

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**MOTION RECORD  
(returnable May 20, 2020)**

Date: May 8, 2020

**AIRD & BERLIS LLP**

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Toronto, Ontario M5J 2T9

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*Lawyers for BDO Canada Limited in its  
capacity as the court-appointed Receiver of  
908593 Ontario Limited, operating as  
Eagle Travel Plaza, et al.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

**NOTICE OF MOTION  
(returnable May 20, 2020)**

BDO Canada Limited (“**BDO**”), in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”), of the assets, undertakings and properties of Court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza (“**908**”), 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited (collectively, the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on May 20, 2020, at 2:00 p.m., or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Kathryn Esaw at [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com).

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR** an Order, including, amongst other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;

- (b) approving the Seventh Report of the Receiver dated May 8, 2020 (the “**Seventh Report**”) and approving the actions of the Receiver described therein;
- (c) approving the agreement of purchase and sale between the Receiver, as vendor, and K2 Group Inc. (“**K2 Group**” or the “**Purchaser**”), as purchaser, dated April 24, 2020 (as amended, the “**Sale Agreement**”) and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);
- (d) upon completion of the Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser; and
- (e) sealing Confidential Appendix 1 and Confidential Appendix 2 to the Seventh Report; and
- (f) such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to an Order of this Court dated September 30, 2019 (the “**Receivership Order**”), BDO was appointed as the Receiver of all of the assets, undertakings and properties of the Debtors acquired for or used in relation to a business carried on by the Debtors (the “**Property**”);
- (b) a sale process to market the Property was previously approved by this Court (the “**Sale Process**”) pursuant to the Order of The Honourable Justice Hainey made December 16, 2019;
- (c) a summary of the results of the Sale Process is set out in the Seventh Report;
- (d) the Receiver recommends that the Court approve the Sale Agreement for the following reasons:
  - (i) the Sale Process was fair and transparent;

- (ii) the Sale Agreement represents the best and highest offer received for the Property thereunder; and
  - (iii) Canadian Imperial Bank of Commerce, the Debtors' senior arm's-length secured creditor, supports the Transaction;
- (e) the Sale Agreement, which the Receiver has accepted (subject to approval by this Court), contemplates that the Receiver will complete the Transaction and that the Property described in the Sale Agreement will be vested in the Purchaser;
- (f) a condition of the Sale Agreement is that this Court provide a sale approval and vesting order in favour of the Purchaser;
- (g) pursuant to the Receivership Order, the Receiver was authorized to, amongst other things, market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (h) the information subject to the sealing request contains commercially sensitive information, which if disclosed would prejudice all stakeholders in the event that the Transaction does not close for any reason. If the Transaction does not close, it is likely that another sale process may be required and, in the absence of a sealing order, future bidders would have access to the amount of the purchase price in the Transaction, which would adversely affect any such future realization;
- (i) the grounds set out in the Seventh Report;
- (j) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (k) sections 101, 107(2) and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(l) rules 1.04, 2.03, 3.02, 30 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(m) such further and other grounds as counsel may advise and this Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the Seventh Report;

(b) such further and other material as counsel may submit and this Court may permit.

Date: May 8, 2020

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*Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.*

**TO: ATTACHED SERVICE LIST**



## **SCHEDULE “A”**

### **Conference Details to join Motion via Zoom**

Meeting ID: 910-9155-1352

Password: 629765

Registration Link:

<https://zoom.us/meeting/register/tJUfuitqzopH9Z2IAc0o3C3HjP-Wb9NrBxR>

**CANADIAN IMPERIAL BANK OF COMMERCE**

- and -

**SIMRANJIT DHILLON ET AL.**

Plaintiff

Defendants

Court File No. CV-19-00628293-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION  
(returnable May 20, 2020)**

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*Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.*

# TAB 2

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP DHILLON, 908593 ONTARIO LIMITED, (OPERATING AS EAGLE TRAVEL PLAZA, 402 ESSO TRAVEL CENTRE, EAGLE FLEET SERVICES, 18 WHEELER TRUCK STOP AND BLOOMFIELD TRUCK STOP), 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED, 2612550 ONTARIO LIMITED, 2541899 ONTARIO LIMITED, 2571279 ONTARIO INC., 2541900 ONTARIO LIMITED, 2587984 ONTARIO INC., 2561534 ONTARIO LIMITED, 2431264 ONTARIO INC., 2542372 ONTARIO INC., 2034039 ONTARIO INC., 5009770 ONTARIO LIMITED, 5009771 ONTARIO LIMITED, 1107943 ONTARIO INC., 1786675 ONTARIO LIMITED, 1797598 ONTARIO LTD., 1325109 ONTARIO LIMITED, 2660556 ONTARIO LIMITED, AND 2665448 ONTARIO LTD., 1882190 ONTARIO INC., 2616768 ONTARIO LIMITED, 2616766 ONTARIO LIMITED, 2652876 ONTARIO LTD, 2598753 ONTARIO LIMITED, HIRA DHILLON, MAHAN DHILLON, VIPEN CHAUSER, RUPINDER KAUR, 2309136 ONTARIO INC. (OPERATING AS INDO CANADIAN CARRIERS), TIGER EXPRESS INC., DOE 1 INC., DOE 2 INC., JANE DOE 1, JANE DOE 2, JOHN DOE 1 and JOHN DOE 2**

Defendants

**SEVENTH REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER AND MANAGER**

May 8, 2020

# ***Listing of Appendices***

- Appendix A - Appointment Order Dated September 30, 2019
- Appendix B - List of the Debtors Subject to the Appointment Order
- Appendix C - Third Report of the Receiver (Redacted)
- Appendix D - Sale Process Order Dated December 16, 2019
- Appendix E - Newspaper Advertisement
- Appendix F - Form of Non-Disclosure Agreement
- Appendix G - Template Sale Agreement
- Appendix H - Sale Agreement (Redacted)
- Confidential Appendix 1 - Summary of Bids
- Confidential Appendix 2 - Sale Agreement

**1.1 Introduction**

1.1.1 By way of an order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 30, 2019 (as subsequently amended, the “**Appointment Order**”), BDO Canada Limited was appointed as the receiver (the “**Receiver**”), without security, of all the Property (as defined in the Appointment Order) of 908593 Ontario Limited (“**908**”) and certain of the other Defendants. Attached as **Appendix A** is copy of the Appointment Order. As detailed below, certain of the Defendants are no longer subject to the Appointment Order. The parties listed in **Appendix B** hereto are the parties in addition to 908 that are currently subject to the Appointment Order (collectively, the “**Debtors**”).

**1.2 Purpose of this Report**

1.2.1 This report is the Receiver’s seventh report to the Court (the “**Seventh Report**”) and is filed in respect of a motion for an order (the “**Approval and Vesting Order**”):

- a) approving this report and the actions of the Receiver described herein;
- b) approving the agreement of purchase and sale between the Receiver, as vendor, and K2 Group Inc. (“**K2 Group**” or the “**Purchaser**”), as purchaser, dated April 24, 2020 (as amended, the “**Sale Agreement**”) and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”); and
- c) upon completion of the Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser.

1.2.2 In preparing this Seventh Report, the Receiver has relied upon the Debtors’ books and records that could be located by the Receiver, unaudited and draft financial information available, certain financial information obtained from third parties, and discussions with various individuals (collectively, the “**Information**”). The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.

1.2.3 This Seventh Report has been prepared for the use of this Court in respect of the above-noted relief. This Seventh Report should not be relied upon for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of the circulation, publication, reproduction or use of this Seventh Report contrary to the provisions of this paragraph.

- 1.2.4 All references to dollars are in Canadian currency unless otherwise noted.
- 1.2.5 In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the receivership proceedings are available on the Receiver's case website at [www.extranets.bdo.ca/eagletravelplaza](http://www.extranets.bdo.ca/eagletravelplaza).

## **2.0 RECEIVER'S ACTIVITIES**

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### **2.1 Introduction**

- 2.1.1 This Section is intended to provide the Court with a summary of the Receiver's activities, particularly since the date of the last report. Certain of the activities discussed in this Section are set out in greater detail in the Receiver's previous reports, which should be read in conjunction with this Section.

### **2.2 Debtors' Business and Operations**

- 2.2.1 The background with respect to the Debtors, as well as a description of the activities and circumstances leading to the appointment of the Receiver, are contained in the motion record (the "**CIBC Motion Record**") filed by Canadian Imperial Bank of Commerce ("**CIBC**"), the plaintiff in the within proceeding. The CIBC Motion Record has been sealed pending further order of the Court.
- 2.2.2 Certain of the Debtors operated various truck service centres and fueling stations in Southwestern Ontario, a business that sells truck fleet refueling cards for use in Canada and the United States (the "**Fuel Card Business**") and certain other less significant ancillary businesses lines, including owning and operating related businesses, including a number of fast food retail franchise outlets, and/or assets.
- 2.2.3 As of October 11, 2019, the Fuel Card Business, which was owned and operated by 908, was wound down.
- 2.2.4 On October 18, 2019, the Receiver filed the third report of the Receiver (the "**Third Report**") to provide the Court with an update on the Debtors' business and operations. A copy of the Third Report (without appendices) is attached as **Appendix C**.
- 2.2.5 Since the Appointment Order and further to the status update contained in the Third Report, the Receiver has continued to operate the retail gas stations over which it was appointed in the ordinary course.

### **2.3 Discharge as Receiver of Certain of the Debtors**

- 2.3.1 On October 16, 2019, Bank of Montreal was granted an order appointing MNP Ltd. as receiver over all of the assets, undertakings and properties of 1552838 Ontario Inc., 2189788 Ontario Inc., and 1254044 Ontario Limited (the "**BMO Receivership Order**").
- 2.3.2 On December 16, 2019, First Ontario Credit Union was granted an order appointing msi Spergel Inc. as receiver over certain of the assets, undertakings and properties of 1393382 Ontario Limited ("**139**") (the "**FOCU Receivership Order**"), namely the Bloomfield Truck Stop location.
- 2.3.3 On December 16, 2019, Laurentian Bank of Canada was granted an order appointing KSV Kofman Inc. as receiver over all of the assets, undertakings and properties of 2145744 Ontario Limited (the "**Laurentian Receivership Order**").



- 2.3.4 As a result of the BMO Receivership Order, the FOCU Receivership Order and the Laurentian Receivership Order, the Receiver was discharged as Receiver of 1552838 Ontario Inc., 2189788 Ontario Inc., 1254044 Ontario Limited, and 2145744 Ontario Limited, and **Appendix B** reflects the parties that are currently the subject of the Appointment Order.
- 2.3.5 The Receiver operated the business and property subject to the BMO Receivership Order, the FOCU Receivership Order and the Laurentian Receivership Order in the ordinary course until its discharge.
- 2.4 Collections Process**
- 2.4.1 On December 16, 2019, the Honourable Justice Hainey issued an order approving a process by which collections agencies would bid on the opportunity to purchase the right to collect, or assist the Receiver in collecting the uncollected accounts receivable (the “**Collections Process Order**”).
- 2.4.2 The Collections Process Order authorized the Receiver to, at its discretion, enter into an agreement (a) for the purchase of the right to collect the accounts receivable that remain uncollected (such uncollected amounts, the “**Uncollected Accounts Receivable**”); and (b) for the provision of services to assist the Receiver in collecting the Uncollected Accounts Receivable.
- 2.4.3 Since the date of the Collections Process Order, the Receiver has solicited proposals from collections agencies. After reviewing these proposals, and considering other avenues for collection, the Receiver has developed the reverse litigation plan detailed below, and intends to return to the court in the near term for approval of such a plan.
- 2.5 Insurance Policy with Atradius**
- 2.5.1 Prior to the appointment order, Atradius Crédito y Caución S.A. de Seguros y Reaseguros (“**Atradius**”) issued a credit risk insurance policy, effective June 1, 2019 to May 31, 2020 (the “**Policy**”) to 908 pursuant to which Atradius agreed to indemnify 908 in accordance with the terms and conditions of the Policy for covered losses sustained in the event that it does not receive full payment for the insured receivables, provided the conditions in the Policy are met.
- 2.5.2 Subsequent to its appointment on September 30, 2019, the Receiver has engaged in efforts to seek payment from Atradius of the amounts to which 908 is entitled under the Policy. In this regard, the Receiver has engaged in ongoing communications with representatives of Atradius, and has provided Atradius with relevant information, as requested. To date, no payments have been made and the Receiver continues to liaise with Atradius on this topic. Consistent with the terms of the policy, Atradius has commenced collection proceedings against those customers for which claims have been filed. To date, it has recovered about \$50,000 in payments. None of these monies have yet been paid out to the Receiver.
- 2.5.3 As a precautionary measure, the Receiver issued a statement of claim against Atradius in the Ontario Superior Court of Justice on February 20, 2020. The Receiver has not required Atradius to file a statement of defence believing that it is

preferable to advance claims in the normal course unless or until it appears that the claims are not being duly processed.

## **2.6 Reverse Litigation Plan**

**2.6.1** The Receiver is currently in the process of developing a plan (the “**Reverse Litigation Plan**”) to recover the Uncollected Accounts Receivable. As will be detailed in a further report, the Reverse Litigation Plan would be similar to the ordinary claims processes undertaken in insolvency proceedings, with the difference being that the Receiver will be crystallizing claims against the insolvent person’s customers (the “**Subject Customers**”), rather than against the debtor. The Receiver expects to bring a motion before the Court in the near future to propose a mechanism that would result in the most efficient means of fairly adjudicating the claims against the Subject Customers.

## **2.7 Mortgages on 43 Arctic Fox and 66 Citadel**

**2.7.1** The Receiver recently identified mortgages in favour of 908 on properties located at 43 Arctic Fox Crescent and 66 Citadel Crescent in Brampton, Ontario. The mortgagors claim that the principal loan amount was \$252,000 notwithstanding the mortgages are in the aggregate amount of \$500,000. The Receiver, through counsel, issued demand letters to the mortgagees on April 28, 2020.

## **2.8 Canada Life (formerly London Life) Policies**

**2.8.1** The Receiver recently identified two life insurance policies in the name of Eagle Travel Plaza provided by The Canada Life Insurance Company (“**CL**”). The cash surrender value of the policies was \$47,176.05 and \$44,035.69 respectively as of February 18, 2020. Pursuant to instructions from CL, the Receiver submitted applications for the return of the cash surrender values of the policies on February 19, 2020. On April 23, 2020, the Receiver, through counsel, delivered a letter to CL requesting an update on the applications and the estimated date for payment. CL responded on April 30 that it is proceeding to process the return of the cash surrender values of the policies.

## **2.9 Canada Revenue Agency Correspondence**

**2.9.1** The Receiver recently received a letter from the Canada Revenue Agency (“**CRA**”) advising that, based on their review of the January 1, 2018 to September 30, 2019 period, the goods and services tax and harmonized sales tax of 908 is in excess of \$10,000,000. More particularly, CRA has claimed an increase to HST/GST collection of \$8,100,000 and an adjustment to taxes payable of \$2,057,000. Additionally, based on the status of 908’s records, CRA has expressed further concern that 908 does not have the support to justify the HST input tax credits that have been claimed.

**2.9.2** The Receiver has not seen any copies of the documentation filed by 908 in support of the HST remittances (including by a search of 908’s offices). CRA has advised that it is prepared to review and consider any additional information in support of the subject HST filings.

- 2.9.3** CRA has also submitted letters in respect of 2145754 Ontario Limited and 2364507 Ontario Limited.
- 2.9.4** Regarding 2145754 Ontario Limited, CRA's report relates to unreported income and the resultant corporate taxes.
- 2.9.5** In respect of 2364507 Ontario Limited, CRA issued a notice relating to the period April 1, 2014 to September 30, 2019, with a net HST adjustment totaling \$443,998.93.
- 2.9.6** The Receiver, through counsel, wrote to the counsel for the applicable Debtors on April 29, 2020 regarding these CRA claims. The Receiver intends to work cooperatively with the CRA and the applicable Debtors' counsel to investigate the claims. As of the date of this Seventh Report, there has been no response to the April 29 letter.

## 3.0 SALE PROCESS

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### 3.1 Introduction

- 3.1.1 On November 26, 2019, the Receiver filed the Fifth Report in support of a motion brought by the Receiver for an order approving a sale process (the “**Sale Process**”) for the Gas Station Properties (as defined below) and related assets (the “**Sale Process Order**”).
- 3.1.2 On December 16, 2019, the Honourable Justice Hainey issued the Sale Process Order approving the Sale Process and the procedures proposed to govern the Sale Process (the “**Bidding Procedures**”). The Sale Process and Bidding Procedures are set out in greater detail in the Fifth Report. The Sale Process Order is attached as **Appendix D** to this Seventh Report.
- 3.1.3 The assets subject to the Sale Process are as follows:
- the Esso-branded gas station and On the Run convenience store at the address municipally known as 3613 Queens Line in Tilbury, Ontario (the “**Tilbury Location**”);
  - the Esso-branded gas station at the address municipally known as 1670 London Line Road in Sarnia, Ontario (the “**1670 London Line Location**”); and
  - the Esso-branded gas station at the address municipally known as 2097 London Line Road in Sarnia, Ontario (the “**2097 London Line Location**”, and together with the Tilbury Location and the 1670 London Line Location, the “**Gas Station Properties**”).

