

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made _____

BETWEEN:

(the "**Vendor**")

- and -

(the "**Purchaser**")

WHEREAS the Vendor has commenced and is subject to a proceeding (the "**CCAA Proceeding**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), under Court File No. CV-24-00713245-00CL in the Ontario Superior Court of Justice (Commercial List) in Toronto (the "**Court**");

AND WHEREAS KSV Restructuring Inc. ("**KSV**") was appointed as monitor (in such capacity, the "**Monitor**") of the Vendor pursuant to the initial order granted by the Court on January 23, 2024 (as subsequently amended and restated on January 31, 2024, February 15, 2024 and March 28, 2024, the "**Initial Order**");

AND WHEREAS on April 12, 2024, the Court granted an Order, which, among other things, approved a sale or investment solicitation process (the "**SISP**");

AND WHEREAS on June 25, 2024, the Court granted an order (the "**Monitor's Powers Order**") expanding the powers of the Monitor in respect of the Vendor;

AND WHEREAS on August 30, 2024, the Court granted an order (the "**Restructuring Approval Order**") approving the Restructuring Term Sheet substantially in the form attached to the Monitor's Seventh Report (the "**Restructuring Term Sheet**"), and authorized the Monitor, on the behalf of the Vendor, to (among other things) enter into credit bid purchase agreements with mortgagees of the Vendor;

AND WHEREAS the Purchaser holds a first-ranking mortgage on the lands and premises set out in **Schedule "A"** attached hereto and described by municipal address and legal description (the "**Real Property**");

AND WHEREAS pursuant to the Restructuring Approval Order and the Restructuring Term Sheet, the Purchaser wishes to purchase, and the Vendor wishes to sell, the Real Property upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“Administration Charge” means the administration charge granted under the Initial Order;

“Agreement” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“Approval and Vesting Order” means the approval and vesting order to be issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Real Property free and clear of all Encumbrances, other than the Permitted Encumbrances or any Leases, in form and substance consistent with the Ontario model form of order approved by the Commercial List Users’ Committee with such modifications deemed necessary by the Vendor, acting reasonably, which approval and vesting order may, in the discretion of the Vendor, include approval of one or more other similar sale transactions in the CCAA Proceeding;

“Business Day” means a day on which Schedule 1 Banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in Ontario;

“CCAA” has the meaning set out in the recitals hereof;

“CCAA Assignment Order” means an order of the Court made pursuant to section 11.3 of the CCAA, in form and substance satisfactory to the Vendor, acting reasonably, to be sought by the Vendor assigning the rights and obligations of the Vendor to the Purchaser under the Leases;

“Closing” means the successful completion of the Transaction;

“Closing Date” means the date that is the later of: (i) the first Business Day following the date that is ten (10) days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined; or, if the Parties agree, such other date as agreed in writing by the Parties;

“Closing Time” means no later than 5:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“Court” has the meaning set out in the recitals hereof;

“Deposit” has the meaning given in section 4.2 herein;

“DIP Agreement” has the meaning given to it in the Initial Order, as may be amended, supplemented, extended or replaced with the consent of the Monitor;

“DIP Lender’s Charge” means the DIP lender’s charge granted under the Initial Order;

"Document Registration Agreement" has the meaning given in section 6.6 herein;

"Encumbrances" means all liens, charges, security interests, pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever affecting the Real Property;

"Environmental Law" means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;

"ETA" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

"Governmental Authority" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof, including, without limitation, any municipality in which the Real Property is located; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"GST/HST" means the goods and services tax and harmonized sales tax imposed under Part IX of the ETA, or any other similar statute in any jurisdiction of Canada;

"Hazardous Materials" means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any **"contaminants"**, **"dangerous substances"**, **"hazardous materials"**, **"hazardous substances"**, **"hazardous wastes"**, **"industrial wastes"**, **"liquid wastes"**, **"pollutants"** and **"toxic substances"**, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;

"Initial Order" has the meaning set out in the recitals hereof;

"ITA" means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

"KSV" has the meaning set out in the recitals hereof;

"Lender Representative Counsel" means Chaitons LLP;

"Leases" means, collectively, all lease agreements existing in respect of the Real Property as at the Closing Time;

