatoon, Surrey and Toronto.
3. PEF 2010 Nilex Investment Limited Partnership ("Fulcrum") has been the Company's controlling shareholder since 2013.
4. The Company is the 100% shareholder of Nilex USA, which operates from leased premises in Utah and Colorado. As at the date of this Report, Nilex USA is not subject to the Company's NOI proceedings or any other insolvency process. Nilex USA has continued to operate in the normal course since the commencement of the Company's NOI proceedings. Prior to the return of the Company's application, Nilex USA intends to file a Notice of Intention to Make a Proposal pursuant to the BIA.
5. The Company presently has approximately 70 full-time employees and 44 seasonal employees. Nilex USA has eight employees. The Companies' workforce is not unionized. The Company offers its employees a defined contribution pension plan and Nilex USA offers its employees a 401k plan, in each case where the respective Nilex entity matches contributions by its employees. The Companies are current on their pension plan contributions.
6. CIBC is the Companies' senior secured lender. As of the date of this Report, CIBC was owed approximately \$15.8 million by the Companies.
7. Fulcrum is also a secured creditor of the Company. Fulcrum has subordinated the amounts owed to it by the Company to CIBC. As of the date of this Report, Fulcrum was owed approximately \$45 million by the Company.
8. CIBC has continued to provide funding to the Company during these proceedings - its post-filing advances are secured under a Court-approved Lender Priority Charge, as defined in the November 8<sup>th</sup> Order.

9. Additional background information about the Companies is included in the Affidavit of Jeff Allen, the Company's Vice President, Finance, sworn October 31, 2022 (the "First Allen Affidavit"), Mr. Allen's Affidavit sworn November 21, 2022 in support of the Company's application dated November 21, 2022 (the "Second Allen Affidavit") and the Proposal Trustee's First Report to Court dated October 31, 2022 (the "First Report"). A copy of the First Report, without appendices, is attached as Appendix "B".

### 3.0 Sale Process

1. As set out in the First Report, the Company engaged Valitas Capital Partners ("Valitas") on October 6, 2021 to conduct the Sale Process. The Sale Process, including its milestones and deadlines, was approved pursuant to the November 8<sup>th</sup> Order.
2. A summary of the Sale Process is provided below:
  - a) the Sale Process offered for sale the Companies' business and assets;
  - b) Valitas compiled a comprehensive list of over 400 prospective purchasers based on geography and industry;
  - c) Valitas selected 16 of the prospective purchasers as strong acquisition candidates based on, *inter alia*, strategic fit. Nine of these parties confirmed their interest in the opportunity; and
  - d) the nine prospective purchasers, plus three additional strategic parties, performed due diligence, including reviewing the confidential information memorandum (the "CIM") prepared by Valitas and information made available in a virtual data room. A subset of the prospective purchasers also conducted site visits and attended management meetings.
3. The Sale Process timelines and milestones were, in part, a product of negotiations between the Company and CIBC pursuant to which CIBC agreed to fund these proceedings. The timelines and milestones were set out in a Forbearance Agreement dated October 17, 2022 (the "Forbearance Agreement") between the Companies and CIBC, which considered that the Sale Process had been ongoing for several months. Funding under the Forbearance Agreement was tied to the Company advancing the Sale Process in accordance with the agreed timelines and milestones in the Forbearance Agreement.
4. Valitas initially requested that prospective purchasers submit non-binding letters of intent in March 2022; however, none of the offers received were acceptable to the Company. At the time, the Company forecasted improved results for the balance of 2022 and the Company believed that going back to prospective purchasers later in the year would result in a higher purchase price based on the forecasted improved results. Ultimately, the forecasted results did not materialize.
5. In August 2022, Valitas re-engaged with prospective purchasers and since that time has facilitated their due diligence. Valitas provided interested parties with a template term sheet to be used as the basis for submitting non-binding letters of intent. Several non-binding letters of intent were submitted in late September 2022.

6. On or around October 8, 2022, Valitas sent interested parties a process letter, which sets out the process timelines (the “Process Letter”). The Process Letter, a copy of which is attached as Appendix “C”, *inter alia*:
  - a) 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 template asset purchase agreement which was uploaded to the data room (the “Template APA”); and
  - b) indicated that the Company’s objective was to enter into a binding agreement of purchase and sale (the “Purchase Agreement”) by no later than November 15, 2022.