3.1.4 The timeline for the Bidding Procedures is set out in the table below:

| Date                      | Description of Bidding Procedures                                 |
|---------------------------|-------------------------------------------------------------------|
| Week of January 6, 2020   | Receiver begins marketing the Gas Station Properties              |
| Week of February 6, 2020  | Interested parties sign NDA and access Data Room                  |
| Friday, February 28, 2020 | Bid Deadline                                                      |
| Monday, March 2, 2020     | Shortlisted Bidders negotiate with the Receiver                   |
| Tuesday, March 3, 2020    | Successful Bidder identified (and Back-up Bidder, if appropriate) |
| Thursday, March 5, 2020   | APA and transaction documents finalized                           |
| Week of March 9, 2020     | Court attendance regarding sale                                   |
| By Friday, March 27, 2020 | Close of sale transaction                                         |

## 3.2 Sale Process

- 3.2.1 Pursuant to the Bidding Procedures, the Receiver began marketing the Gas Station Properties in early January 2020, including by:
- a) maintaining and developing lists of (i) parties that had inquired regarding a sale of the Gas Station Properties; and (ii) prospective buyers (the “**Prospective Purchasers**”);
  - b) listing the Gas Station Properties on the multiple listing service (MLS) website;
  - c) advertising the Gas Station Properties on a website focused on insolvency filings, court cases and news;
  - d) publishing a notice in each of the Globe and Mail, the London Free Press, and the Windsor Star advertising the opportunity, a copy of which is attached hereto as **Appendix E** to this Seventh Report;
  - e) directly emailing the Prospective Purchasers; and
  - f) sending a teaser document and a form of non-disclosure agreement (the “**NDA**”) to parties identified as having an interest in the Gas Station Properties, a copy of which is attached as **Appendix F** to this Seventh Report.
- 3.2.2 Additionally, the Receiver obtained multiple appraisals for the Gas Station Properties (the “**Appraisals**”).
- 3.2.3 The Receiver has prior experience selling fuel stations. Senior personnel were actively engaged in this marketing process, including those involved with the sale of prior gas stations.
- 3.2.4 As a result of the Receiver’s efforts in connection with the Sale Process, the Receiver contacted a total of 94 prospective purchasers. Pursuant to the Bidding Procedures, only parties who executed the NDA were granted access to the electronic data room (the “**Data Room**”).
- 3.2.5 The Data Room included copies of various documents, including environmental reports, fuel supply agreements, financial statements of the operating and holding companies for 2016, 2017 and 2018, historical fuel sale information, site particulars including pictures and drawings, property tax information, and Technical Standards and Safety Authority reports.
- 3.2.6 The Receiver supplied the materials that were available to the Receiver and which it believed were necessary for prospective purchasers to evaluate the opportunity and put forth their best bid for the assets.
- 3.2.7 Pursuant to the Sale Process, binding offers (each, a “**Bid**”), made in the form of a template asset purchase agreement (the “**Template Sale Agreement**”) accompanied by a deposit in an amount equal to a percentage of the purchase price, must have been submitted to the Receiver by the Bid Deadline.

- 3.2.8 The form of Template Sale Agreement included market-standard terms used in an insolvency sale process. A copy of the Template Sale Agreement is attached as **Appendix G** to this Seventh Report.
- 3.2.9 The Gas Station Properties were marketed on an “as is, where is” basis. In preparing for the sale, the *Receiver* engaged an inspector to attend and inspect fuel tanks at each location. Generally, fuel tanks, pumps, and monitoring systems were in working order, with any necessary repairs being made. Updated Technical Standards and Safety Authority reports were obtained for each location which did not identify any known fuel safety concerns.
- 3.3 **Bids**
- 3.3.1 As of 5:00 p.m. Toronto time on Friday, February 28, 2020 (the “**Bid Deadline**”), a total of 59 potential bidders had executed an NDA. As of the Bid Deadline, the Receiver received multiple Bids. A summary of the Bids received is attached as **Confidential Appendix 1** to this Seventh Report.
- 3.3.2 The Template APS was consistent with a sale of this nature and purchasers were entitled to incorporate amendments for the Receiver’s consideration. No potential bidder raised and issues or concerns regarding the Template Sale Agreement or the Sales Process or Bidding Procedures.
- 3.3.3 Certain retail gas stations originally subject to the Receivership but since moved into separate receivership proceedings were being marketed for sale concurrently with the Sale Process. The Receiver has no confirmed knowledge of the details of those processes but notes that there was an increased supply of gas stations in receivership subject to sales processes.
- 3.4 **Identification of Successful Bidder**
- 3.4.1 The Receiver considered the Bids that had been submitted in respect of the Gas Station Properties, taking into consideration a number of factors, including: (a) the purchase price and how it compares to the Appraisals; (b) whether the bid was for one, two or all of the Gas Station Properties; (c) evidence of the purchaser’s ability to finance the Transaction; (d) conditions to closing the Transaction; and (e) the provision of a substantial deposit.
- 3.4.2 The Receiver considered the Bids with a view to selecting the Bid that would have the most certainty of closing and that would maximize the value realized to the estate. After consideration of the Bids and discussions with certain bidders, K2 Group was identified as the successful bidder. The Receiver consulted with CIBC, the secured lender in the proceedings, and CIBC advised that it supports the transaction.
- 3.4.3 Subsequent to the Bid Deadline, both the Receiver and its counsel received unsolicited calls from an interested party, expressing interest in submitting a bid on certain of the Gas Station Properties (the “**Unsolicited Offer**”). Based on the Receiver’s review of the Unsolicited Offer and the fact that it was made outside of the Sale Process, the Receiver determined that it did not warrant additional consideration.

3.4.4 As detailed further below, the Receiver and its counsel engaged in significant efforts to finalize the asset purchase agreement with K2 Group. This task was made more complicated by the onset of the COVID-19 pandemic, and K2 Group's resulting wariness in finalizing the transaction.

### 3.5 Asset Purchase Agreement

3.5.1 As noted above, the Receiver and K2 Group ultimately entered into the Sale Agreement, which is dated April 24, 2020. A redacted copy of the Sale Agreement is attached as **Appendix H** to this Seventh Report. A non-redacted copy of the Sale Agreement is attached as **Confidential Appendix 2** to this Seventh Report.

3.5.2 As originally submitted by the bid deadline of February 28, 2020, the Sale Agreement was identical to the Template Sale Agreement, with the addition of a Purchase Price being set out.

3.5.3 In March 2020, K2 Group, through counsel, expressed concerns with the purchase price and closing timeline due to the COVID-19 pandemic. The Receiver and K2 Group engaged in further negotiations in respect of same. During these negotiations, the Receiver considered the other offers available in the circumstances, the reality of the COVID-19 pandemic, and the increased risk of any remarketing initiative in the current environment. Taking these factors into account, the Receiver ultimately determined that the Transaction, even with the additional negotiated points settled between the parties, was the best outcome for the estate (the "**Further Negotiations**").

3.5.4 The Sale Agreement dated April 24, 2020, is generally in the form of the Template Sale Agreement. Among other things:

- a) the "Closing Date" is the date that is the later of (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) June 16, 2020. The Closing Date was delayed due to the circumstances caused by the COVID-19 crisis;
- b) the Sale Agreement relates to all three Gas Station Properties. "Purchased Assets" means all of the Receiver's, Eagle Travel Plaza's and 139's (Eagle Travel Plaza and 139, the "**Companies**") right, title and interest in and to all of the tangible and intangible assets, properties, rights and claims, wherever located, used, intended for use or arising in connection with the ownership, operation or conduct of the business carried on by the Companies (the "**Business**"), including, without limitation: (i) all leases of personal or moveable property that relate to the Business; (ii) the Gas Station Properties; and (iii) all of the contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Companies is a party other than any employment agreements with employees (the "**Contracts**");
- c) notable "Excluded Assets" include, without limitation: (i) any assets (other than fuel) related to the Fuel Card Business (as defined in the Third Report); and (ii) all accounts receivables of the Companies.

- d) the “Purchase Price” contemplates a cash payment, with the assumption of the “Assumed Obligations”, and plus working capital adjustments, largely for fuel and inventory. The Purchase Price was reduced as a result of the Further Negotiations;
- e) the Purchase Price is subject to, without limitation, a standard working capital adjustment and any applicable taxes;
- f) notable Assumed Obligations include: (i) all liabilities and obligations arising under or relating to the Contracts; (ii) if any employees are being transferred: all liabilities and obligations of the Companies or the Receiver with respect to employee benefits, compensation or other arrangements arising on or after the closing with respect to the employees of the Companies who accept employment with the Purchaser and commence employment upon closing; and (iii) all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services by the Companies or the Receiver in the ordinary course of business that remain unpaid as of the Closing Date;
- g) as a result of the Further Negotiations, all conditions precedent in favour of K2 Group with the exception of obtaining the Approval and Vesting Order were removed;
- h) as a result of the Further Negotiations, in addition to the initial deposit of 15% of the purchase price, K2 Group agreed to pay an additional deposit in the following three instalments: (a) upon execution of the Sale Agreement (which was received on May 1, 2020); (b) on May 15, 2020; and (c) on May 30, 2020. The initial deposit and the additional deposit are not refundable in any event; and
- i) on or before closing, K2 Group will notify the Receiver as to which employees K2 Group has agreed to hire upon closing.

**3.5.5** The Receiver believes that the terms and price of the Sale Agreement are commercially reasonable considering the current state of the economy in Ontario.



## 4.0

## ***SERVICE OF THE WITHIN MOTION***

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4.1.1 In addition to serving all parties who have registered security interests against the Debtors, the Receiver has served, among others, the following:

- Shell Canada Products Limited
- Parkland Fuel Corporation
- Simranjit Dhillon, Mandhir Dhillon, Sarbjit Dhillon and Mandeep Dhillon
- First Ontario Credit Union
- Laurentian Bank of Canada
- Bank of Montreal

For the reasons set out above, the Receiver respectfully requests that the Court issue an order:

- a) approving this report and the actions of the Receiver described herein;
- b) approving the Sale Agreement and authorizing the Receiver to complete the Transaction; and
- c) upon completion of the Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser, as set out in the draft Approval and Vesting Order.

All of which is respectfully submitted this 8<sup>th</sup> day of May, 2020.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly Court-appointed and since discharged Receiver of 1552838 Ontario Inc., 2189788 Ontario Inc., 1254044 Ontario Limited, and 2145744 Ontario Limited and not in its corporate or personal capacity.



Per: \_\_\_\_\_  
Christopher J. Mazur, CIRP, LIT  
Senior Vice President  
National Commercial Practice Leader

**APPENDIX A**  
**APPOINTMENT ORDER DATED SEPTEMBER 30, 2019**

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See attached.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 30<sup>TH</sup>

JUSTICE HAINEY

)

)

DAY OF SEPTEMBER, 2019

BETWEEN:



CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,  
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel  
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754  
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,  
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO  
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and  
2612550 ONTARIO LIMITED

Defendants

**AMENDED ORDER**

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO

LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED (collectively the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record dated September 30, 2019 and on hearing the submissions of counsel for the applicant, counsel for BDO Canada Limited in its capacity as proposed receiver, and upon being advised that counsel for certain of the Debtors was given notice of this motion, and on reading the consent of BDO Canada Limited to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, investigators, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (l) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

- (m) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- (n) and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;



- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (u) to provide copies of any materials that Grant Thornton Limited requests, and which the Receiver believes, acting reasonably, the Grant Thornton requires, which may be of assistance or required as part of Grant Thornton's engagement by the Plaintiff to conduct a forensic investigation. Materials shall include but shall not be limited to electronic records or information contained therein.
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that all Persons are hereby enjoined and restrained from in any way altering, concealing, defacing, destroying, discarding, erasing or otherwise tampering or adversely dealing with any of the Property of the Debtors or from removing any Property out of the ordinary course of business, from the premises of the Debtors without the prior written consent of the Receiver.

8. THIS COURT ORDERS that any security personnel engaged by the Receiver pursuant to paragraph 3(b) herein shall be authorized and entitled, but not required, to escort or remove any Persons onto or from the Property of the Debtors as the Receiver may in its sole discretion consider it necessary or desirable to escort or remove.

9. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

### **OBLIGATIONS OF THE DEBTORS AND OTHERS**

10. THIS COURT ORDERS that all of the current and former directors, officers, employees, agents, accountants, and shareholders of the Debtors, and all other persons acting on their instructions or behalf and all persons with notice of this order are hereby restrained from:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Property, wherever situate, without prior approval of the Receiver;
- (b) instructing, requesting, counselling, demanding , or encouraging any other person to do the acts identified in subparagraph 10(a) above; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any of the activities subparagraph 10(a) above.

without prior written instructions from the Receiver.

### **NO PROCEEDINGS AGAINST THE RECEIVER**

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

13. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

17. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental**

**Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.



22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$5,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL [www.extranets.bdo.ca/eagletravelplaza](http://www.extranets.bdo.ca/eagletravelplaza).

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

35. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

36. THIS COURT ORDERS that, until further Order of this Court, the Motion Record in support of this Motion shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.



---

C. Irwin  
Registrar

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 04 2019

PER / PAR: 

**Schedule "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the

*Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:

\_\_\_\_\_  
Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE  
Plaintiff

-and- SIMRANJIT DHILLON et al.  
Defendants

Court File No. CV-19-00628293-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE  
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Lawyers for the Plaintiff

**APPENDIX B**  
**LISTING OF THE RECEIVERSHIP PARTIES**

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See attached.



|   | Company                 | Address                                                                                                                                                                         | Referred to:                                                                                | Operations                                                                                                                                                                                                                                                                                                                                                                                             | Owned Real Property | Security             |
|---|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------|
| 1 | 908593 Ontario Limited  | 1)3613 Queens Line, Tilbury, ON<br>2)22216 Bloomfield Road, Chatham, ON<br>3)1670 London Line, Sarnia, ON<br>4)2097 London Line, Sarnia, ON<br>5)69 Bramalea Road, Brampton, ON | Tilbury Esso<br>Bloomfield Truck Centre<br><br>402 Travel Centre<br><br>XTR<br>Sales Office | Gas station (Esso brand); Semi-tractor truck gas station; Convenience store<br>Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant<br>Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant<br>Gas station (Esso brand); Convenience store<br>Sales and customer service representatives for fleet fuel card |                     | CIBC                 |
| 2 | 1393382 Ontario Limited | 1)3613 Queens Line, Tilbury, ON<br>2)1670 London Line, Sarnia, ON<br>3)2097 London Line, Sarnia, ON                                                                             | Holdco - 908                                                                                | Holding company for 908593 Ontario Limited                                                                                                                                                                                                                                                                                                                                                             | Yes<br>Yes<br>Yes   | CIBC<br>CIBC<br>CIBC |
| 4 | 2145754 Ontario Limited | 203 Indian Road South, Sarnia, ON                                                                                                                                               | Shell Sarnia                                                                                | Gas station (Shell brand); Convenience store                                                                                                                                                                                                                                                                                                                                                           |                     | CIBC                 |
| 5 | 2123618 Ontario Limited | 191 Keil Drive South                                                                                                                                                            |                                                                                             | Formerly owned the gas station located at 191 Keil Drive South                                                                                                                                                                                                                                                                                                                                         |                     | None                 |
| 6 | 1849722 Ontario Ltd     |                                                                                                                                                                                 |                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                        |                     | None                 |
| 7 | 2469244 Ontario Limited | 22216 Bloomfield Road, Chatham, ON                                                                                                                                              | Pizza Pizza                                                                                 | Pizza Pizza Franchise                                                                                                                                                                                                                                                                                                                                                                                  |                     | None                 |
| 8 | 2364507 Ontario Limited | 1041 Wellington Rd., London, ON                                                                                                                                                 | Menchie's                                                                                   | Receiver ceased operations                                                                                                                                                                                                                                                                                                                                                                             |                     | Yogurtworld          |
| 9 | 2612550 Ontario Limited |                                                                                                                                                                                 | 261                                                                                         | Broker sales of diesel to semi-tractor truck fuel stations                                                                                                                                                                                                                                                                                                                                             |                     | None                 |