"Monitor" has the meaning set out in the recitals hereof;

"Monitor's Powers Order" has the meaning set out in the recitals hereof;

"Mortgage Indebtedness Amount" means the amount of \$ _____¹, representing [specify ☐ all or ☐ part] of the indebtedness owed by the Vendor to the Purchaser as of the Closing Date and secured by the Purchaser's mortgage on the Real Property;

"Notice" has the meaning given in section 14.3 herein;

"Parties" means the Vendor and the Purchaser;

"Permitted Encumbrances" means all those Encumbrances as determined by the Monitor, acting reasonably, not to be affected by the Approval and Vesting Order, provided that, for greater certainty, Permitted Encumbrances shall not include any mortgages registered on title to the Real Property, the Administration Charge or the DIP Lender's Charge;

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

"Priority Payables" means all amounts owing (including all amounts accrued but not yet payable) by the Vendor as of the Closing Date which rank in priority to the Mortgage Indebtedness Amount, including but not limited to the amounts secured by, or to be secured by, the Administration Charge and the DIP Lender's Charge, as may be allocated by the Monitor to the Real Property;

"Purchase Price" has the meaning set out in section 4.1 herein;

"Real Property" has the meaning set out in the recitals hereof;

"Schedules" means the schedule attached hereto as **Schedule "A"**;

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, GST/HST, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement; and

"Transfers" has the meaning set out in Section 6.3(1) herein.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The Schedules are incorporated in and form part of this Agreement.

¹ Must be an amount between (a) the Purchaser's first-ranking mortgage principal amount, and (b) the full amount owed, inclusive of accrued interest, fees and costs.

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of the Real Property.

- (1) The Vendor hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, the Real Property, on the terms set out herein.
- (2) Subject to the Closing, the Vendor hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Real Property.

3.2 Assumption of Leases

Subject to Closing, the Purchaser hereby agrees to assume the Leases, if any, and from and after the Closing Time shall be responsible for all obligations of the Vendor under the Leases. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing of the Transaction, and shall survive the closing of this Transaction.

ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Real Property shall be equal to the Mortgage Indebtedness Amount plus the amount of the Priority Payables (the "**Purchase Price**").

4.2 Deposit.

- (1) The sum of TEN THOUSAND (\$10,000) Dollars (the "**Deposit**") shall be paid to the Vendor, in trust, upon execution of this Agreement, to be held by the Vendor pending completion or other termination of this Agreement and to be credited in reduction of the purchase price on closing.
- (2) The Parties agree that the Vendor shall cause the Deposit to be placed in a non-interest bearing account and on completion of the Transaction shall be credited to the Purchaser against the Purchase Price on the Closing Date.

4.3 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price by:

- (a) paying the Deposit in accordance with Section 4.2;
- (b) paying an amount equal to the Priority Payables (less a credit for the amount of the Deposit) by wire transfer, certified cheque or immediately available funds to the Vendor on Closing; and
- (c) reducing the amount owed by the Vendor to the Purchaser and secured by the Purchaser's mortgage on the Real Property by the Mortgage Indebtedness Amount on a dollar-for-dollar basis.

4.4 No Adjustment of Purchase Price.

- (1) There will be no adjustments to the Purchase Price at Closing, including in respect of any deposits or rental arrears under the Leases.

4.5 Allocation of Purchase Price

- (1) If necessary, the Parties, acting reasonably and in good faith, covenant to use commercially reasonable efforts to agree to allocate the Purchase Price in a mutually agreeable manner on or prior to the Closing Date, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but shall rather result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

ARTICLE 5 TAXES

5.1 Taxes.

- (1) The Parties agree that the Purchase Price is exclusive of any applicable Taxes.
- (2) The Purchaser is liable for and shall pay all applicable land transfer tax, GST/HST and other similar taxes, duties or fees in respect of the registration of the transfer of the Real Property, and other like charges properly payable upon and in connection with the sale, assignment and transfer of the Real Property from the Vendor to the Purchaser.
- (3) To the extent any GST/HST is determined to be payable on the purchase of the Real Property or any part thereof by a Governmental Authority, such GST/HST shall be the exclusive liability of the Purchaser. The Purchaser shall indemnify and save harmless the Vendor from or against any and all GST/HST payable under the ETA, penalties, costs, and/or interest which may be payable by or assessed by a Governmental Authority as it pertains to the sale of the Real Property by the Vendor to the Purchaser.
- (4) The indemnities in this Section 5.1 shall survive the Closing Date in perpetuity.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing.