### **3.1 Sale Process Results**

1. A summary of the Sale Process results is as follows:
  - a) four going-concern offers were submitted;
  - b) from the Bid Deadline until November 18, 2022, the Companies, with the assistance of Valitas, the Proposal Trustee, the Companies’ legal counsel and the Proposal Trustee’s legal counsel, worked with the Purchasers and their legal counsel to finalize the terms of the APA; and
  - c) the APA was executed on November 18, 2022.
2. A summary of the offers received in the Sale Process is attached as Confidential Appendix “1”. The Proposal Trustee’s rationale for sealing this schedule is set out in Section 4.2 below.

### **3.2 Orderly Wind-Down Analysis**

1. As discussed in the First Report, KSV Advisory Inc. (“KSV Advisory”)<sup>1</sup> was engaged by the Company to assist it to consider restructuring options and to oversee the Sale Process being conducted by Valitas prior to the commencement of these proceedings. This included preparing a liquidation analysis based on an orderly wind-down of the Companies’ business.
2. The Wind-Down Analysis reflects that the value of the Transaction significantly exceeds the projected recoveries that may be generated from an orderly wind-down process. A copy of the Wind-Down Analysis is provided in Confidential Appendix “2”. The Proposal Trustee’s rationale for filing this analysis on a confidential basis is set out in Section 4.2 below.

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<sup>1</sup> KSV’s affiliate, KSV Advisory Inc., was engaged for this advisory mandate.

## 4.0 Transaction<sup>2</sup>

1. A summary of the APA is as follows:

Description	Canadian Transaction	US Transaction
Purchaser	Terrafix Geosynthetics Inc.	Hanes Companies, Inc.
Purchased Assets	Substantially all assets of the Companies	
Purchase Price	For the reasons set out in Section 4.2 of this Report, the Proposal Trustee recommends that the Purchase Price be sealed pending expiry of the TSA or further order of the Court.	
Deposit	The Purchasers have paid a deposit representing approximately 13% of the Purchase Price, which is being held in the Proposal Trustee's trust account.	
Adjustment Mechanism	The estimated Purchase Price for both the Canadian Transaction and the US Transaction is based on an Interim Statement of Adjustments. Within 60 days following Closing of each transaction, the applicable Vendor is to provide a Final Statement of Adjustments. The difference between the Interim Statement of Adjustments and the Final Statement of Adjustments shall be paid promptly by the Vendor/Purchaser, as applicable, which amount shall accrue interest at the Prime Rate plus 1%.	
Locations	The Canadian Purchaser will assume the leases for the Company's premises in Edmonton, Calgary and BC. The leases for the Company's premises in Ontario and Saskatchewan will not be assumed by the Canadian Purchaser. The Company may continue to occupy the Ontario and Saskatchewan locations for up to six months in accordance with the TSA.	The leases for both US locations will not be assumed by the US Purchaser. The premises can be occupied by Nilex USA for a period of up to six months in accordance with the TSA.
Employees	<p>The Purchasers intend to offer employment to the vast majority of the Company's employees in Canada and four of the eight Nilex USA employees. Certain of the employees who are not offered employment by the Purchaser will be offered the opportunity to provide transition services to the Purchaser pursuant to the TSA.</p> <p>All wages and vacation pay accrued to the Effective Date are for the account of the Companies. Following and after the Effective Date, all wages and vacation pay accruing in respect of Transferred Employees will be for the account of the Purchasers, as will wages and vacation pay for Transition Employees pursuant to the TSA, albeit Transition Employees will remain employees of the Company or Nilex USA. Payroll and benefits for any non-Transferred Employees and non-Transition Employees will remain the obligation of the Company or Nilex USA following the Effective Date.</p>	
Representations and Warranties	Consistent with the terms of a standard insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.	

<sup>2</sup> Defined terms in this section of the Report have the meanings provided to them in the APA.