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**APPENDIX C**  
*THIRD REPORT OF THE RECEIVER (REDACTED)*

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See attached.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP DHILLON,  
908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO  
LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED, 1552838  
ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722  
ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED,  
1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**THIRD REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER AND MANAGER**

**OCTOBER 18, 2019**

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- Appendix E - Amended Appointment Order (amended October 4, 2019)
- Appendix F - Order of the Court dated October 7, 2019
- Appendix G - The Receiver's Second Report dated October 11, 2019, without appendices
- Appendix H - Order of the Court dated October 11, 2019
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- Appendix K - In-House AR
- Appendix L - Subway Notice dated October 4, 2019

# 1.0 INTRODUCTION AND PURPOSE OF REPORT

---

## 1.1 Introduction

- 1.1.1 By way of an order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 30, 2019 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as the Receiver, without security, of all the Property (as defined in the Appointment Order) of 908593 Ontario Limited operating as Eagle Travel Plaza (“**908**”), 1393382 Ontario Limited (“**139**”), 2145744 Ontario Limited (“**5744**”), 2145754 Ontario Limited (“**5754**”), 1552838 Ontario Inc., 2189788 Ontario Inc., 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 1254044 Ontario Limited and 2612550 Ontario Limited (collectively, the “**Debtors**” or the “**Receivership Parties**”). Attached, as **Appendix A**, is copy of the Appointment Order. Attached as **Appendix B** is a listing of the Receivership Parties, including their location, a description of their operations and the parties which hold security over each entity’ assets.
- 1.1.2 At the September 30 hearing, the Court granted the following two additional orders by separate motion:
- an order to allow entry and search of premises of the Defendants (the “**Anton Piller Order**”); and
  - a Mareva injunction order restraining Simranjit Dhillon (“**Simran**”), Mandhir Dhillon (“**Mandhir**”), Sarbjit Dhillon (“**Sarbjit**”) and Mandeep Dhillon (“**Mandeep**”) (collectively the “**Individual Defendants**” and, together with the Debtors, the “**Defendants**”) from dissipating their assets (the “**Mareva Order**”).
- 1.1.3 Certain of the Debtors operate a number of retail gas stations, truck service centres and fueling stations in Southwestern Ontario (collectively, the “**Retail Gas Stations**”). The service centres are located in Windsor, Tilbury, Chatham, Wyoming, and Sarnia (Sarnia having three locations). 908 operated a fleet member reward card program (the “**Fleet Card Business**”) used by its customers at gas stations located in Canada and the United States, including at gas stations operated by certain of the Debtors. The Fleet Card Business is described in detail below at paragraph 3.1.1. For the reasons outlined in detail below, the Receiver terminated active operations in respect of the Fleet Card Business on October 11, 2019, after determining that it lacked any centralized record-keeping, traditional management structure, and/or controls, and that it was generating significant and rapidly escalating losses. As set out in Appendix B, the remaining Debtors are related companies who own, operate and/or guarantee related businesses and assets, including certain fast food restaurants located at certain of the Retail Gas Stations.
- 1.1.4 The background with respect to the Defendants, as well as a description of the activities and circumstances leading to the appointment of the Receiver over the Receivership Parties, are contained in the motion record (the “**CIBC Motion Record**”) filed by Canadian Imperial Bank of Commerce (“**CIBC**”), the plaintiff in the within proceeding. The CIBC Motion Record has been sealed pending further order of the Court.

- 1.1.5 The Individual Defendants, who are not the subject of the receivership but are subject to the Mareva Order and the Anton Piller Order, are various members of the Dhillon family. Together, members of the Dhillon family own, operate and are otherwise associated with the Receivership Parties.
- 1.1.6 On October 3, 2019, the Court issued an order (the “**October 3 Order**”) that, among other things, released into the Receiver’s possession three computer towers (the “**Simran Computers**”) which had been seized from Simran’s Cadillac XT5 pursuant to the Anton Piller Order. Attached as **Appendix C** is a copy of the October 3 Order.
- 1.1.7 On October 4, 2019, the Receiver filed its first report to the Court (the “**First Report**”), in support of a motion brought by CIBC seeking an order, among other things, granting the Receiver access to certain records seized from the Storage Unit (as defined in the First Report) located at a storage facility identified in the Anton Piller Order. Attached as **Appendix D**, is a copy of the First Report (without appendices). The First Report has already been sealed, and therefore will be redacted the publicly-available version of this Third Report
- 1.1.8 On October 4, 2019, the Court amended the Appointment Order (the “**Amended Appointment Order**”) to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge (as defined in the Appointment Order) to \$5,000,000. A copy of the Amended Appointment Order is attached to this report as **Appendix E**.
- 1.1.9 On October 7, 2019, the Court issued an order amending the Mareva Order (the “**October 7 Order**”) to expand the assets subject to the Mareva Order to include the assets of certain corporations that are not named as Defendants. A copy of the October 7 Order is attached as **Appendix F**.
- 1.1.10 On October 11, 2019, the Receiver filed its second report to the Court (the “**Second Report**”), which was filed in support of a motion brought by the Receiver to amend and restate the Appointment Order to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge to \$10,000,000. A copy of the Second Report (without appendices) is attached as **Appendix G**.
- 1.1.11 On October 11, 2019, the Court issued an order (the “**October 11 Order**”) that amended the Appointment Order to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge (as defined in the Appointment Order) to \$10,000,000. A copy of the October 11 Order is attached to this report as **Appendix H**.

## 1.2 Purpose of this Report

- 1.2.1 This report is the Receiver’s third report to the Court (the “**Third Report**”) and is filed to provide the Court with an update on the Debtors’ business and operations. In particular, the Receiver is reporting on a number of materially detrimental events that occurred in the business days leading up to Friday, October 11, 2019, which led the Receiver to conclude that the Debtors’ Fleet Card Business and its associated operations were not viable even in the short term. The Fleet Card Business was accordingly shut down effective 6:00 p.m. on October 11, 2019, as

described in sections 3 and 6.1 below. The Receiver continues to assess the Debtors' Retail Gas Station business and operations, and this business line remains operational as of the date of this report.

- 1.2.2 In preparing this Third Report, the Receiver has relied upon the Receivership Parties' books and records that could be located by the Receiver, unaudited and draft financial information available, certain financial information obtained from third parties, and discussions with various individuals (collectively, the "Information"). The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.
- 1.2.3 This Third Report has been prepared for the use of this Court to provide general information and an update relating to these Receivership Proceedings. This Third Report should not be relied upon for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of the circulation, publication, reproduction or use of this Third Report contrary to the provisions of this paragraph.
- 1.2.4 Capitalized terms used but not defined in this Third Report shall have the meaning ascribed to them in the First Report or the Appointment Order, as applicable, both of which are appended hereto for reference. All references to dollars are in Canadian currency unless otherwise noted.
- 1.2.5 In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the Receivership Proceedings are available on the Receiver's Case Website at [www.extranets.bdo.ca/eagletravelplaza](http://www.extranets.bdo.ca/eagletravelplaza).



## 2.0 RECEIVER'S ACTIVITIES

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### 2.1 Taking Possession

2.1.1 On September 30, 2019, the majority of the Receiver's Southern Ontario commercial restructuring team was mobilized to locations near each of the Debtors' premises, to await the issuance of the Appointment Order. Immediately upon the issuance of the Appointment Order, the Receiver's staff took possession and control over the Debtors' Property, as detailed below. In total, the Receiver engaged fourteen staff members, together with technology experts including its national IT security director, in its initial effort. Since the date of the Appointment Order, the Receiver has taken possession and control of the following properties:

- the Esso gas station, On the Run convenience store and restaurants at the address municipally known as 3613 Queens Line in Tilbury, Ontario (the "**Tilbury Location**"), at which location certain of the Debtors also maintain staff offices;
- the Esso gas station at the address municipally known as 1670 London Line Road in Sarnia, Ontario;
- the Esso gas station at the address municipally known as 2097 London Line Road in Sarnia, Ontario;
- the truck stop convenience store and Esso gas station, including the Pizza Pizza and Subway restaurants, at the address municipally known as 22216 Bloomfield Road in Chatham, Ontario (the "**Bloomfield Location**"), at which location certain of the Debtors also maintain staff offices;
- the Shell gas station at the address municipally known as 203 Indian Road in Sarnia, Ontario;
- the Esso gas station, Pizza Depot and customer service operations of the Eagle Fleet Business at the address municipally known as 1527 Provincial Road in Windsor, Ontario (the "**Windsor Location**"); and
- the Debtors' sales office at the address municipally known as 69 Bramalea Road, PO Box 1618, Brampton, Ontario (the "**Sales Office**").

2.1.2 In taking possession, the Receiver arranged for the changing of all external locks and certain internal office locks, mail redirection, inventorying the various assets on site, videotaping the premises, implementing security arrangements (where appropriate), backing up computer systems, changing computer passwords, copying the records of internal video surveillance systems, limiting external access to company computer systems, closing the Debtors' bank accounts, and opening bank accounts for the Debtors that were operating entities (collectively, the "**Receiver's Account(s)**").

2.1.3 In addition, as a result of the evidence in the CIBC motion record that the Debtors had been moving funds around in the days leading up to the appointment, the Receiver advised the Schedule A banks and a number of credit unions of its appointment, asked for information relating to any accounts held by the Debtors, and asked that any such accounts be frozen.

- 2.1.4 The Receiver secured cash found on the various sites totaling approximately \$71,000, and made arrangements for the cash to be deposited into the Receiver's Account. This amount includes \$9,000 the Receiver found in a desk drawer in a locked office at 1670 London Line, Sarnia location, and \$60,000 of cash the Receiver found in a bag at the Tilbury Location (the "**Cash Bag**") on September 30, 2019. A BDO representative witnessed Sarbjit leaving the Cash Bag in a small bathroom on the outside of the main building, while Sarbjit was removing records from the business premises and loading them into his vehicle earlier that day. Mandeep later notified the Receiver that the Cash Bag related to a separate ATM business operated by relatives of the Individual Defendants. To date, no additional documentation has been provided by the Individual Defendants and/or their relatives to the Receiver in respect of this matter.
- 2.1.5 The Receiver met with the employees and/or third party contractors at the sites above to advise of the Appointment Order and the intention to continue operations in the normal course.
- 2.2 Cash Controls and Depositing**
- 2.2.1 A meaningful portion of the Debtors' sales receipts relating to the Retail Gas Stations are received in cash from customers (i.e. the retail fuel, convenience stores and fast food operations). The Receiver obtained access to the on-site safes where daily cash deposits were stored, and arranged daily pick-up of cash from each of the locations to be deposited to the Receiver's Accounts daily.
- 2.2.2 None of the employees at the various locations knew the combinations to the safes. Accordingly, in certain instances the Receiver had to arrange for the safes to be breached in order to gain access. At the Bloomfield and Tilbury Locations, Simran and Mandeep, respectively, provided access to the safes. For those safes where access was provided, the Receiver has changed the combinations and/or secured the keys.
- 2.3 Invoicing and Collections**
- 2.3.1 As discussed in greater detail below in Section 3, invoicing and collections for the Fleet Card Business are complex and labour-intensive. The Receiver has spent considerable time with the various employees who are involved in gathering invoicing data from the T-Chek and Comdata systems (defined in paragraph 3.1.1 below), in order to understand the method used to convert that data into customer invoicing, and the methods of collection of amounts invoiced to each customer. The Receiver's efforts in this regard have been impeded by, among other things, the fact that the Debtors' record-keeping was completely inadequate, as described in sections 2.4 and 3.2 below.
- 2.3.2 The Receiver has also had to understand the process for invoicing and collecting certain customer accounts that were not invoiced through the Fleet Card Business, (the "**In-House Diesel Fuel Accounts**"). This process is also discussed in greater detail in section 3 below.

## **2.4 Accounting Controls and Books and Records**

- 2.4.1 Upon taking possession of the Bloomfield Location and the Tilbury Location, the Receiver changed the locks of the various offices at each location. The Receiver noted that the records at each location were in extreme disarray, with no apparent coordination of records. The records were strewn about the offices, and several of the drawers of the desks in the offices were empty.
- 2.4.2 The three accounting staff at the Tilbury Location maintained their offices in small portables at the back of the gas station. The records in the portables primarily consist of historical daily sales packages for each gas station location, supplier payables, certain government accounts reporting and some customer fuel card credit applications. There are no monthly operations reporting packages at the accounting office.
- 2.4.3 The Receiver has begun to put in place rudimentary reporting on the retail sales conducted at the Retail Gas Stations on a consolidated basis, as well as reconciling the Fleet Card Business sales to third party data supplied by T-Chek and Comdata. This is discussed further in Section 3.
- 2.4.4 Lastly, the Receiver has been in contact with the Debtors' external accountant, MDP LLP, who has provided the Quickbooks files related to 908, 139, 5754 and 5744.

## **2.5 Maintaining Operations**

- 2.5.1 The Receiver has arranged to maintain fuel deliveries to the Retail Gas Stations for both regular and diesel fuels. The Receiver has had to contact fuel suppliers, make arrangements for new accounts and to set up delivery terms for the fuel. The Receiver notes that the Debtors originally had diesel fuel delivered to them, but the Receiver could not initially determine the identity of the supplier(s). The Receiver later determined that Pilot (as defined in paragraph 3.1.1 herein) supplied some fuel, which was delivered by Canadian Clean Fuels, up to the afternoon of October 2, 2019. In the intervening period, the Receiver sourced and made arrangements with Amco Petroleum Ltd., which had not previously provided fuel to the Debtors, to continue supply.
- 2.5.2 The Receiver took possession of the sales offices located in Brampton and Windsor, and maintained the employment of the sales and customer service staff at each location. Through the sales staff and directly, the Receiver has maintained contact with Fleet Card Business customers. The Receiver has also been in contact with Go Daddy to maintain the Fleet Card Business website for customers. Initially, Go Daddy would not respond or provide details to the Receiver and/or its counsel, Aird & Berlis LLP ("**Counsel**"), without the account number and applicable PIN, despite the issuance of the Appointment Order. Access to the Go Daddy site was gained on October 4, 2019, after the Receiver gained access to the Simran Computers (discussed below).
- 2.5.3 The Receiver made direct contact with both T-Chek and Comdata to discuss the continuation of operations, customer listing, customer usage, billing and credit terms.

- 2.5.4** The Receiver contacted and set up new accounts for the numerous suppliers to the gas station convenience stores (such as Coke, Pepsi, Cor Mark, Imperial Tobacco, etc.).
- 2.5.5** Further, the Receiver has been in contact with Ontario Lottery and Gaming Commission (the “**OLG**”) to discuss the lottery sales at the various gas stations. To date, the OLG has not authorized the Receiver to continue the sales of OLG products. Once the Debtors’ bank accounts were closed and/or frozen pursuant to the Mareva Order, a number of payments bounced, and the OLG disabled the terminals. Upon learning of the issue, the Receiver began setting up new accounts in the Receiver’s name to allow these terminals to operate, which remains in process while the Receiver awaits the Alcohol and Gaming Commission’s authorization. The Receiver will take appropriate steps to ensure that the authorization is granted.
- 2.5.6** The Receiver has maintained various fast food operations at the various gas station locations, and has arranged to continue supply of the various products sold at the locations. In total, the Receiver is maintaining the operations of a Subway and Pizza Pizza at the Bloomfield location, and a Pizza Depot at the Windsor Location.
- 2.5.7** The Receiver closed the Menchie’s Frozen Yogurt business located at 1041 Wellington Rd., London. The Receiver determined that the professional costs associated with keeping this business operational would outweigh the benefits.
- 2.5.8** The Receiver met with the staff at the various locations, and discussed the Appointment Order with them, along with the Receiver’s intended course of action. The Receiver has also arranged to continue the payroll for each of the Retail Gas Stations, the sales staff, the Subway, the Pizza Pizza, the Pizza Depot, and the accounting staff at the Tilbury Location.

## **2.6 Other Activities of the Receiver**

**2.6.1** In addition to the activities detailed above, the Receiver has:

- liaised with the Ministry of the Environment regarding potential environmental issues;
- liaised with other lenders to the Receivership Parties;
- coordinated the execution of the Receiver’s duties under the Appointment Order and the execution of Grant Thornton’s duties under the Anton Piller Order;
- worked with CIBC and Pilot (as defined in paragraph 3.1.1 herein), on the negotiations of the non-disclosure and stabilization agreements (as discussed in greater detail in Section 5, below); and
- participated in daily update calls with CIBC and their counsel regarding the status of operations, the stabilization agreement and funding requirements.