Closing shall take place at the Closing Time on the Closing Date or at such other time as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers electronically, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

6.3 Vendor's Closing Deliverables.

The Vendor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) registrable transfer of the Real Property (the "**Transfer**") transferring the Real Property to the Purchaser or as it may direct with the *Planning Act* (Ontario) statements completed;
- (2) a copy of the issued and entered Approval and Vesting Order, and a signed certificate substantially in the form attached thereto;

- (3) a copy of the issued and entered CCAA Assignment Order in respect of the Leases;
- (4) copies of the Leases in the possession of the Vendor;
- (5) a direction as to the payee or payees of the Purchase Price;
- (6) a notice and direction to all tenants under the Leases advising of the sale of the Real Property and directing that all rent payable after Closing be paid to the Purchaser or as the Purchaser may direct; and
- (7) a bring down certificate.

6.4 **Purchaser's Closing Deliverables.**

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at Closing or on such other date as expressly provided herein:

- (1) payment in full of the Purchase Price according to section 4.3 hereof;
- (2) an acknowledgment delivered in accordance with to section 12.1 hereof;
- (3) an indemnity in favour of the Vendor with respect to GST/HST in accordance with Article ARTICLE 5 hereof;
- (4) a bring down certificate; and
- (5) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Vendor, acting reasonably, Applicable Law or any Government Authority.

6.5 **Monitor's Certificate.**

Upon receipt of written confirmation from the Purchaser that the conditions contained in Section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Vendor of the conditions contained in section 7.1, the Vendor shall forthwith deliver to the Purchaser the Monitor's Certificate pursuant to the Approval and Vesting Order, and shall file same with the Court.

6.6 **Electronic Registration.**

If electronic registration of the Transfer at the applicable land registry office is mandatory on the Closing Date, or is optional and is requested by the Purchaser, the following terms shall form part of this Agreement:

- (1) the Vendor and the Purchaser shall each authorize and instruct their respective legal counsel to enter into an escrow closing agreement in the form mandated by the Law Society of Ontario, subject to such reasonable amendments as such legal counsel or the circumstances of the Transaction may require, establishing the procedures and timing for completion of the Transaction (the "**Document Registration Agreement**"); and
- (2) the delivery and exchange of the Transfer documents, other documents and funds and the release thereof to the Vendor and the Purchaser, as the case may be:
 - (a) shall not occur contemporaneously with the registration of the Transfer; and

- (b) shall be governed by the Document Registration Agreement, pursuant to which the lawyer receiving the documents and/or funds will be required to hold the same in escrow and will not be entitled to release the same except in accordance with the provisions of the Document Registration Agreement.

6.7 Registration Costs.

The Purchaser shall bear all costs in registering the Transfer and all costs of preparing any further assurances required to convey the Real Property to it. The Purchaser shall register the Transfer and all such conveyances in accordance with the Document Registration Agreement.

ARTICLE 7 CONDITION PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Vendor.

The obligation of the Vendor to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser in all material respects;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date in all material respects, including the Purchaser deliverables in section 6.4;
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Real Property, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Approval and Vesting Order and the CCAA Assignment Order and the operation and effect of such orders shall not have been stayed, amended, modified, reversed, dismissed or appealed (or such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired).

7.2 Conditions in Favour of Vendor Not Fulfilled.

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Vendor, then the Vendor may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by Notice to the Purchaser, in which event the Vendor shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 **Conditions in Favour of the Purchaser.**

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Vendor under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Vendor in all material respects;
- (c) the Vendor shall have complied with all the terms contained in this Agreement applicable to the Vendor prior to the Closing Date in all material respects, including the Vendor deliverables in section 6.3;
- (d) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Real Property, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (e) the Court shall have issued the Approval and Vesting Order and the CCAA Assignment Order and the operation and effect of such orders shall not have been stayed, amended, modified, reversed, dismissed or appealed (or such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired).