Description	Canadian Transaction	US Transaction
Closing	Subject to Court approval, closing of the Canadian Transaction is contemplated to occur on or before December 16, 2022. The Outside Date is February 28, 2023.	Closing of the US Transaction is contemplated to occur promptly following US Court approval. The Outside Date is February 28, 2023.
Material Conditions	The only material condition precedent to the Canadian Transaction is Court approval. The closing of the Canadian Transaction is not subject to US Court approval and/or completion of the US Transaction.	The only material condition precedent to the US Transaction is approval of the Canadian Transaction by the Court and the US Court. The closing of the US Transaction is subject to the completion of the Canadian Transaction.

2. **Transition Services Agreement:** Pursuant to the APA, the execution of the TSA by the Companies and the Purchasers is a condition to closing of the Canadian Transaction and the US Transaction. The purpose of the TSA is for the Companies to maintain in good standing, during these proceedings, certain contracts and real property lease agreements until those locations can be vacated, at which time those leases are intended to be disclaimed by the Companies. Also pursuant to the TSA, certain employees will remain employees of the Companies during the transition period, but will provide assistance to the Purchasers as it relates to transition issues. As part of the TSA, the Purchasers are required to fund any costs incurred by the Companies in providing the Services (as defined in the TSA). The TSA also requires that the Purchasers fund a deposit equal to one month of the estimated transition costs. The TSA has a term of up to six months.
  
3. A copy of the redacted version of the APA is attached as Appendix "D". The TSA is a schedule to the APA. A copy of the unredacted version of the APA is provided in Confidential Appendix "3" and is being filed on a confidential basis for the reasons set out in Section 4.2 of this Report. The unredacted version of the APA included in Confidential Appendix "3" does not include copies of schedules that contain customer or employee information, however, information contained therein is available upon request subject to confidentiality restrictions.

#### 4.1 Recommendation re Transaction

1. The Proposal Trustee recommends the Court issue an order approving the Transaction for the following reasons:
  - a) the Sale Process was carried out in accordance with the November 8<sup>th</sup> Order;
  - b) in the Proposal Trustee's view, the Sale Process was commercially reasonable, including its timelines, the breadth of the marketing process and the information made available by the Company to interested parties, including information in the CIM and data room;
  - c) the value of the Transaction was the highest of the offers received in the Sale Process;

- d) the value of the Transaction materially exceeds the liquidation value of the Companies' business and assets based on the Wind-Down Analysis;
- e) the Sale Process provided prospective bidders with the opportunity to submit offers for the business and assets of either or both the Company and Nilex USA;
- f) the Transaction is expected to preserve employment for a substantial number of the Companies' employees;
- g) CIBC, which will be repaid in full from the Transaction, is supportive of the Transaction. CIBC has been funding the Companies' operations over the course of these proceedings. Should a transaction not be completed imminently, the Company would be in default of the Forbearance Agreement;
- h) Fulcrum supports approval of the Transaction notwithstanding that it will incur a substantial shortfall on its advances to the Company;
- i) the Sale Process commenced in early 2022, and accordingly, the Proposal Trustee does not believe that further time spent marketing the Companies' business and assets will result in a superior transaction; and
- j) Valitas has advised the Proposal Trustee that it believes that the Transaction is in the best interest of the Companies and their stakeholders and concurs with the Proposal Trustee that further time spent marketing the Companies' business and assets will not result in a superior transaction.

## 4.2 Sealing

1. The Proposal Trustee recommends that the unredacted version of the APA, the offer summary and the Wind-Down Analysis be filed with the Court on a confidential basis and remain sealed pending expiry of the TSA or further Court order, as the availability of this information to other parties may negatively impact any future sale process for the Companies if the Transaction does not close. The redacted version of the APA has only been redacted for purchase price, deposit amount, and related information.
2. In the Proposal Trustee's view, sealing this information is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the Sale Process. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Proposal Trustee believes the proposed sealing of the Confidential Appendices is appropriate in these circumstances. The Proposal Trustee does not believe that any stakeholder will be prejudiced if the information is sealed.