## 2.7 Assets not in the Receiver's possession

2.7.1 The Receiver has not taken possession and control over certain of the assets and/or locations of the following parties either included in the Appointment Order or related thereto:

- the Esso gas station owned by 1254044 Ontario Limited and the Burger King restaurant at the address municipally known as 5906 Oil Heritage Road in Wyoming, Ontario (together, the “**Wyoming Location**”), which are discussed in greater detail at paragraphs 2.7.2-2.7.7 below;
- the Shell station at 119 Keil Drive South, which was previously owned by 2123618 Ontario Limited (one of the Debtors), but which was sold to an unrelated party in or around 2014. The Receiver is not aware of any active business being carried on by this entity;
- the Burger King restaurant located at the Shell gas station at 203 Indian Road in Sarnia, Ontario, as it is not owned by any of the Debtors; and,
- two of the apparent three Menchies owned by 2364507 Ontario Limited, as the Receiver has been unable to determine with certainty whether this company owns additional Menchies locations, and if so, where they are located.

2.7.2 On October 2, 2019, the Receiver became aware that the Wyoming Location may be operated by 1254044 Ontario Limited (“**125**”), a Receivership Party. Until that time, there had been confusion regarding 125's ownership and operational status, because the Teraview Land Registry search results for the Wyoming Location's municipal address incorrectly indicated that the land is owned by an unrelated party, JN Ventures Limited. Upon learning that the Wyoming Location may be operated by 125, the Receiver immediately sought clarification regarding the ownership of the Wyoming Location, and determined that the property is in fact owned by 125. Around the same time, the Receiver further came to understand that 125 had granted a security interest in the Wyoming Location in favour of Bank of Montreal (“**BMO**”) pursuant to various security agreements.

2.7.3 Upon learning of BMO's interest, the Receiver and Counsel began engaging with BMO with respect to this issue. BMO, CIBC and the Receiver engaged in discussions regarding the path forward for 125 and certain other Receivership Parties which were subject to BMO security interests, being 218 and 155. Attached as **Appendix I** is a chart which illustrates the related companies which have granted security interests in favour of BMO, and their relationship(s) to the Debtors.

2.7.4 Following discussions with the Receiver and CIBC, BMO determined that it would initiate a separate application to appoint MNP Ltd. as receiver over all of the assets, undertakings and properties of 125, 218, 155 and certain other related companies and assets. The application was unopposed and the order was granted on October 16, 2019 (the “**BMO Receivership Order**”). As part of the BMO Receivership Order, the Receiver was discharged as Receiver of 125, 218 and 155 effective as of 1:00 p.m. (Toronto time) on October 16, 2019. A copy of the BMO Receivership Order is attached hereto as **Appendix J**.

2.7.5 Leading up to the issuance of the BMO Receivership Order, the Receiver, BMO and CIBC collectively agreed to provide operational support to the Wyoming Location.

The Receiver, BMO and CIBC entered into a reimbursement agreement dated October 10, 2019, whereby 125's employee payroll and fuel supplies would be funded by the Receiver (and indirectly, by CIBC), and reimbursed by BMO (the "Reimbursement Agreement").

- 2.7.6** The Reimbursement Agreement also included employee payroll and fuel delivery funding for the Ultramar gas station at the address municipally known as 5470 Walker Road, Tecumseh, Ontario (the "Tecumseh Location"). The Tecumseh Location is owned by 2541899 Ontario Limited ("254"), a related company to the Debtors which is not a Receivership Party, but which is the subject of the BMO Receivership Order. As a result of the Reimbursement Agreement, employees of 125 have continued to be paid and are current on their wages. The Receiver subsequently learned that 254's employees are not paid directly by 254, but by a third-party management company, which has continued to pay 254's employees.
- 2.7.7** In order to deliver fuel to the Wyoming Location and the Tecumseh Location, on or about October 9, 2019, the Receiver reached out to counsel to the Individual Defendants (other than Simran) by phone and email, requesting confirmation as to the quantity of fuel needed, as well as certain other basic information required for fuel delivery. The Receiver did not receive a response to its requests, and therefore was unable to order fuel to be delivered.

## 3.0 DIESEL FUEL BUSINESS UNIT

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### 3.1 Background

3.1.1 The Receiver estimates that the Fleet Card Business accounted for approximately 95% of the Debtors' business, representing approximately \$1.1 million in revenues per day. The Fleet Card Business can be summarized as follows:

- 908 provided its customers (truck transportation companies with varying fleet sizes) with “Fleet Cards”. A Fleet Card is essentially a credit card, which was issued to each of the customers' truck drivers to allow them to purchase fuel and other items on credit, as described below. As of the date of the appointment, 908 had approximately 1,300 active known customers, and up to 1,800 customers in total. As each customer represents numerous truck drivers, there are significantly more Fleet Cards in circulation than there are active known customers;
- the Fleet Cards were administered by way of electronic systems maintained by two third-party operators, WEX Bank (doing business as T-Chek Systems, Inc., “T-chek”) and Comdata, Inc. (“Comdata”), both of which are domiciled in the U.S.;
- customers' truck drivers used the Fleet Cards to purchase diesel fuel, convenience store items and obtain cash advances at stations operated by the Debtors and their partners, Pilot Travel Centers LLC, Flying J Canada Inc. and their respective affiliates and partners (collectively, “Pilot”). Pilot has informed the Receiver that Fleet Cards issued by 908 could be used at all of Pilot's stations, consisting of approximately 700 U.S. locations and 70 Canadian locations;
- 908 paid Pilot, at a discounted rate, for the fuel purchased by its Fleet Card customers. Pursuant to the short term fuel marketing agreement between Pilot Travel Centers LLC and 908, 908 had ten days to pay Pilot for the fuel purchased by customers through the Fleet Cards;
- 908 would then invoice its customers for the fuel and other items purchased, and any cash advances received through the Fleet Cards. Pursuant to credit agreements with each customer, customers' payments were taken either daily, twice weekly, weekly or every 15 days, through several payment methods. The main payment method was for 908 to debit a customer's bank account for the amount owed through 908's bank account system. However, customers also made payments to 908 by way of credit cards, fund transfers, and cheques;
- monthly, customers expected to receive a rebate cheque from 908 in relation to their fuel purchases on the Fleet Cards. The Receiver's counsel has reviewed the customer agreements, and has not found any contractual requirement for 908 to issue rebate cheques to its customers, nor any documented basis upon which rebates were to be calculated. Based on discussions with 908's employees and Simran, the Receiver understands that, historically, 908 provided customers with rebates, which Simran personally quantified based on the spread between the price and the cost of fuel, and then taking into consideration the volume of fuel purchased, Simran's relationship with the customer, and the economic climate; and

- Fleet Card holders were also eligible to access credit by way of the “Express Codes” system administered on T-Chek and Comdata’s systems, pursuant to which customers receive cheques that they could use to pay for items or services purchased from vendors other than the Debtors and Pilot, such as repairs.

## 3.2 Books and Records and Management Controls

- 3.2.1 Upon its appointment, the Receiver could not initially locate the majority of the critical information that was fundamental to operating the Fleet Card Business. It appeared to the Receiver that the Debtors did not maintain a central repository for customer and other data. Accordingly, in order to understand the Debtors’ operations, the Receiver had to meet with representatives of the Debtor, including Simran and Mandeep. Due to Simran’s alleged involvement in the events that precipitated the Receiver’s appointment, the Receiver has been cautious in relying on any information provided by Simran, but has had little other option given the state of the business records (or lack thereof).
- 3.2.2 Following requests from the Receiver, on Thursday, October 3, 2019, Simran and Mandeep attended at the Tilbury Location to meet with the Receiver (the “October 3 Meeting”). This was Simran’s first attendance at any of the Debtors’ operations since the issuance of the Appointment Order. Mandeep had attended briefly at the Bloomfield Location on October 1, 2019, to address payroll, but his assistance was not ultimately required as the Receiver made arrangements to coordinate the payroll.
- 3.2.3 At the October 3 Meeting, Simran advised representatives of the Receiver that critical operational and financial information relating to the Fleet Card Business was contained on the Simran Computers, which at that time were in the possession of the Independent Supervising Solicitor (the “ISS”), pursuant to the Anton Piller Order, having been seized from the trunk of Simran’s Cadillac XT5, where he had put them.
- 3.2.4 Counsel for CIBC and the Receiver immediately attended before the Court to obtain the October 3 Order, which permitted the ISS to transfer custody of the Simran Computers to the Receiver. The Receiver thereafter received the Simran Computers at approximately 10:00 p.m. on October 3, 2019.
- 3.2.5 On October 4, 2019, Simran attended at the Bloomfield Location to assist the Receiver with reviewing the information contained on the Simran Computers. Mandeep did not attend, and has not attended at any of the Debtors’ locations since the October 3 Meeting, despite a request by the Receiver that Mandeep attend at the Bloomfield Location on or about October 8, 2019. The Receiver has asked Mandeep a limited number of questions by email and phone, which he has answered.
- 3.2.6 For a business of the size and reported revenue base of the Debtors, and the significant amount of cash being generated, the Receiver expected to find integrated professional systems and processes for accounting, management and significant internal controls. Instead, the Receiver has determined that:
- there are no written procedures for calculating the rebates for customers;



- there are no controls for determining the accuracy or completeness of invoicing;
- there are no written procedures for accumulating In-House Diesel Fuel customer data for invoicing;
- there are no written procedures for collection from customers (i.e. which method of payment each customer is using and when they are expected to pay);
- there is no procedure for maintaining ongoing accounts receivable balances;
- information and tasks were highly disbursed amongst the employees at different locations, such that no employee knew any complete process or task; and
- there are multiple systems recording differing types of transactions, with no internal accounting system to consolidate all transactions.

**3.2.7** One of the most significant issues for the Receiver continues to be the lack of accurate and complete customer data. The Debtors did not have a central repository for customer data. The Company did begin using the Salesforce CRM system in 2018; however, the Receiver was unable to ascertain if this information was complete. Additionally, the Salesforce CRM was used primarily for customer contact details only (no pricing, billing frequency, banking details, etc.). As noted above, the employees did not have a complete understanding of the various operations of the Debtors, and there were effectively no controls or procedures in place.

**3.2.8** The Fleet Card Business consisted of thousands of transactions each week that were invoiced through an excel-based proprietary program, with no known reconciliation to the source data from T-Chek and Comdata. In order to collect payment from the Fleet Card Business' approximately 1,300 known active customers, the Receiver required customer bank account information. However, the Receiver did not have access to customer collection data and customer bank account information until Simran was able to show the Receiver the information on the Simran Computers on Friday, October 4, 2019.

**3.2.9** As noted above, the Debtors do not have a centralized accounting system by which the financial results of the various parts of the Business are consolidated in order to assess the overall financial position of the Debtors. In particular, there is no accounting system that consolidates the invoicing, collections and rebates for the most significant portion of the Business, the Fleet Card Business. At the October 3 Meeting, Simran confirmed there was no updated accounts receivable listing, and that the accounts receivable listing was only prepared manually by him on a monthly basis for the borrowing base calculation at the end of the following month. Accordingly, Simran stated that the August 31, 2019 accounts receivable listing would not have been prepared until September 30, 2019 and the only receivables listing available was as at July 31, 2019.

**3.2.10** Following the meeting on October 4, 2019, Simran attended at the Bloomfield Location for approximately an hour's worth of assistance on October 7, 2019, and two hours' worth of assistance on October 9, 2019.

- 3.2.11** At the October 9 meeting, the Receiver again discussed with Simran the September 30, 2019 accounts receivable and requested Simran's assistance with preparing same. Simran advised that it would take up to 4 to 6 hours to complete, and that he could assist on either October 10 or 11. The Receiver did not hear from Simran on October 10, and on October 11 texted him at approximately 9:00 a.m. on the cell phone number Simran had previously responded to, to request that he attend the Bloomfield Location to assist in the preparation of the accounts receivable listing as discussed on October 9. The Receiver did not receive a response.
- 3.2.12** There is no easy way to determine which customers have paid which invoices, as this is not tracked in any system. This is exemplified in Simran's comments regarding the accounts receivable listing, noted above. Management appears to have used excel spreadsheets that were not integrated with any accounting systems to record the accounts receivable information, but there is no way to determine if the information is accurate or complete. The Receiver is attempting to obtain third party information to confirm the information supplied by Simran.
- 3.2.13** As detailed above, despite Simran and Mandeep providing some initial information to the Receiver about the Business in the meetings on October 3 and 4, and Simran attending for short meetings at the Bloomfield Location on October 7 and 9, thereafter neither Simran nor Mandeep responded promptly, adequately, or at all, to the Receiver's requests for assistance. In particular, the Receiver notes that Simran was not able to provide the Receiver with a current accounts receivable listing in order for the Receiver to collect outstanding accounts.
- 3.2.14** In summary, the Receiver has determined that record-keeping for the Fleet Card Business was wholly inadequate. In some cases, crucial operational information does not exist except to the extent that Simran personally has knowledge of such information. In addition, the Fleet Card Business lacks written policies and procedures that would permit anyone other than Simran to carry on the Business. The situation has been aggravated by the Individual Defendants' apparent removal of information from the Business in the days leading up to the Receiver's appointment, and by the Individual Defendants' failure to co-operate substantively with the Receiver, except for the minor assistance detailed above.

### **3.3 Anton Piller Order Records**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



### 3.4 Invoicing and Collection for the Fleet Card Business Unit - Fuel

- 3.4.1 In order to collect electronically from Fleet Card Customers, an operator must enter information regarding a customer's complete corporate name, Fleet Card account number and banking information into CIBC's on-line banking system (collectively, the "Customer Data").
- 3.4.2 Upon its appointment, as stated, the Receiver did not have the information necessary to collect from customer bank accounts. As discussed above, the Receiver gained access to the Customer Data upon receipt of the Simran Computers at approximately 10:00 p.m. on October 3, 2019.
- 3.4.3 On Friday, October 4, 2019, Simran attended the offices at the Bloomfield Location and showed the Receiver certain computer files containing Customer Data. On a test basis, the Receiver initially entered approximately 40 customer accounts into the CIBC system, and then walked through how those customer accounts would be debited (the "PAD Process").
- 3.4.4 Once it had established how to complete the PAD Process, the Receiver had to enter Customer Data for the Debtors' approximately 1,300 active known customers before it could commence collections of the amounts invoiced to customers. Seven (7) of the Receiver's staff members spent approximately eight (8) hours each on Saturday, October 5, 2019 manually entering Customer Data into the CIBC systems. This was the maximum number of Receiver staff who could be authorized to have bank account access, for security reasons.
- 3.4.5 On Monday, October 7, 2019, the Receiver arranged for seven (7) staff members to commence the PAD Process to debit the approximately 1,300 customer accounts, for amounts invoiced for the period September 23 to 29, 2019. The Receiver commenced the PAD Processing for the week of September 30 to October 6, 2019 on Wednesday October 9 and finished what could be entered on Friday, October 11, 2019.

**3.4.6** During the PAD Processing conducted between October 4, 2019, and October 11, 2019, the Receiver determined that there was CDN \$1,814,579.69 and U.S. \$1,691,608.19 in accounts for which the Receiver did not have complete Customer Data to permit the Receiver to process a payment. Examples of the missing information include, without limitation:

- incomplete customer names (i.e. the entry stated “Orbit” for the customer name but there were five different customers whose name began with “Orbit”);
- missing bank account information (either U.S. or Canadian accounts or both);
- incorrect bank account information that would not be accepted by the PAD system;
- the customer ID account number did not match the customer name; and,
- the customer did not appear in the listing of customer files provided.

**3.4.7** In the end, the Receiver was able to process \$5,532,445.30 and U.S. \$3,598,861.62 in customer payments through PAD Processing between October 4, 2019, and October 11, 2019. The Receiver also completed \$90,116.76 in payments through customer credit cards.

**3.4.8** As of Friday, October 11, 2019 the Receiver has experienced numerous returned items from PAD Processing. The chart below summarizes the Receiver’s returned items from PAD Processing as of October 11, 2019:

| Reason for Return               | Currency            |                   |
|---------------------------------|---------------------|-------------------|
|                                 | CAD                 | U.S.              |
| Payment stopped by customer     | \$ 472,023          | \$ 67,558         |
| NSF                             | 289,722             | 58,667            |
| Account closed                  | 55,315              | 417               |
| Account not found               | 68,122              | 88,676            |
| Account frozen                  | 57,068              | -                 |
| Not in accordance with business | 106,230             | 74,462            |
| No agreement existed            | 39,266              | -                 |
| Other                           | 42,503              | -                 |
| <b>Totals</b>                   | <b>\$ 1,130,248</b> | <b>\$ 289,780</b> |

**3.4.9** The Receiver understands that this volume of returns is not surprising in the industry, given the Receiver’s delayed ability to process payments. Over the course of the Receiver’s efforts to effect PAD Processing, the rate of returns has continued to accelerate. Pilot has advised that, in its experience, if accounts are not collected within a few days of becoming due, the likelihood of collection declines each day.