7.4 **Conditions in Favour of Purchaser Not Fulfilled.**

If any of the conditions contained in section 7.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE VENDOR

8.1 The Vendor represents and warrants to the Purchaser as follows:

- (1) upon the Court granting the Approval and Vesting Order, the Vendor has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder; and
- (2) the Vendor is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE PURCHASER

9.1 The Purchaser represents and warrants to the Vendor that:

- (1) it has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder; and

- (2) it is not a non-Canadian for the purposes of the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (Canada), with the knowledge and expectation that the Vendor is placing complete reliance thereon and, but for such representation and warranty, the Vendor would not have entered into this Agreement.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Vendor and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with the conditions set forth in Article 7 hereof.

ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Real Property.

At the Closing Time, the Purchaser shall take possession of the Real Property where situated on an "as-is, where is" basis, including any personal property, goods, chattels or fixtures that may be located at the Real Property at the Closing Time. In no event shall the Real Property be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived.

11.2 Risk.

- (1) The Real Property shall be and remain at the risk of the Vendor until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, following execution of this Agreement and prior to Closing, the Real Property is substantially physically damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised by the Purchaser within 15 calendar days after the Purchaser receives Notice from the Vendor of the occurrence of such physical damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), and in the event of such exercise this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any physical damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such physical damage or destruction. For the purposes of this section, substantial physical damage or destruction shall be deemed to have occurred if the physical loss or damage to the Real Property exceeds 15% of the total Purchase Price.
- (3) If, following execution of this Agreement and prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three Business Days after the Purchaser receives Notice in writing from

the Vendor of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Vendor and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 12 PURCHASER'S ACKNOWLEDGEMENT

12.1 Acknowledgement from the Purchaser.

The Purchaser acknowledges that the Vendor is selling and the Purchaser is purchasing the Real Property on an "as is, where is" and "without recourse" basis as the Real Property shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, Hazardous Materials, deficiencies, work orders, or zoning or building code violations or orders exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Vendor, nor KSV or the Monitor in its corporate or personal capacity, nor Cassels Brock & Blackwell LLP in its capacity as counsel to the Monitor or any other capacity, nor Chaitons LLP in its capacity as Lender Representative Counsel or any other capacity, has provided any representations, warranties, advice or guarantees in connection with this transaction, the Vendor, the Real Property or the Leases, including but not limited to with respect to title to or marketability, use or quality of the Real Property, whether any defects, conditions, impediments, Hazardous Materials, deficiencies, work orders, or zoning or building code violations or orders exist in respect of the Real Property, and the existence and terms of any tenants or occupants at the Real Property, and that the Purchaser has conducted such due diligence or inspections of the condition and title to the Real Property as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Real Property, or the right of the Vendor to use, lease, sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. The description of the Real Property contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Vendor, KSV, the Monitor, Cassels Brock & Blackwell LLP or Chaitons LLP concerning the accuracy of such description.

12.2 Releases.

- (1) Upon Closing, the Purchaser agrees to irrevocably release and discharge KSV and the Monitor and their directors, officers, employees, agents, legal counsel and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to the Vendor, the Real Property or the CCAA Proceedings.
- (2) Upon Closing, without limiting the foregoing, the Purchaser agrees to irrevocably release and discharge the Vendor, KSV and the Monitor and their directors, officers, employees, agents, legal counsel and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Real Property. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor, KSV or the Monitor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Real Property or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials.
- (3) Subsections (1) and (2) above shall not expire with, or be terminated or extinguished by or merged in the Closing of the Transaction, and shall survive the closing of this Transaction.

ARTICLE 13 TERMINATION

13.1 Termination of this Agreement.

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Vendor; or
- (3) pursuant to section 7.3 hereof by the Purchaser.

13.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Vendor under this Agreement, then the Deposit, without deduction, shall be returned to the Purchaser forthwith (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Purchaser's sole right and remedy as a result of the Vendor's breach). If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser under this Agreement, then the Deposit shall be forfeited to the Vendor as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Vendor would suffer in such circumstances (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Vendor's sole right and remedy as a result of the Purchaser's breach).