## 5.0 Nilex USA

1. Nilex USA is a much less significant business than the Company's, with annual sales of approximately US\$6 million and total assets and liabilities of approximately US\$2.5 million and US\$5.2 million<sup>3</sup>, respectively, as reflected in Section 3 of the First Report.
2. As noted above and in the Second Allen Affidavit, it is expected that by the return of this application, Nilex USA will have filed a NOI. Subject to approval of the Transaction by the Court, and consolidation of the Nilex USA NOI proceedings with the Company's NOI proceedings, the Companies, through KSV as Foreign Representative, intend to seek recognition of the Canadian proceedings by the US Court for the primary purpose of completing the Transaction. The proposed recognition proceeding, and US Court approval of the US Transaction, is a requirement of the APA.

## 5.1 Foreign Representative

1. The Company is seeking an order authorizing the Proposal Trustee to be the Foreign Representative. As the Canadian Court officer overseeing the NOI proceedings, the Proposal Trustee believes it is appropriate for it to act as the Foreign Representative, particularly given its familiarity with the Companies and the Transaction.
2. Subject to Court approval, the Proposal Trustee intends to work with US counsel to take the steps required to forthwith commence Chapter 15 recognition proceedings in order to fulfill the conditions precedent to completing the US Transaction.

## 5.2 Center of Main Interest

1. The Proposal Trustee is of the view that Alberta is the COMI for the Companies for the following reasons:
  - a) essentially all of the Companies' strategic decision-making and management functions occur in Alberta. Nilex USA's operations are managed from the Company's head office in Alberta. All employees of Nilex USA report to the Company's employees in Canada;
  - b) the principals, directors and officers of Nilex USA are Canadian residents of, and based in, Canada;
  - c) the Company's Board of Directors is responsible for oversight and guidance of the entirety of the Companies' business and operations;
  - d) the principal secured creditor of the Companies is CIBC, and the loan agreement is governed by Canadian law;

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

- e) the majority of the Companies' administrative functions, including those of Nilex USA, including general accounting, financial reporting, budgeting and cash management, is performed by the Company's management in Alberta and the books and records of the Companies are maintained in Alberta;
  - f) the Companies' human resource department is centralized and managed from Alberta;
  - g) Nilex USA maintains a bank account in Canada and its treasury management function is centralized at the head office in Alberta; and
  - h) the Companies are part of a consolidated cash management system pursuant to which funding for the Companies is determined and managed from the head office in Alberta.
2. The Second Allen Affidavit provides further information illustrating that Alberta is the COMI for the Companies' business.
  3. The Proposal Trustee is of the view that the contemplated foreign main recognition proceeding provides a centralized, fair and cost-efficient process to implement the Transaction with the US Purchaser, as contemplated under the APA.

### **5.3 Stay of Proceedings**

1. The November 8<sup>th</sup> Order expanded the statutory stay provisions under the NOI to include provisions similar to those in the model Initial Order issued in a CCAA proceeding, including as they relate to requiring suppliers and service providers to continue to provide goods and services to the Company without disruption, provided they are not required to do so on credit.
2. Extending the November 8<sup>th</sup> Order to Nilex USA is in the spirit of stabilizing Nilex USA's operations and allowing it the greatest opportunity to preserve normal course operations during the NOI proceedings. Any supply disruptions would impair Nilex USA's ability to continue to operate in the normal course and, potentially, the prospect of completing the Transaction with the US Purchaser. Accordingly, the Proposal Trustee believes that expanding the scope of the stay of proceedings in favour of Nilex USA is appropriate as the continued operation of Nilex USA will assist it to complete the Transaction with the US Purchaser. It is also reasonable that both the Company and Nilex USA have the same stay provisions apply in order to avoid confusion among their respective stakeholders.

## 5.4 Court-Ordered Charges

1. The November 8<sup>th</sup> Order created the following Court-ordered charges (collectively, the “Charges”) over all of the Company’s business and assets:
  - a) Administration Charge (\$350,000);
  - b) Lender Priority Charge securing CIBC’s post-filing advances up to an aggregate principal amount of \$20 million plus interest, fees and expenses;
  - c) D&O Charge (\$925,000); and
  - d) KERP Charge (\$800,000).
2. Given the integrated nature of the Companies’ operations, the Sale Process, the Transaction, and CIBC’s security interest over all of the Companies’ business and assets, the Proposal Trustee believes it is reasonable and appropriate for the Charges to be extended to include the property of Nilex USA.