### **3.5 Invoicing and Collection for the Fleet Card Business Unit - Express Codes**

**3.5.1** As detailed above, Fleet Card holders can use “Express Codes” to obtain cheques that they can use to purchase items and services other than fuel and convenience store items. During the period September 30, 2019 to October 6, 2019, Express

Codes cheques averaged approximately \$70,000 per day, and cash advances averaged approximately \$27,000 a day. The invoicing information for the Express Codes is also gathered by T-Chek and Comdata and downloaded by 908 into their invoicing systems. Accordingly, the Receiver has had the same concerns regarding accuracy and completeness of the Express Codes invoicing as it has had for the fuel invoicing.

- 3.5.2 Express Codes invoicing is provided to customers on a weekly basis, and is collected using the same methods as the fuel invoicing (i.e. principally through the PAD Process).

### 3.6 In-House Diesel Fuel Accounts

- 3.6.1 There are approximately 22 In-House Diesel Fuel Accounts. These customers differ from other customer accounts, in that they are managed at the local gas station and not through the sales staff. In addition, they have different payment terms (mostly by cheques and potentially longer payment terms of up to 30 days) and rebates (cash rebates and preferred pricing). The invoicing information is maintained in a separate computer system at each of the three gas stations with a “Truck Stop” for diesel refueling. The Receiver was informed by the employees at the Bloomfield Location that the invoicing for In-House Diesel Fuel Accounts at Bloomfield was prepared solely by Simran.

- 3.6.2 The accounting staff at the Tilbury Location were able to generate a summary aged receivables listing for the In-House Diesel Fuel Accounts (the “In-House AR”). A copy of the In-House AR as at September 30, 2019 is attached as **Appendix K**. However, the accounting staff stated that the payments received from the largest In-House Diesel Fuel customers were not reported to them, and therefore were not referenced in the In-House AR. The In-House AR shows accounts total approximately \$2,100,000, including the account for One World, which shows an outstanding balance of approximately \$1,260,000. However, in discussions with One World, its representatives stated that payments are remitted weekly and that it only owed approximately \$150,000 as at September 30, 2019. The Receiver is investigating this account further, but it appears that the In-House AR generated by the accounting staff at the Tilbury Location may be significantly overstated.

- 3.6.3 In addition, the Receiver has communicated directly with Warren Gibson, one of the Debtors’ largest In-House Diesel Fuel customers. Warren Gibson advised the Receiver that it would only continue to purchase fuel if its existing pricing arrangements were honoured. The Receiver has learned that the pricing that the Debtors’ offered to Warren Gibson resulted in only a very slim gross margin, which does not appear to be sustainable.

### 3.7 Diesel Fuel Customer Rebates and Special Pricing

- 3.7.1 An important aspect of the Fleet Card Business consisted of the loyalty rebate programs offered to customers, which are important to customers, and therefore to the Fleet Card Business generally. The customers are price sensitive, and the market is very competitive. As detailed above, Simran advised the Receiver that

customer rebates were determined by Simran on a discretionary basis, based on the spread between market price and the cost to 908, taking into consideration the volume of fuel purchased by the customer, Simran's relationship with the customer, and the economic climate. Simran would exercise his own discretion to apply a discount on the premise that retaining customers is essential to the business. There are no written agreements regarding the rebates or discounts that are provided to customers.

- 3.7.2 The Receiver understood from customers and employees that not all of the August 2019 rebates were sent to customers or may not have been cashed prior to the Receiver freezing the 908 bank account at Bank of Montreal ("BMO"). The Receiver wanted to understand the potential liability owing to customers, and, accordingly, what may be offset against accounts receivable or current sales. Simran directed the Receiver to the August 2019 customer rebate spreadsheets on one of the Simran Computers (the "**August 2019 Rebate Spreadsheet**"). The total rebate to customers per the August 2019 Rebate Spreadsheet, as calculated by Simran, was approximately \$3.6 million (using an exchange rate for U.S. dollars of 1.35) for the month of August 2019.
- 3.7.3 Simran estimated that approximately \$500,000 of the August 2019 rebate cheques were issued on 908's CIBC accounts in early September and therefore may have cleared the CIBC accounts. However, Simran advised that these rebate cheques were issued on manual cheques (with no copies retained), and therefore the clearing of these cheques through the CIBC account could not be confirmed unless the Receiver reviewed the bank statements. The balance of the August 2019 rebate cheques were issued on the BMO account on or around September 22, 2019. Accordingly, a portion of the cheques may have cleared the BMO account prior to the account being frozen by the Receiver. Again, the Receiver would require bank statements to confirm, which, if any, cleared the BMO account. Further, Simran advised that certain customer rebate cheques from prior months were not released, but he was not able to provide a listing of those unsent rebate cheques.
- 3.7.4 Further, the business operated another "rebate" program, whereby individual truck drivers who fueled at Debtor-owned gas stations would receive cash from cashiers at a rate of 14 cents per litre of gas purchased.
- 3.7.5 The rebate program calculation process is highly irregular and void of oversight, structure, and systemization. The foregoing contributes to the difficulties associated with accurately assessing the financial performance of the Fleet Card Business.

## 4.0 RETAIL GAS STATIONS

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### 4.1 Books and Records and Point of Sale Systems

- 4.1.1 The accounting staff at the Tilbury Location collect the electronic information from the point of sale systems for the retail operations at all but one gas station. The gas station located at 203 Indian Road, Sarnia uses a different point of sale system, and the electronic information for that gas station has to be collected manually by the accounting staff.
- 4.1.2 Each of the retail locations prepares a daily cash register report and cash reconciliation, which is delivered to the accountants at the Tilbury Location. To the Receiver's knowledge, no one summarizes the retail point of sale system results or the daily cash register and cash reconciliation reports. The Receiver is in the process of setting up daily reporting for the retail operations.

### 4.2 Fuel and Retail Store Operations

- 4.2.1 In the days following the issuance of the Appointment Order, the Receiver went to some lengths to secure continued supply of fuel for the retail operation, as well as the supply of goods for the stores. The Receiver treated continued supply of fuel and store inventory with urgency. The Receiver has now established ongoing fuel supply arrangements with Parkland Fuel Corporation for five of the six retail stations and Shell for the other, as well as ongoing supply for the convenience stores from over a dozen different suppliers.

### 4.3 Fast Food and Space Rental Operations

- 4.3.1 As previously noted, the Receiver has spoken with the employees at each of the Subway and Pizza Pizza operating at the Bloomfield Location, and the employees at the Pizza Depot operated at the Windsor Location, and has maintained these operations. However, the Receiver has received a notice from Subway Franchise World Headquarters dated October 4, 2019 (the "**Subway Notice**") regarding certain underreported sales and a demand for payment of royalties previously issued on July 31, 2019. A copy of the Subway Notice is attached as **Appendix L**. The Receiver has attempted to contact Subway to follow up on the Subway Notice.
- 4.3.2 The Receiver will be reviewing the rent to be charged to any operating fast food restaurant not under the Receiver's control pursuant to the Appointment Order. Specifically, the Receiver will be reviewing whether there are any rent/lease agreements entered into by the entity that controls the Burger King in Sarnia. The Receiver has made arrangements to collect rent from 18 Wheeler Restaurant, which operates at the Tilbury Location.

## 5.0 PILOT DUE DILIGENCE

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### 5.1 Stabilization Agreement

- 5.1.1 As discussed briefly above, Pilot was the Debtors' partner in the Fleet Card Business. The Debtors' Fleet Card customers were able to use their Fleet Cards to purchase fuel and other goods at each of Pilot's 700 U.S. locations and 70 Canadian locations. In fact, prior to the issuance of the Appointment Order, Pilot and the Debtors had been in discussions regarding a proposed joint venture to further their strategic partnership.
- 5.1.2 The daily cost of fuel payable by 908 to Pilot as part of the Fleet Card Business is approximately \$1,000,000. On or about October 2, 2019, Pilot approached the Receiver and CIBC to express concern about Pilot's potential exposure in the receivership, due to the 10-day payment terms described in paragraph 3.1.1 above. Based on the Receiver's inability to pay pre-filing expenses, and the 10-day payment terms Pilot is required to abide by in the receivership, Pilot advised that its potential exposure associated with Fleet Card Business could be in excess of \$20 million.
- 5.1.3 Pilot further offered its expertise to the Receiver in order to assist the Receiver in overcoming the complete lack of controls at the Business and to stabilize operations, including the Fleet Card Business. The Receiver determined that having a seasoned industry player assist with such stabilization efforts would be to the benefit of the Business and the stakeholders.
- 5.1.4 In addition, Pilot was sufficiently concerned about ensuring ongoing payment on better terms than the 10 days contemplated pre-receivership, that it engaged counsel to bring a motion to seek to vary those payment terms to limit its potential exposure. On October 4, 2019, the Court directed the parties to make efforts to work out an arrangement, to avoid the necessity of such a motion.
- 5.1.5 Accordingly, in order to continue the supply of fuel under the Fleet Card Business and to engage Pilot in the stabilization efforts that were underway in respect of the Fleet Card Business, the Receiver, CIBC and Pilot entered into a funding stabilization agreement dated October 5, 2019 (the "**Stabilization Agreement**"). The Stabilization Agreement required Pilot to provide consulting services for the length of the Stabilization Agreement, with the objective of assessing and stabilizing the Fleet Card Business, in exchange for which Pilot would receive \$1,000,000 per day over six days to apply to the cost of fuel supplied during the receivership proceedings. The Receiver determined that entering into this agreement was absolutely necessary for several reasons, including:
- Pilot had brought a motion to alter its fuel payment terms with 908 to accelerate payments given the instability of the Fleet Card Business, and;
  - Pilot is an industry leader in fuel supply and a partner of 908 in the Fleet Card Business, and, therefore, had knowledge that was determined to be essential in the Receiver's attempt to stabilize the Fleet Card Business.



## **5.2 Potential Offer**

- 5.2.1** In addition to offering consulting services by way of the Stabilization Agreement, Pilot also expressed an interest in purchasing some or all of the Debtors' operations. Pilot entered into a confidentiality and non-disclosure agreement in respect of both the consulting services to be provided by way of the Stabilization Agreement, and a potential transaction.
- 5.2.2** Given Pilot's partnership and familiarity with the Debtors, the fact that the majority of the Debtor's customers purchased fuel from Pilot/Flying J locations, the fluidness of the Receivership, and the immediate flight risks associated with the Debtors' customers, it was the Receiver's and CIBC's view that Pilot was likely the only plausible buyer of the Fleet Card Business in the circumstances, including the limited time frame within which the Receiver would likely be required to effect such a transaction.
- 5.2.3** There were two major barriers to the Receiver selling the Fleet Card Business to any party other than Pilot.
- 5.2.4** First, on an operational level, the Debtors' Fleet Card holders were already accustomed to attending at Pilot/Flying J locations for fuel and other necessities. A sale to any other buyer would require customers to fundamentally change their habits by attending at gas station locations other than those operated by Pilot/Flying J, which would be likely to lead to a major loss of customers.
- 5.2.5** Second, any other purchaser would be required to perform significant due diligence. The Fleet Card Business effectively consisted of the extension of short-term credit arrangements to over 1,300 known active customers (and up to 1,800 customers in total). Pilot's existing familiarity with the Debtors and their operations was expected to permit Pilot to conduct due diligence on a more expedited basis, as compared to a purchaser who did not have an existing relationship with the Debtors' operations. The length of time required to conduct a fulsome due diligence process was expected to lead to a major loss of customers.
- 5.2.6** In initial discussions with Pilot, before Pilot had conducted any due diligence, Pilot identified a proposed purchase price which appeared to the Receiver to be a commercially reasonable figure.
- 5.2.7** Following the execution of the Stabilization Agreement, Pilot representatives arrived at the Business on October 7, 2019 to provide consulting services to the Receiver, as agreed. Pilot's primary role was to assist with operations, and, in particular, to seek to slow customer attrition. Pilot also immediately began its due diligence in attempting to understand the Fleet Card Business' profitability.
- 5.2.8** Shortly after engaging in these efforts, Pilot expressed concern about the lack of controls over the Fleet Card Business, and the methodology used by the principals of the Business to determine customer rebates, all as detailed above. Despite Pilot's intimate industry knowledge, it was unable to materially assist the Receiver to better understand the operations.

- 5.2.9** Late in the afternoon, on Wednesday October 9, 2019, Pilot informed the Receiver that the structure and operational organization of the Debtors' operations were not as it expected them to be. Given the uncertainty surrounding the Company's operations (undetermined rebates, lack of financial records, lack of financial and operational controls), Pilot advised that the only transaction it would consider was a purchase of the Debtors' customer list.
- 5.2.10** On October 10, 2019, Pilot, CIBC and the Receiver, together with their respective counsel, met to discuss the status and future prospects of the Fleet Card Business and a potential transaction. Pilot formally communicated its belief, which is shared by the Receiver, that the Fleet Card Business had not been stabilized. The Fleet Card Business continued to lose a significant amount of cash and customers on a daily basis.
- 5.2.11** Most significantly, the additional collection risk surrounding the maintenance of operations and the continuity of invoicing of customers could have led to substantial financial losses for any purchaser. In addition, as detailed above, the Receiver has been unable to determine the quantum of customer rebate arrears from August and September 2019. Currently, they are estimated to be approximately CAD \$3.8 million and USD \$1.9 million (prior to consideration of any unknown prior period rebate amounts). In order to maintain the Debtors' customers, a purchaser would likely be required to honour these arrears, which would result in a corresponding decrease to the quantum of any offer. The Receiver agrees that these material uncertainties made it very difficult for a proposed purchaser, such as Pilot, to assess the value of the Business.
- 5.2.12** Based on its review of the Business, Pilot significantly reduced its proposed purchase price for the list of customers in the Fleet Card Business, to a fraction of the price that had been discussed initially. The offer from Pilot for the purchase of the customer list was rejected by the Receiver, in consultation with CIBC, on October 10, 2019. Pilot also rejected various other proposals put forward by the Receiver. Accordingly, negotiations with Pilot came to an end.

## 6.0 STATUS OF OPERATIONS

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### 6.1 Fleet Card Business Segment

- 6.1.1** The Receiver's funding has been impacted by the fact that a material portion of payments from customers have been stopped by the customer or returned for non-sufficient funds, or the Receiver has not been able to collect from customers' accounts due to inaccurate customer banking data, or other outstanding Customer Data, all as discussed above. The Receiver is concerned that there will be even more stopped payments and chargebacks to the Receiver's Accounts from the PAD Process. As the Receiver does not have certainty that such receivables will be honoured, the Receiver has determined that using those receipts for the operation of the Debtors' Business is not appropriate until after the expiry of a ten-day clearing period. Accordingly, the funds generated from PAD Processing have not been able to be used for operating the Debtors' businesses, which has impeded the Receiver's ability to stabilize and operate the Business in the ordinary course. Major expenditures, such as, but not limited to, fuel and Express Codes in excess of \$1.1 million per day, on the other hand, are highly certain and need to be paid. Therefore, the Receiver has had to resort to extraordinary borrowings to keep the Debtors' businesses operating.
- 6.1.2** Most significantly, between September 30, 2019, and October 10, 2019, the Receiver had expended over \$5,700,000 associated with maintaining the Fleet Card Program, and over \$800,000 to purchase fuel for the Retail Gas Stations. Given the difficulties in collections, as detailed above, these expenditures have been funded to date by CIBC.
- 6.1.3** In addition to these amounts, since the Receiver's appointment, the Fleet Card Business has incurred liabilities in respect of the operation of the Fleet Card Program of approximately \$6,000,000, which, as at October 11, 2019, had yet to be paid. The majority of this amount consists of fuel costs payable to Pilot, and the rest represents amounts owing for the provision of services by T-chek and Comdata. Overhead and professional costs must also be accounted for.
- 6.1.4** Currently, the Receiver's Borrowing Limit is \$10 million. If the Fleet Card Business operations were to continue, the Receiver estimates that it would have likely exceeded its current borrowing capacity in the short term.
- 6.1.5** The viability of the Fleet Card Business depends on the loyalty of customers. However, there are no barriers to customers leaving the Fleet Card Business to join a competitor. The uncertainty of the future of 908's Fleet Card Business and the inability of the Receiver to expeditiously continue the rebate program in an insolvency would have provided and did provide customers with sufficient reason to join a competitor's program. In a meeting with Pilot on October 10, 2019, the Receiver was advised that 10% of the Debtors' customers have migrated away from 908's Fleet Card Business in one day. The Receiver was also advised that at least one other company with familial ties to the Individual Debtors was rumoured to be systematically poaching the Debtor's customers. Accordingly, it appears that the uncertainty surrounding the Fleet Card Business resulted in a significant loss of customers.