13.3 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (1) all obligations of each of the Vendor and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) the Deposit, without deduction, shall be returned to the Purchaser forthwith; and
- (3) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

ARTICLE 14 GENERAL CONTRACT PROVISIONS

14.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

14.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.4, article 8, article 9, article 12, section 13.2 and section 13.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Monitor as monitor of the Vendor, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

14.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a “**Notice**”) shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Vendor:

c/o KSV Restructuring Inc., in its capacity as Monitor of the Vendor
220 Bay Street, 13th Floor
Toronto, Ontario M5J 2W4

Attention: Noah Goldstein/David Sieradzki
Email: ngoldstein@ksvadvisory.com/dsieradzki@ksvadvisory.com

and a copy to the Vendor’s solicitor for the Transaction:

Kormans LLP
Suite 200, 46 Village Centre Place
Mississauga, Ontario L4Z 1V9

Attention: David Korman/Taimoor Qureshi
Email: dkorman@kormans.ca / tqureshi@kormans.ca

(b) to the Purchaser:

Attention:
Email:

and a copy to the Purchaser’s counsel to:

Rabideau Law Professional Corporation

62 Regina St. N., Waterloo, ON, N2J 3A5

Attention: Geoff Rabideau
Email: offers@rabideaulaw.ca / ibids@rabideaulaw.ca

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3rd) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1st) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4th) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

14.4 **Waiver.**

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

14.5 **Governing Law.**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the Court. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

14.6 **Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

14.7 **Time of the Essence.**

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

14.8 **Assignment.**

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Vendor's prior written approval. The Purchaser shall have the right to direct that title to the Real Property be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the Purchaser notifies the Vendor of the name of the assignee at least seven (7) Business Days prior to the issuance of the Approval and Vesting Order and that the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Vendor forthwith after having been entered into, in which case the Purchaser shall nonetheless not be released from any and all further obligations and liabilities hereunder.

14.9 **Expenses.**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

14.10 **Severability.**

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

14.11 **Currency.**

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

14.12 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

14.13 Counterparts.

This Agreement may be executed in counterparts and by electronic transmission, each of which when so executed shall be deemed to be an original and all such counterparts together shall constitute one and the same instrument.

14.14 Independent Legal Advice.

The Purchaser acknowledges that in executing and delivering this Agreement, it has acted and continues to act freely and without duress, and has had the benefit of independent legal advice from a solicitor duly qualified to practice law and provide legal advice in the Province of Ontario in connection with the negotiation of this agreement.

14.15 Capacity of Monitor

The Purchaser acknowledges and agrees that the Monitor is executing this Agreement, in its capacity as Monitor and not in its personal or corporate capacity, on behalf of the Vendor in accordance with the Monitor's authority under the Monitor's Powers Order and that KSV and the Monitor, and their officers, directors, partners, managers, contractors, shareholders, advisors (including legal counsel), agents, and employees, shall have no personal or corporate responsibility or liability under or in connection with this Agreement. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall engage directly and exclusively with the Monitor (and its legal counsel) on behalf of the Vendor on all matters related to this Agreement and the performance of the Purchaser's duties, obligations and covenants hereunder. Without limiting the foregoing, any information, communication or Notices that are required to be provided to the Vendor under this Agreement shall be provided to the Monitor on the Vendor's behalf and any consents, agreements or approvals to be provided by the Vendor under this Agreement shall be provided by the Monitor on the Vendor's behalf pursuant to the Monitor's Powers Order.

14.16 Search Authorization

The Seller hereby authorizes and consents to the municipality or other governmental agencies releasing to the Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees that this signed Agreement is their authorization in this regard. Seller agrees to execute and deliver such further authorizations in this regard as Buyer may require.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

[Individual Purchaser]

Name:

Name:

Name:

[Corporate Purchaser]

Per: _____
Name: _____
Title: _____
I/We have authority to bind the corporation.

Per: _____
Name: _____
Title: _____
I/We have authority to bind the corporation.

WITNESS

Name:

Name:

ACCEPTED by the Vendor this _____ day of _____, 2024.

_____,
**By KSV Restructuring Inc., in its capacity as Monitor of the Vendor
and not in its personal or corporate capacity**

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

SCHEDULE A(APS)

“Real Property”

Municipal address _____

PIN Description PIN: _____ (LT)