## 5.5 Procedural Consolidation

1. The Companies’ application materials seek an order continuing and procedurally consolidating the Company’s NOI proceedings and Nilex USA’s NOI proceedings.
2. As the consolidation is for administrative purposes only, the Company and Nilex USA would remain separate for the purpose of a claims process and making distributions to creditors, if any.
3. The Proposal Trustee believes that procedurally consolidating the proceedings is appropriate as:
  - a) 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;
  - b) the business and assets of both entities are subject to the same Transaction pursuant to the APA;
  - c) it will facilitate the orderly administration of these proceedings;
  - d) creditor rights will not be affected by the procedural consolidation; and
  - e) it will reduce costs, including by filing materials in one proceeding only.

## 6.0 Proposed Distributions to CIBC

1. CIBC is the Companies' senior secured creditor. CIBC is presently owed approximately \$15.8 million by the Companies, comprised of approximately \$13.3 million under its revolving loan facility and approximately \$2.5 million under the business credit availability program ("BCAP"). Interest and costs continue to accrue on both facilities.
2. The Proposal Trustee is not aware of any other secured creditors or any claim that ranks or may rank in priority to CIBC, other than the amounts secured under the Charges. Any equipment lessors with security interests in certain leased assets will either be assumed by the Purchasers under the Transaction or these assets will be returned to the lessor.
3. In advance of these proceedings, the Proposal Trustee instructed its legal counsel, Cassels Brock & Blackwell LLP ("CBB"), to provide an opinion on the validity and enforceability of CIBC's security. CBB's opinion dated October 29, 2022, which addresses the laws of Alberta, British Columbia and Ontario<sup>4</sup>, provides that, subject to the customary assumptions and qualifications contained therein, the security granted to CIBC is valid and enforceable. A copy of the security opinion can be made available to the Court upon request.
4. As at the date of this Report, the Proposal Trustee's US counsel is reviewing CIBC's security over Nilex USA as well. Should any concerns be identified by the Proposal Trustee's US counsel in this regard, the Proposal Trustee intends to advise the Court of same.
5. Based on the foregoing, the Proposal Trustee recommends that the Court issue an order authorizing the Proposal Trustee to make distributions to CIBC, from the proceeds generated from the Transaction, up to the amount of the Companies' indebtedness owing to CIBC.

## 7.0 Cash Flow

1. Pursuant to the BIA, the Companies are required to prepare a cash flow forecast for the stay extension period. The Cash Flow Forecast for the period ending February 24, 2023 (the "Period"), together with Management's Report on the Cash-Flow Statement, as required by subsection 50.4(2)(c) of the BIA, is provided in Appendix "E".
2. The Cash Flow Forecast was prepared with the assistance of the Proposal Trustee. It should be noted that the Cash Flow Forecast does not reflect closing of the Transaction during the Period as doing so would provide confidential information regarding the value of the Transaction.

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<sup>4</sup> CBB's opinion also notes that CIBC's security is registered in Saskatchewan as well.

3. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Companies' Cash Flow Statement as required by subsection 50.4(2)(b) of the BIA is attached as Appendix "F".

## 8.0 Companies' Request for an Extension

1. The Companies are seeking an extension of the time required to file a Proposal to the date that is 45 days following the deadline by which Nilex USA must file a Proposal (which date will be provided in the order sought by the Company). The Proposal Trustee supports the extension request for the following reasons:
  - a) the Companies are acting in good faith and with due diligence;
  - b) it will provide the Companies with additional time required to complete the Transaction and to carry out their obligations under the APA, particularly as it relates to the TSA;
  - c) it will enhance the likelihood of the Companies being able to file a Proposal; and
  - d) the extension should not adversely affect or prejudice any group of creditors as the Companies are projected to have sufficient funding to pay post-filing services and supplies in the amounts contemplated by the Cash Flow Forecast.