- 6.1.6** Ultimately, it became clear that because of the events leading up to the receivership and the myriad of issues confronting the Fleet Card Business, including the apparent significant loss of customers, Pilot was not able to assess the going concern value of the Fleet Card Business quickly. Therefore, Pilot was not prepared to present an offer for the Debtors' Business as a whole, nor for the Fleet Card Business alone.
- 6.1.7** Accordingly, the Receiver had to assess the viability of the Fleet Card Business in light of Pilot withdrawing its interest therein, including an assessment of the significant costs being incurred daily in respect of the daily purchase of fuel from Pilot/Flying J, the substantial quantum of customer payment returns and the probability of further returns, and the uncertainty of whether the Fleet Card Business operations were profitable at all, or ever.
- 6.1.8** As detailed in paragraphs 6.1.2 and 6.1.3 above, the nature of the Business is such that it can incur significant liabilities over a short period of time. CIBC committed to fund certain of these expenses by way of the Stabilization Agreement and the Borrowing Limit provided for in the Appointment Order, as amended. However, in light of the various and significant problems described herein, it appeared to the Receiver that there was no reasonable prospect that the Fuel Card Business could be revived or become profitable, and that the losses accruing daily were likely to be irrecoverable. In light of the uncertainty associated with collecting from customers, the lack of assurances that funding advanced by CIBC will be recovered through operations, the considerable risk associated with maintaining the Business, and the lack of advancement of any negotiations with Pilot for the potential sale of the Fleet Card Business, CIBC advised the Receiver on October 11, 2019, that it was no longer willing to fund the Fleet Card Business on an ongoing basis.
- 6.1.9** Based on all of the foregoing, the Receiver, in consultation with CIBC, decided to shut down the Fleet Card Business effective October 11, 2019. At this time, the Receiver does not have sufficient funding to maintain the Business. Further, as detailed above, there was little to no prospect of selling the Fleet Card Business, such that continuing to incur the significant expenses associated with the Business was unlikely to benefit the stakeholders.

## **6.2 Retail Gas Station Operations**

- 6.2.1** The Receiver is currently maintaining the Retail Gas Station operations and intends to prepare a sales process for the gas stations in the short term.

## **6.3 Fast Food Operations**

- 6.3.1** The Receiver is currently maintaining the fast food operations and will be including same with any sales process for the Retail Gas Stations.

## ***7.0 SEALING ORDER REQUEST***

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- 7.1 The Receiver is requesting that portions of this Third Report be sealed until further order of the Court, as this Third Report contains confidential and commercially sensitive information that could prejudice the Receivership Parties' stakeholders. Accordingly, the Receiver intends to file an unredacted copy of the Third Report with this Court, for which a sealing order will be sought, and will serve all parties, file in the public record, and publish on the Receiver's website a redacted version thereof.

All of which is respectfully submitted this 18<sup>th</sup> day of October, 2019.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly Court-appointed and since discharged Receiver of 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity



Per: Christopher J. Mazur, CIRP, LIT  
Senior Vice President  
National Commercial Practice Leader

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**APPENDIX D**  
**SALE PROCESS ORDER DATED DECEMBER 16, 2019**

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See attached.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) MONDAY, THE 16TH DAY  
)  
JUSTICE HAINEY ) OF DECEMBER, 2019

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff



- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**ORDER  
(Re Sale Process)**

**THIS MOTION**, brought by BDO Canada Limited (“**BDO**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), of the assets, undertakings and properties of 908593 Ontario Limited, operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited (the “**Debtors**”), for an Order approving a sale process to market the Debtors’ assets (the “**Sale Process**”), was heard this day at 330 University Avenue, Toronto, Ontario.



**ON READING** the Fifth Report of the Receiver dated November 26, 2019 (the “**Fifth Report**”) and the appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of Bradley Cook sworn November 26, 2019, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **SALES PROCESS**

2. **THIS COURT ORDERS** that the Sale Process set out in the Fifth Report be and is hereby approved (subject to such amendments as may be determined by the Receiver to be appropriate and that the Gas Stations subject to the Sale Process shall be the Tilbury Location, the 1670 London Line Location and the 2097 London Line Location, as such terms are defined in the Fifth Report), that the Bidding Procedures substantially in the form attached as Schedule “A” hereto be and are hereby approved; and that the Receiver be and is hereby authorized to take such steps as it considers necessary to carry out the Sale Process, subject to prior approval of this Court being obtained before completion of any transaction(s) resulting from the Bid Process.

### **GENERAL**

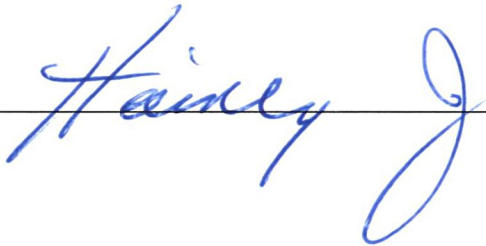
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

4. **THIS COURT ORDERS** that, save and except for any gross negligence or wilful misconduct on its part, the Receiver shall not have any personal or corporate liability in connection with offering the Receiver's right, title and interest in and to the Debtors' assets for sale, including, without limitation:

- (a) by advertising either or both the Debtors' assets and the Sale Process, if at all, including, without limitation, the opportunity to acquire the Debtors' assets;
- (b) by exposing or not exposing the Debtors' assets to any and all parties, including, without limitation, those which have made their interest known to the Receiver;
- (c) by carrying out the Sale Process;
- (d) by responding to any and all requests or enquiries in regards to due diligence conducted in respect of the Debtors' assets;
- (e) through the disclosure of any and all information presented by any of the Receiver, its solicitors and its agents, arising from, incidental to or in connection with the Sale Process;
- (f) pursuant to any and all offers received by the Receiver in accordance with the Sale Process; and

- (g) pursuant to any agreements entered into by the Receiver in respect of the sale of any of the Debtors' assets.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 16 2019

PER / PAR: 

**SCHEDULE "A"**  
**BIDDING PROCEDURES**

See attached.

## **BIDDING PROCEDURES**

**WHEREAS** pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on September 30, 2019, BDO Canada Limited (in such capacity, the “**Receiver**”) was appointed over all of the assets, undertakings and properties of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc., 2123618 Ontario Limited, 1849722 Ontario Ltd., 2469244 Ontario Limited, 2364507 Ontario Limited, 1254044 Ontario Limited and 2612550 Ontario Limited (together, the “**Receivership Parties**”);

**AND WHEREAS** pursuant to an order of the Court issued on October 16, 2019, the Receiver was discharged as the court-appointed receiver of all of the assets, undertakings and properties of 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited;

**AND WHEREAS** it is contemplated that pursuant to the application of FirstOntario Credit Union Limited under Court File No. CV-19-00632077-00CL, the Receiver will be discharged as receiver of the property municipally known as 22216 Bloomfield Road, Chatham, Ontario, including land, buildings, pumps and related operating assets, but, for clarity, it is not contemplated that the Receiver will be discharged as receiver of any of the other assets, properties and undertakings of 1393382 Ontario Limited;

**AND WHEREAS** all of the assets, undertakings and properties of 908593 Ontario Limited operating as Eagle Travel Plaza, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Ltd., 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited remain subject to the Appointment Order;

**AND WHEREAS** the Receiver has commenced a sale process (the “**Sale Process**”) with the goal of selling all or substantially all of three retail gas stations operated by certain of the Receivership Parties (the “**Gas Station Properties**”), or some portion thereof;

**AND WHEREAS** the Receiver together with its counsel has created the following procedures for the solicitation of competing offers or proposals (each a “**Bid**”) for the acquisition of the Gas Station Properties;

**NOW THEREFORE** the following procedures (the “**Bidding Procedures**”) shall govern the proposed sale of the Gas Station Properties pursuant to a Bid.

All references to currency in these Bidding Procedures are references to Canadian dollars.

### **1. Assets for Sale**

The Receiver is soliciting competing offers for all or a portion of the Gas Station Properties.

## 2. Bidding Deadlines

All Bids must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by the Notice Parties (as defined below) no later than 5:00 p.m. (Toronto time) on Friday, February 28, 2020 (the “**Bid Deadline**”).

Written copies of the Bids shall be delivered by the Bid Deadline to: (a) BDO Canada Limited, 25 Main Street West, Suite 805, Hamilton Ontario, L8P1H1, Attn: Chris Mazur, Email: cmazur@bdo.ca, Tel: (905) 524-1008, Fax: (905) 570-0249; and (b) Aird & Berlis LLP, 181 Bay Street, Suite 1800, Toronto, Ontario, M5J 2T9, Attn: Kathryn Esaw, Email: kesaw@airdberlis.com, Tel: (416) 865-4707, Fax: (416) 863-1515 (collectively, the “**Notice Parties**”).

A Bid received after the Bid Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to the Notice Parties contemporaneously.

## 3. Access to Due Diligence Materials

Only parties that execute a non-disclosure agreement (the “**NDA**”) are eligible to receive access to the electronic data room (the “**Data Room**”) due-diligence access or additional non-public information. The Data Room will contain information relevant to the Sale Process and will make a representative available to respond to additional information requests from Bidders. The Data Room will contain a copy of the form of asset purchase agreement (the “**Form of APA**”). The Receiver and its counsel are not responsible for, and bear no liability with respect to, any information obtained by any party in connection with the sale of the Gas Station Properties.

A party’s access to the Data Room and eligibility to receive due diligence or non-public information shall terminate when the earliest of the following events occur: (a) such party does not submit a Bid by the Bid Deadline; (b) such party is determined not to be a Qualified Bidder (as that term is defined below); or (c) the announcement of a Successful Bidder (as that term is defined below). Notwithstanding that a party’s access to such information may continue after the Bid Deadline, the Receiver shall not be obligated to furnish any further due diligence information after the Bid Deadline.

## 4. Determination of Qualified Bids

Each interested party (a “**Bidder**”) shall submit a bid (a “**Bid**”), prior to the Bid Deadline, to the Notice Parties, which Bid must, as determined by the Receiver, satisfy each of the following conditions (a “**Qualified Bid**” and the entity or entities submitting a Qualified Bid, a “**Qualified Bidder**”):

- (a) Identification of Bidder. Identification of the Bidder and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
- (b) Written Submission of Modified APA and Commitment to Close. Qualified Bidders must submit a Bid by the Bid Deadline in the form of an executed mark-up of the Form of APA (each a “**Modified APA**”) reflecting such Bidder’s proposed changes to the Form of APA (together with a blackline of the Modified APA against the Form of APA), and a written and binding commitment to close on the terms and conditions set forth therein. The Receiver may discuss the Modified APA of any Bidder after submission (including for clarification of its terms and conditions) with such Bidder.
- (c) Irrevocable. A Bid must be irrevocable until:
  - (i) if such Bid is not selected as either the Successful Bid or the Back-Up Bid (each as defined below), the day following the selection of the Successful Bid;
  - (ii) if such Bid is selected as the Successful Bid, until the closing of the transaction; and
  - (iii) if such Bid is selected as the Back-Up Bid, the date on which the Successful Bid closes.
- (d) Contingencies. A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence.
- (e) Proof of Financial Ability to Perform. A Bid must identify the actual Bidder and owners and ultimate parent company of the Bidder and contain written evidence upon which the Receiver may reasonably conclude that the Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the Bidder’s current financial statements, provided, however, that the Receiver with the assistance of its counsel shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably refuse a Bidder’s financial qualifications.
- (f) No Fees Payable to Qualified Bidder. A Bid may not request, be conditioned on or otherwise entitle the Bidder to any break up fee, expense reimbursement, or similar type of payment.

- (g) Good Faith Deposit. Each Bid must be accompanied by a cash deposit (the “**Good Faith Deposit**”) in an amount equal to at least 10% of the cash purchase price, which shall be paid to Aird & Berlis LLP to be held in trust in accordance with these Bidding Procedures.
- (h) Portion Bidder. A party that does not wish to purchase all or substantially all of the Gas Station Properties (a “**Portion Bidder**”) may submit a Bid (a “**Portion Bid**”) in respect of a smaller subset of the Gas Station Properties, and the Portion Bidder and the Portion Bid shall constitute a Qualified Bidder and a Qualified Bid, respectively, if such Portion Bid satisfies the requirements in paragraphs (a) to (g) above.

## 5. **Due Diligence from Bidders**

Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information will be a basis for the Receiver with the assistance of its counsel to determine that the Bidder is not a Qualified Bidder.

## 6. **No Agent or Broker Fees**

The Receiver shall not be obligated to pay any commission or other fee to any broker or party performing a service similar to a broker in respect of the solicitation or sale of the Gas Station Properties.

Bidders acknowledge that there are no agent or broker fees or other commissions payable on the purchase price or otherwise in connection with the Sale Process, and each party agrees to indemnify the other party against any claim for compensation or commission by any third party or agent retained by such party in connection with the Sale Process.

## 7. **Determination of Qualified Bidder**

The Receiver, with the assistance of its counsel, shall review all Bids submitted in accordance with these Bidding Procedures and shall notify all Bidders with respect to whether they are a Qualified Bidder as soon as practicable after the Bid Deadline. The Receiver may, in its sole discretion, allow an interested party to cure a Bid that does not otherwise meet the criteria set out in section 4, above.

The Receiver may consult with any party at its discretion in respect of the Bids.

## 8. **Bidding Procedures**

The Receiver, with the assistance of its counsel, shall: (a) coordinate the efforts of Bidders in conducting their due-diligence investigations; (b) receive Bids and determine whether a Bidder is a Qualified Bidder as permitted by the provisions



herein; and (c) negotiate offers made in accordance with these Bidding Procedures to purchase all or a portion of the Gas Station Properties.

**9. Negotiations and Selection of a Successful Bid and Back-Up Bid**

The Receiver may, in its sole discretion and if it determines it to be appropriate, conduct negotiations with the Qualified Bidders to determine the highest and/or best Bid with respect to the Gas Station Properties. In any event, following the Bid Deadline, the Receiver may accept what it determines to be the highest and/or best Qualified Bid (such Bid, the “**Successful Bid**” and such Bidder, the “**Successful Bidder**”) and take steps as may be necessary to finalize definitive transaction documents for the Successful Bid with the Successful Bidder.

The Receiver may select a second Qualified Bid that it determines to be the second highest and/or best Qualified Bid (such Bid, the “**Back-Up Bid**” and such Bidder, the “**Back-Up Bidder**”) to be an alternate Bid.

**10. Acceptance of Successful Bid**

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-Up Bid only when it has been approved by the Court and has been deemed to be the Successful Bid.

The Receiver shall not be required to accept the highest Bid, or any Bid.

**11. “As Is, Where Is”**

The sale of Gas Station Properties pursuant to these Bidding Procedures shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Receiver except to the extent set forth in the Successful Bidder’s purchase agreement. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Gas Station Properties prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Gas Station Properties in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Gas Station Properties, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or the terms of the sale of the Gas Station Properties shall be set forth in the Successful Bidder’s purchase agreement.

**12. Free of Any and All Encumbrances**

Except as otherwise provided in the Successful Bidder's purchase agreement, all of the Receiver's right, title, and interest in and to the Gas Station Properties subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, and other than any permitted encumbrances under the Successful Bidder's purchase agreement, the "**Encumbrances**") to the extent and as provided for in a vesting order of the Court.

### **13. Sale Hearing**

A hearing to approve the sale of the Gas Station Properties to the Successful Bidder shall be conducted by the Court within seven (7) business days following the selection of the Successful Bidder, subject to Court availability, at 330 University Avenue, Toronto, Ontario (the "**Sale Hearing**").

If the sale to the Successful Bidder is not consummated for any reason, the Receiver shall be authorized, but not required, to deem the Back-Up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the sale with the Back-Up Bidder and upon so doing the Back-Up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

### **14. Return or Application of Good Faith Deposit**

Good Faith Deposits of all Bidders shall be held in a separate non-interest bearing account or escrow. Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders as soon as practicable following such determination. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-Up Bidder, shall be returned to such Qualified Bidders two (2) business days after the selection of the Successful Bidder and the Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing or otherwise dealt with in accordance with the terms of such Bid. The Good Faith Deposit of the Back-Up Bidder shall (i) be held in a non-interest bearing account until such time as the Back-Up Bid becomes revocable in accordance with the terms hereof, and is revoked by the Back-Up Bidder, and thereafter returned to the Back-Up Bidder, or (ii) if a transaction is completed with the Back-Up Bidder, be applied to the purchase price of the transaction contemplated by the purchase agreement of the Back-Up Bidder at closing.

### **15. Modifications and Reservations**

These Bidding Procedures may only be modified or amended with the express written consent of the Receiver.

**SCHEDULE A**  
**Bidding Procedures Timeline**

| <b>Date</b>               | <b>Description of Bidding Procedures</b>                          |
|---------------------------|-------------------------------------------------------------------|
| Week of January 6, 2020   | Receiver begins marketing the Gas Station Properties              |
| Week of January 6, 2020   | Interested parties sign NDA and access Data Room                  |
| Friday, February 28, 2020 | Bid Deadline                                                      |
| Monday, March 2, 2020     | Shortlisted Bidders negotiate with the Receiver                   |
| Tuesday, March 3, 2020    | Successful Bidder identified (and Back-Up Bidder, if appropriate) |
| Thursday, March 5, 2020   | APA and transaction documents finalized                           |
| Week of March 9, 2020     | Court attendance regarding sale                                   |
| By Friday, March 27, 2020 | Close of sale transaction                                         |

**CANADIAN IMPERIAL BANK OF COMMERCE**

- and -

**SIMRANJIT DHILLON ET AL.**

Plaintiff

Defendants

Court File No. CV-19-00628293-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**ORDER**

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*Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.*

**APPENDIX E**  
**NEWSPAPER ADVERTISEMENT**

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See attached.

## ACQUISITION OPPORTUNITY

### Esso & Shell Gas Stations & Ancillary Businesses



BDO Canada Limited, in its capacity as Court Appointed Receiver of various entities (the “Receiver”), as more particularly described in a Receivership Order dated September 30, 2019, and subsequent Orders made by the Court, is inviting offers for the purchase of four (4) Esso and one (1) Shell branded gas stations and ancillary businesses including convenience stores and restaurants (collectively the “Gas Stations”).

#### KEY INVESTMENT HIGHLIGHTS:

- The Gas Stations are located in Southwestern Ontario and are improved by convenience stores and restaurants.
- The Gas Stations are being marketed by the Receiver on an operating/going concern basis.
- While the Receiver is marketing the Gas Stations collectively, offers on individual Gas Stations will be permitted.
- The properties from which the Gas Stations operate are owned by entities subject to the Receivership Order and are being marketed by the Receiver along with the respective operating businesses.
- The Gas Stations operate under the “Esso” or “Shell” trade names, as applicable, with the Esso convenience stores branded as either “On the Run” or “Express Stop” and the Shell convenience store branded as “Shell Stop” which carry a recognizable standard of quality known to consumers.

The assets of the respective Gas Stations, including the real properties, are being offered for sale under a Court approved sale process implemented by the Receiver.

**DEADLINE FOR THE SUBMISSION OF BINDING OFFERS WITH DEPOSIT IS 5:00 PM EST ON JANUARY 24, 2020.**

For additional information contact BDO.

#### CONTACT INFORMATION:

Michael Lalani  
BDO Canada LLP  
Tel: 1-647-598-6707  
Email: mlalani@bdo.ca



**APPENDIX F**  
**FORM OF NON-DISCLOSURE AGREEMENT**

---

See attached.

<Date>

BDO Canada Limited  
25 Main Street West, Suite 805  
Hamilton, Ontario L8P1H1

Attention: Chris Mazur

Dear Sir:

**Re: Non-Disclosure Agreement**

In order to assist the undersigned in assessing the sale of the assets, undertakings and properties (the “**Property**”) of 908593 Ontario Limited operating as Eagle Travel Plaza and 1393382 Ontario Limited (collectively, the “**Companies**”) by BDO Canada Limited, in its capacity as the Court-appointed receiver of the Property (in such capacity, the “**Receiver**”), we understand that the Receiver will provide us and/or any of our affiliates, directors, officers, employees, agents, professional advisors or consultants (collectively, our “**Representatives**”) with information concerning the Property and/or the Companies which will be of a confidential nature.

In consideration of the Receiver providing such information, we agree as follows:

1. “**Confidential Information**” in this agreement shall include all communications, whether written or oral, of any kind whatsoever, between the Receiver and our Representatives concerning the Property, the Companies or any of its affiliates, or any or all intellectual property, trade secrets, data, reports, interpretations, forecasts, analyses, customer and supplier information, studies, appraisals, agreements or other materials prepared or acquired by us or our Representatives. Confidential Information, however, will not include information which:
  - (a) is already in our possession at the time of receiving same from the Receiver as evidenced by documentation to that effect; or
  - (b) is or may be published or become available within the public domain, provided that disclosure in the public domain was not as a result of a breach of this agreement by us or our Representatives.
2. In consideration of the Receiver providing us or our Representatives with Confidential Information, we agree that we and our Representatives:
  - (a) will keep the Confidential Information in strict confidence;
  - (b) will not use the Confidential Information in any manner whatsoever, in whole or in part, other than in connection with our evaluation for the purpose set out above; and



- (c) will not disclose to any person any Confidential Information, that the Confidential Information has been made available to us, or that we are assessing the sale of the Property by the Receiver.
3. We agree that the Confidential Information will only be disclosed, to the extent required by law, and used by those of our Representatives who need to know the Confidential Information for the purpose of assessing the sale of the Property by the Receiver, and that we will advise each of such Representatives of this agreement and of its terms. In any event, we will be responsible for any breach of this agreement by our Representatives.
  4. In the event that we or any of our Representatives who have received any Confidential Information are required by law to disclose any Confidential Information, we will provide the Receiver with prompt written notice of any such requirement so that the Receiver may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this agreement. We will not oppose action by the Receiver to obtain an appropriate protective order or other remedy. In the event that either such protective order or other remedy is not obtained or that the Receiver waives compliance with the provisions of this agreement, we will disclose only that portion of the Confidential Information which we are legally obliged to disclose to the appropriate authorities.
  5. We acknowledge that the Receiver makes no express or implied representations or warranties as to the accuracy or completeness of the Confidential Information, and that the Receiver expressly disclaims any and all liability that may be based on the Confidential Information, errors therein or omissions therefrom.
  6. We will indemnify and hold harmless the Receiver and its affiliates, directors, partners, officers, employees, agents, professional advisors and consultants from any and all losses or damages (including, without limitation, legal costs) which are incurred directly or indirectly as a result of unauthorized disclosure or use of the Confidential Information by us or our Representatives.
  7. The Confidential Information, together with any copies thereof, except for the portion of the Confidential Information which consists of analyses, compilations, studies, or other documents prepared by us or our Representatives, will be returned to the Receiver upon the request of the Receiver, which request may be made at any time at the sole discretion of the Receiver, and neither we nor our Representatives will retain any copies or extracts thereof. That portion of the Confidential Information which consists of analyses, compilations, studies or other documents prepared by us or our Representatives shall be destroyed. If requested, we will provide the Receiver with an appropriate affidavit as to the disposition of this material at the conclusion of our negotiations.
  8. We acknowledge that this agreement shall enure to the benefit of and be binding upon us and our respective successors and permitted assigns.

- 9. We acknowledge that no interest, licence or any right in respect of the Confidential Information, other than as expressly set out herein, is granted to us under this agreement, by implication or otherwise.
- 10. We acknowledge that the Receiver is acting in its capacity as the Court-appointed receiver of the Property and shall have no personal or corporate liability under this agreement.
- 11. We agree that this agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and shall remain in full force for a period of one (1) year from the date hereof.

DATED this <\*> day of <\*>, <\*>.

<NAME OF ENTITY>

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness Name: )  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
<Name of Individual>

37885301.4

**APPENDIX G**  
**TEMPLATE SALE AGREEMENT**

---

See attached.

## **ASSET PURCHASE AGREEMENT**

### **BETWEEN**

#### **BDO CANADA LIMITED**

solely in its capacity as court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly court-appointed and since discharged receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity

- and -

<\*>

Dated: <\*>, 2020

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## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the <\*> day of <\*>, 2020.

### BETWEEN:

#### **BDO CANADA LIMITED**

solely in its capacity as court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly court-appointed and since discharged receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity

(the “**Receiver**”)

- and -

<\*>

(the “**Purchaser**”)

**WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on September 30, 2019 (the “**Receivership Order**”), the Receiver was appointed as the court-appointed receiver of all of the assets, undertakings and properties of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc., 2123618 Ontario Limited, 1849722 Ontario Ltd., 2469244 Ontario Limited, 2364507 Ontario Limited, 1254044 Ontario Limited and 2612550 Ontario Limited;

**AND WHEREAS** pursuant to an order of the Court issued on October 16, 2019 and amended on October 30, 2019 (and as may be subsequently amended), the Receiver was discharged as the court-appointed receiver of all of the assets, undertakings and properties of 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited;

**AND WHEREAS** pursuant to an order of the Court issued on December 16, 2019 (and as may be subsequently amended), the Receiver was discharged as the court-appointed receiver of all of the assets, undertakings and properties of 2145744 Ontario Limited;

**AND WHEREAS** pursuant to order of the Court issued on December 16, 2019 and amended on December 18, 2019 (and as may be subsequently amended), the Receiver was discharged as the court-appointed receiver of the property municipally known as 22216 Bloomfield Road, Chatham, Ontario, including pumps and related operating assets (the “**Bloomfield Property**”),

but, for clarity, the Receiver was not discharged as the court-appointed receiver of any of the other assets, properties and undertakings of 1393382 Ontario Limited;

**AND WHEREAS** all of the assets, undertakings and properties except the Bloomfield Property (collectively, the “**Property**”) of 908593 Ontario Limited operating as Eagle Travel Plaza and 1393382 Ontario Limited (together, the “**Companies**”), *inter alia*, remain subject to the Receivership Order;

**AND WHEREAS** pursuant to an order of the Court issued on December 16, 2019 (the “**Sale Process Order**”), the Receiver was authorized to offer the Purchased Assets (as defined hereafter) for sale under a marketing and sales process established in the Fifth Report of the Receiver dated November 26, 2019, and to apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Receiver’s right, title and interest in and to the Purchased Assets;

**AND WHEREAS** the Purchaser acknowledges its receipt and review of a confidential information memorandum making certain confidential disclosures with respect to the Companies and the Property;

**AND WHEREAS** the Purchaser wishes to purchase, and the Receiver wishes to sell, the Purchased Assets 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, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

## **ARTICLE 1 DEFINED TERMS**

### **1.1 Definitions.**

In this Agreement:

“**Accounts Payable**” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services by the Companies or the Receiver in the ordinary course of business;

“**Accounts Receivable**” means all accounts receivables, bills receivable, trade accounts, trade debts and book debts and insurance claims due or accruing due to by the Companies or the Receiver in connection with the Business;

“**Agreement**” means this asset purchase agreement, 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 issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule A hereto;

“**Assignable Assets**” has the meaning given in section 3.1(2) hereof;

“**Assumed Obligations**” has the meaning given in section 3.3 hereof;

“**Books and Records**” means, other than the Excluded Books and Records, all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) used or intended for use in connection with the operation or conduct of the Business or the Purchased Assets, including the Contracts, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records and other data;

“**Business**” means the business carried on by the Companies, including, without limitation, the operation, ownership and management of the Property;

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

“**Cash**” means any and all of the Companies’ cash and liquid assets easily convertible into cash, including, without limitation, any such cash, cash equivalents (including bank account balances and marketable securities), including the amounts of any received but uncleared checks and wires issued to the Companies or the Receiver (in connection with the Business) prior to Closing;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Companies or the Property, and “**Claim**” means any one of them;

“**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 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 12:01 a.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Closing Working Capital**” means (a) Current Assets; minus (b) Current Liabilities, in each case determined as of the Closing Time;

“**Consents and Approvals**” means the consents and approvals of all relevant third parties;

“**Contracts**” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Companies is a party, including, without limitation, those contracts listed in Schedule B hereto;

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

“**Current Assets**” means the current assets of the Business included in the line items set forth in Schedule H, and only to the extent acquired under the terms of this Agreement;

“**Current Liabilities**” means the current liabilities of the Business included in the line items set forth in Schedule H, and only to the extent assumed under the terms of this Agreement.;

“**Companies**” has the meaning set out in the recitals hereof;

“**Deposit**” has the meaning given in section 4.2 hereof;

“**Encumbrances**” means all liens, charges, security interests, pledges, leases, 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;

“**Equipment**” means all of the equipment and other machinery used by the Companies in connection with the Business;

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

“**Excluded Assets**” means the following assets of the Companies:

- (a) any assets (other than fuel) related to the provision and administration of fuel fleet card services regarding fuel purchased from locations owned or operated by Pilot Travel Centers LLC, Flying J Canada Inc. or their respective affiliates and partners (the “**Fuel Card Business**”), including but not limited to the customer lists and any other Books and Records related to the Fuel Card Business;
- (b) the Excluded Books and Records;

- (c) all the Accounts Receivable;
- (d) the benefit of any refundable Taxes payable or paid by the Companies net of any amounts withheld by any taxing authority, and any claim or right of the Companies to any refund, rebate, or credit of Taxes;
- (e) the rights that accrue to the Companies and the Receiver under the Transaction Documents;
- (f) all Cash; and
- (g) any other asset(s) set out in Schedule D hereto,

and any other rights, title and interest of the Receiver in and to any other asset(s) of the Companies that the Purchaser elects to be an Excluded Asset prior to the Closing Time. The exclusion of any of the foregoing Excluded Assets from the Transaction shall not give rise to any reduction or adjustment of the Purchase Price;

**“Excluded Books and Records”** means the Books and Records related to the Fuel Card Business, the original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers, all employee-related or employee benefit-related files or records, other than personnel files of employees transferred to the Purchaser, other documents relating to the organization, maintenance and existence of the Companies that do not relate exclusively or primarily to any of the Purchased Assets, and any other books and records that the Receiver is prohibited from disclosing or transferring to the Purchaser under Applicable Law and is required by Applicable Law to retain;

**“Excluded Liabilities”** has the meaning given in section 3.4 hereof;

**“GAAP”** means generally accepted accounting principles as set forth in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis;

**“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; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **“Governmental Authority”** means any one of them;

**“HST”** means harmonized sales tax imposed under Part IX of the ETA;

**“Interim Period”** means the period from and including the date of this Agreement to and including the Closing Date;

**“Intellectual Property”** means, collectively, all of the Receiver’s and the Companies’ right, title and interest in and to:

- (a) all business and trade names, corporate names, brand names and slogans related to the Business;
- (b) all inventions, patents, patent rights, patent applications (including all reissues, divisions, continuations, continuations-in-part and extensions of any patent or patent application), industrial designs and applications for registration of industrial designs related to the Business;
- (c) all copyrights and trade-marks (whether used with wares or services and including the goodwill attaching to such trade-marks), registrations and applications for trade-marks and copyrights (and all future income from such trade-marks and copyrights) related to the Business;
- (d) all rights and interests in and to processes, notebooks, data, trade secrets, designs, know-how, product formulae and information, manufacturing, engineering and other drawings and manuals, technology, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar materials recording or evidencing expertise or information related to the Business;
- (e) all other intellectual and industrial property rights throughout the world related to the Business;
- (f) all licences of the intellectual property listed in items (a) to and including (e) above;
- (g) all future income and proceeds from all the intellectual property listed in items (a) to and including (e) above; and
- (h) all rights to damages and profits by reason of the infringement of any of the intellectual property listed in items (a) to and including (e) above.