## 9.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief being sought by the Companies.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS TRUSTEE *IN RE* THE PROPOSAL OF  
NILEX INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “C”**

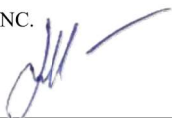


Nilex Inc. and Nilex USA Inc.  
**Projected Cash Flow Statement**  
For the period ending March 24, 2023  
(Unaudited; \$CAD Thousands)

	Note	Week ending								Total
		3-Feb-23	10-Feb-23	17-Feb-23	24-Feb-23	3-Mar-23	10-Mar-23	17-Mar-23	24-Mar-23	
<i>Receipts</i>										
Collections under TSA	2	-	300	-	-	-	-	-	-	300
<b>Total Receipts</b>		-	300	-	-	-	-	-	-	300
<i>Disbursements</i>										
Vendor payments	4	-	(142)	-	-	-	(117)	-	-	(259)
Professional fees	5	-	(461)	-	-	-	(100)	-	(167)	(727)
Purchase price adjustment	6	-	(1,843)	-	-	-	-	-	-	(1,843)
Other	7	-	-	-	(190)	-	-	-	-	(190)
<b>Total Disbursements</b>		-	(2,446)	-	(190)	-	(217)	-	(167)	(3,019)
<b>Net Cash Flow</b>		-	(2,146)	-	(190)	-	(217)	-	(167)	(2,719)
Opening Cash Balance	8	8,698	8,698	6,552	6,552	6,362	6,362	6,146	6,146	8,698
Net Cash Flow		-	(2,146)	-	(190)	-	(217)	-	(167)	(2,719)
<b>Closing Cash Balance</b>		8,698	6,552	6,552	6,362	6,362	6,146	6,146	5,979	5,979

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

NILEX INC.



Per: Jeff Allen, Vice President, Finance

Jan 30 2023

Date

NILEX USA INC.



Per: Jeff Allen, Vice President, Finance

Jan 30 2023

Date

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



Per: David Sieradzki

January 30, 2023

Date

### **Purpose and General Assumptions**

1. The purpose of the projection is to present a forecast of the cash flow of Nilex Inc. and Nilex USA Inc. (jointly, the "Companies") for the period January 30, 2023 to March 24, 2023 in respect of their notice of intention to make a proposal ("NOI") proceedings under the *Bankruptcy and Insolvency Act*.

Pursuant to an order of the Court of King's Bench of Alberta dated November 28, 2022, the Companies' NOI proceedings were procedurally consolidated.

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

### **Hypothetical**

2. Represents collection of an amount owing from Terrafix Geosynthetics Inc. (the "Canadian Purchaser") and Hanes Companies, Inc. (the "US Purchaser", and together with the Canadian Purchaser the "Purchasers") to the Companies relating to the Companies' invoice for January services under the Transition Service Agreement ("TSA").

### **Most Probable**

3. Reflects post-filing costs that are not reimbursed by the Purchaser under the TSA.
4. Reflects payments to trade vendors in respect of the Companies' operations during the proceedings.
5. Represents estimated professional fees of the Companies' legal counsel, the Proposal Trustee and its legal counsel.
6. Represents the Companies' estimated purchase price adjustment related to the sale between Nilex Inc. and the Canadian Purchaser, which closed on December 19, 2022 (effective date December 16, 2022) which is due to be settled on or around February 16, 2023.
7. Represents the final portion of a court-approved key employee retention plan payable to certain of the Companies' employees.
8. The opening cash balance reflects cash on deposit in the Companies' bank accounts and funds in the Proposal Trustee's bank accounts.

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

The management of Nilex Inc. and Nilex USA Inc. (jointly, the “Companies”) has developed the assumptions and prepared the attached statement of projected cash flow of the Companies for the period ending March 24, 2023.

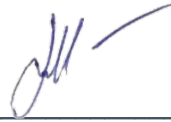
The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Companies and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 8.

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

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 8. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Edmonton, this 30<sup>th</sup> day of January, 2023.

**NILEX INC.**



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Per: Jeff Allen, Vice President, Finance

**NILEX USA INC.**



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Per: Jeff Allen, Vice President, Finance

## **Appendix “D”**

**Trustee's Report on Cash-flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)**

The attached statement of projected cash-flow of Nilex Inc. and Nilex USA Inc. (jointly, the "Companies"), as of the 30<sup>th</sup> day of January, 2023, consisting of a weekly cash flow statement for the period January 30, 2023 to March 24, 2023, has been prepared by the management of the insolvent person for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2-8.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated this 30<sup>th</sup> day of January, 2023.

**KSV RESTRUCTURING INC.  
TRUSTEE**



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Per: David Sieradzki