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

**“Lands”** means all of the lands and premises municipally described as

- (a) 3613 Queens Line, Tilbury, Ontario;
- (b) 1670 London Line, Sarnia, Ontario; and
- (c) 2097 London Line, Sarnia, Ontario;

the legal descriptions of which Lands are attached as Schedule C hereto;

**“Licences”** means all licences and licence agreements relating to the Business and in favour of the Companies, the Receiver or both the Companies and the Receiver, to the extent that the foregoing are transferable to the Purchaser or the Purchaser’s permitted assignees;

**“Notice”** has the meaning set out in section 15.2 hereof;

**“Parties”** means the Receiver and the Purchaser;

**“Permits”** means all the authorizations, registrations, permits, certificates of approval, approvals, licences, leases, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Business or necessary for the conduct of the Business;

**“Permitted Encumbrances”** means all those Encumbrances described in Schedule E hereto;

**“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;

**“Personal Property Leases”** means all leases of personal or moveable property that relate to the Business, including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof, including, without limitation, the leases of personal or movable property listed on Schedule F hereto;

**“Post-Closing Adjustment”** means (a) the Closing Working Capital; minus (b) the Estimated Closing Working Capital;

**“Priority Indebtedness”** means the indebtedness arising pursuant to the Receiver’s Charge, the Receiver’s Borrowings Charge and any other charge created under the Receivership Order, including, without limitation, all reasonable fees and expenses of the Receiver and its counsel, that are owing and outstanding on the Closing Date;

**“Property”** has the meaning set out in the recitals hereof;

**“Purchase Price”** has the meaning set out in section 4.1 hereof;

**“Purchased Assets”** means all of the Receiver’s and the Companies’ right, title and interest in and to all of the tangible and intangible assets, properties, rights and Claims, wherever located, used, intended for use or arising in connection with the ownership, operation or conduct of the Business, including, without limitation:

- (a) the full benefit of all prepaid expenses of the Business and all deposits with any Person, public utility, lessor or Governmental Authority;
- (b) all the Property that is machinery, Equipment, furnishings, furniture, parts, tools, computer hardware, supplies, accessories and other tangible personal and moveable property (including fuel and other inventory) owned or used or held for use in or relating to the Business, whether located on the Lands or elsewhere;

- (c) all the Personal Property Leases;
- (d) all the Real Property that is used in the Business, wherever situate, including, without limitation, the Lands;
- (e) all the Contracts;
- (f) all the Intellectual Property;
- (g) all the software and documentation therefor used in the Business, including, without limitation, all electronic data processing systems, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material;
- (h) all the goodwill of the Business, and information and documents relevant thereto including, without limitation, lists of customers and suppliers, credit information, telephone and facsimile numbers, research materials, research and development files (including working papers) and the exclusive right of the Purchaser to represent itself as carrying on the Business;
- (i) all the Books and Records, including without limitation, the general ledger and accounting records relating to the Business, all customer lists and lists of suppliers, all operating manuals, plans and specifications and all of the right, interest and benefit, if any, thereunder and to and in the domain names, telephone numbers and facsimile numbers used in the conduct of the Business, provided, however, that the Receiver may retain copies of all Books and Records to the extent necessary or useful for the discharge of its obligations as Receiver of the Property or the filing of any tax return by or on behalf of the Companies;
- (j) all the Permits, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees;
- (k) all the Licences; and
- (l) all the Warranty Rights,
- (m) any other asset(s) set out in Schedule C hereto,

provided, however, that the Purchased Assets shall not include the Excluded Assets;

**“Purchaser”** means <\*>, a <\*> duly formed and validly subsisting under the laws of <\*>;

**“Real Property”** means all the land and premises owned by the Companies, together with all buildings and structures thereon and the fixtures (other than trade fixtures) affixed thereto, as well as all plans, designed and specifications in connection therewith, including, without limitation, the Lands;



“**Receiver**” has the meaning set out in the recitals hereof;

“**Receiver’s Borrowings Charge**” has the meaning set out in the Receivership Order;

“**Receiver’s Charge**” has the meaning set out in the Receivership Order;

“**Receivership Order**” has the meaning set out in the recitals hereof;

“**Rights**” has the meaning given in section 3.1(2) hereof, but only has such meaning in such section;

“**Sale Process Order**” has the meaning set out in the recitals hereof;

“**Target Working Capital**” means \$0.

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any 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;

“**Transaction Documents**” means this Agreement and the other agreements, instruments, and documents required to be delivered at the Closing; and

“**Warranty Rights**” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Companies against manufacturers, contractors or any other Person which apply to any of the Purchased Assets or the Business, but only to the extent that the same are capable of being assigned.

## **ARTICLE 2 SCHEDULES**

### **2.1 Schedules.**

The following schedules are incorporated in and form part of this Agreement:

| <u><b>Schedule</b></u> | <u><b>Description</b></u>                |
|------------------------|------------------------------------------|
| Schedule A             | Form of Draft Approval and Vesting Order |
| Schedule B             | Contracts                                |
| Schedule C             | Purchased Assets                         |
| Schedule D             | Excluded Assets                          |
| Schedule E             | Permitted Encumbrances                   |

|            |                            |
|------------|----------------------------|
| Schedule F | Personal Property Leases   |
| Schedule G | Legal Description of Lands |
| Schedule H | Working Capital            |

**ARTICLE 3**  
**AGREEMENT TO PURCHASE**

**3.1 Purchase and Sale of Purchased Assets.**

- (1) Upon and subject to the provisions hereof, the Receiver agrees to sell the Purchased Assets to the Purchaser, and the Purchaser agrees to purchase the Purchased Assets from the Receiver, in each case at the Closing Time.
- (2) Notwithstanding anything to the contrary in this Agreement, this Agreement or the Transaction Documents shall not constitute an assignment of any rights, benefits or remedies (in this section 3.1(2), collectively, the “**Rights**”) under any Contracts, Licences, Permits, Personal Property Leases, or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained prior to the Closing Date, then, to the extent permitted by Applicable Law and provided that the Purchaser hold the Receiver harmless of and pay all liabilities, costs and expenses incurred by the Receiver or its agents arising out of the Receiver’s performance of its obligations in this section 3.1(2):
  - (a) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
  - (b) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
  - (c) the Receiver will use all reasonable commercial efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
  - (d) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Assignable Assets.

### **3.2 Excluded Assets.**

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

### **3.3 Assumed Obligations.**

On the terms and subject to the conditions set forth in this Agreement, the Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, the following liabilities and obligations of the Companies and the Receiver, as applicable, with respect to the Purchased Assets, other than the Excluded Liabilities (collectively, the “**Assumed Obligations**”):

- (a) all liabilities and obligations arising under or relating to the Contracts;
- (b) if any employees are being transferred: all liabilities and obligations of the Companies or the Receiver with respect to employee benefits, compensation, or other arrangements arising on or after the Closing, with respect to employees of the Companies who accept employment with the Purchaser and commence employment upon the Closing;
- (c) all other liabilities and obligations arising out of or relating to Purchaser’s ownership or operation of the Business or the Purchased Assets on or after the Closing;
- (d) all liabilities and obligations arising under or relating to the Personal Property Leases; and
- (e) all the Accounts Payable that remain unpaid as of the Closing Date.

### **3.4 Excluded Liabilities.**

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Companies or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Companies’ ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Companies arising before the Closing Date;
- (b) any liability resulting from an Encumbrance that is not a Permitted Encumbrance;
- (c) any liabilities associated with any of the Excluded Assets; and

- (d) any liabilities in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date, with the exception of the Assumed Obligations.

## **ARTICLE 4**

### **PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE**

#### **4.1 Purchase Price.**

The purchase price for the Purchased Assets shall be the aggregate of \$<\*>, plus the assumption of the Assumed Obligations (the “**Purchase Price**”), subject to any adjustments contemplated herein.

#### **4.2 Deposit.**

- (1) Upon the execution of this Agreement, the Purchaser shall pay the Receiver a deposit equal to 15% of the Purchase Price (the “**Deposit**”), which Deposit shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in an interest bearing account, which Deposit shall be credited to the Purchaser on the Closing Date.

#### **4.3 Satisfaction of Purchase Price.**

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) \$<\*> shall be paid by the Purchaser to the Receiver on Closing, being the net amount owing after deducting the Deposit from the Purchase Price.

#### **4.4 Allocation of Purchase Price.**

The Purchase Price shall be allocated among the Purchased Assets in a manner to be agreed upon by the Parties prior to the Closing Time, acting reasonably. The Purchase Price will be allocated among the Purchased Assets as set out in Schedule C.

#### **4.5 Adjustment of Purchase Price.**

- (1) Without duplication of items included in the Closing Working Capital, the Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes, utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale.
- (2) Other than as provided for in this Article, there shall be no adjustments to the Purchase Price.

#### 4.6 Working Capital Statement

- (1) Not later than five Business Days prior to the Closing Date, the Receiver shall deliver to the Purchaser a written statement (the “**Working Capital Statement**”) setting forth the Receiver’s good faith estimate of the Closing Working Capital (such amount, the “**Estimated Closing Working Capital**”), together with supporting documentation and calculations. Should the Purchaser object to any of the amounts or calculations in the Working Capital Statement, Purchaser and the Receiver shall cooperate in a diligent and good faith manner to resolve such objections prior to the Closing, and the Working Capital Statement shall be adjusted prior to the Closing to reflect any changes agreed to by the Purchaser and the Receiver prior to the Closing. If the Purchaser and the Receiver cannot agree, the Receiver’ estimate of any items in dispute shall be used for the purposes of Closing.
- (2) At Closing, the Purchase Price shall be adjusted by an amount (the “**Closing Adjustment**”) equal to (a) the Estimated Closing Working Capital; minus (b) the Target Working Capital. If the Closing Adjustment is a positive number, the Purchase Price shall be increased by the amount of the Closing Adjustment. If the Closing Adjustment is a negative number, the Purchase Price shall be reduced by the absolute value of the Closing Adjustment.
- (3) No later than 90 days following the Closing Date, the Purchaser shall deliver to the Receiver a written statement (the “**Post-Closing Working Capital Statement**”) setting forth the Purchaser’s good faith determination of the Closing Working Capital. Within 15 days of the Receiver’ receipt of the Post-Closing Working Capital Statement, the Receiver must notify the Purchaser in writing if it objects to any of the amounts or calculations in the Post-Closing Working Capital Statement and identify the objectionable amounts or calculations in its written notice to the Purchaser. The Purchaser and the Receiver shall cooperate in a diligent good faith manner to resolve such objections as soon as possible after the Purchaser’s receipt of the Receiver’ objections, but not later than 30 days after the Receiver’ receipt of the Post-Closing Working Capital Statement, and the Post-Closing Working Capital Statement shall be adjusted to reflect any changes agreed to by the Purchaser and the Receiver. In the event of an unresolved dispute regarding the Post-Closing Working Capital Statement, the Parties shall utilize the dispute resolution procedure set forth in Section 4.7 as the exclusive mechanism to resolve such dispute.
- (4) Following delivery and agreement, or a determination by the Accounting Referee in accordance with Section 4.7 below with respect to the Post-Closing Working Capital Statement:
  - (a) if the Post-Closing Adjustment is a positive number, the Purchaser shall promptly pay to the Receiver an amount equal to the Post-Closing Adjustment; and
  - (b) if the Post-Closing Adjustment is a negative number, the Receiver shall promptly pay to the Purchaser an amount equal to the absolute value of the Post-Closing Adjustment.

Any payments made pursuant to this Section 4.6 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Applicable Law.

- (5) The Working Capital Statement and the Post-Closing Working Capital Statement shall be prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the financial statements of the Companies for the most recent financial year end.

#### **4.7 Dispute Resolution Procedure**

In the event the Parties are unable to agree upon the Post-Closing Working Capital Statement, such dispute shall be submitted to, and all issues having a bearing on such dispute shall, subject to any order of the Court, be resolved by the Accounting Referee, in consultation with the Receiver. In resolving any such dispute, the Accounting Referee shall consider only those items or amounts in disagreement and shall act as an expert and not an arbitrator. Unless otherwise ordered by the Court, the Accounting Referee's determination of any of the matters set forth above shall be final and binding on the parties to this Agreement. The Accounting Referee shall use commercially reasonable efforts to complete its work within thirty (30) days following its engagement. All fees and expenses of the Accounting Referee shall be borne equally by Purchaser, on the one hand, and the Receiver on the other hand, and each of the Purchaser and the Receiver shall bear their own costs in the dispute.

### **ARTICLE 5 TAXES**

#### **5.1 Taxes.**

- (1) The Purchaser is completely and solely liable and responsible for the full payment of all Taxes in respect to the purchase and sale of the Purchased Assets and shall provide the Receiver at Closing or on such other date as expressly provided herein with proof of payment of such Taxes or, if applicable, provide the Receiver with appropriate tax exemption certificates.
- (2) The Purchaser hereby agrees to indemnify and hold the Receiver harmless from and against all Claims in connection with the payment of any Taxes under this Agreement and in respect of the Transaction, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.

**ARTICLE 6  
CLOSING ARRANGEMENTS**

**6.1 Closing.**

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's lawyers, Aird & Berlis LLP, located in Toronto, Ontario, or on such other time and at such other place 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, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

**6.3 Receiver's Closing Deliverables.**

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

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.5 hereof, to be delivered not less than five Business Days prior to Closing;
- (3) the Working Capital Statement, to be delivered not less than five Business Days prior to Closing;
- (4) an undertaking by the Receiver to readjust the adjustments set out in section 4.5 hereof;
- (5) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time; and
- (6) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

**6.4 Purchaser's Closing Deliverables.**

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

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;

- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time;
- (4) a certificate from the Purchaser, dated as of the Closing Date, certifying:
  - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time in all material respects, with the same effect as though made on and as of the Closing Time (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (5) if necessary, payment or evidence of payment of applicable Taxes or, if applicable, appropriate tax exemption certificates in accordance with article 5 hereof;
- (6) if desired, a direction directing the Receiver to convey title to any of the Purchased Assets to an entity other than the Purchaser; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

## **ARTICLE 7**

### **CONDITIONS PRECEDENT TO CLOSING**

#### **7.1 Conditions in Favour of the Receiver.**

The obligation of the Receiver 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 on the Closing Date in all material respects (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified 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 in all material respects by the Purchaser;
- (3) the Purchaser shall have complied with all the terms and conditions contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (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 Purchased Assets, 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.

## **7.2 Conditions in Favour of Receiver Not Fulfilled.**

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date, then the Receiver 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 Receiver 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:

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (2) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed in all material respects by the Receiver;
- (3) the Receiver shall have complied in all material respects with all the terms and conditions contained in this Agreement applicable to the Receiver prior to the Closing Date; and
- (4) the Court shall have issued the Approval and Vesting Order.

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

If any of the conditions contained in section 7.3 hereof are not fulfilled on or prior to the Closing Date, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their 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 RECEIVER**

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has been duly appointed as the receiver of the Property, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Receiver and the Companies in and to the Purchased Assets; and
- (2) the Receiver is not a non-resident of Canada for the purposes of the ITA.

**ARTICLE 9  
REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of ;
- (2) the Purchaser has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

## **ARTICLE 10 COVENANTS**

### **10.1 Mutual Covenants.**

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement.

### **10.2 Receiver Covenants.**

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Companies and the Property reasonably required to complete the applicable tax elections in accordance with any tax elections contemplated by this Agreement and to execute all necessary forms related thereto.

### **10.3 Purchaser Covenants.**

The Purchaser hereby covenants and agrees that, except as expressly contemplated in this Agreement, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with any tax elections contemplated by this Agreement hereof and to execute all necessary forms related thereto. The Purchaser covenants and agrees to use commercially reasonable efforts following the Closing Time to assist the Receiver with the collection of Accounts Receivable.

## **ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING**

### **11.1 Possession of Purchased Assets.**

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Receiver has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets 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 and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

### **11.2 Examination of Title and Access to Assets.**

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Real Property, including, without limitation, the Lands, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Lands, satisfy itself as to the use of the Lands being in accordance with applicable zoning requirements and satisfy itself that any and

all buildings and structures on the Lands may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding work orders, deficiency notices or order to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title.

- (2) The Purchaser and its agents and representatives may have reasonable access to the Purchased Assets (with the prior written consent of the Receiver, not to be unreasonably withheld) during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Purchased Assets as it deems appropriate, provided that such inspections shall not unduly interfere (and the Purchaser undertakes to use its best efforts, which the Purchaser represents and warrants shall not be less than reasonable commercial efforts, not to so interfere) with the use, operation and enjoyment of the Purchased Assets by the Receiver. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Purchased Assets to the condition same were in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, or as a result of any unauthorized tests or inspections by Government Authorities.

### **11.3 Risk.**

The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Purchased Assets are substantially 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 within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event 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 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 damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).

## **ARTICLE 12 AS IS, WHERE IS**

### **12.1 Condition of the Purchased Assets.**

The Purchaser acknowledges that the Receiver is selling, and the Purchaser is purchasing, the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies 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 Receiver nor the Companies has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets 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, encumbrance, description, fitness for purpose, environmental state or compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

## **ARTICLE 13 POST-CLOSING MATTERS**

### **13.1 Books and Records.**

The Purchaser shall keep and maintain the Books and Records which relate to the Purchased Assets for a period of two years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Receiver and the Companies and, in the event the Companies is adjudged bankrupt, any trustee of the estate of the Companies and their respective representatives, reasonable access during normal business hours, and a licence free of charge, to use and copy the Books and Records and other documentation related to the Purchased Assets, including, without limitation, computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

## **ARTICLE 14 TERMINATION**

### **14.1 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 Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser; or
- (4) pursuant to section 11.3 hereof.

### **14.2 Effect of Termination.**

- (1) If the Receiver terminates this Agreement as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser, the Receiver's right to pursue all legal remedies with respect to such breach shall survive such termination.
- (2) If the Purchaser terminates this Agreement, the Receiver and the Companies shall have no liability in connection with this Agreement except to the extent arising from wilful misconduct.

### **14.3 Termination If No Breach of Agreement.**

If this Agreement is terminated, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein; and
- (3) the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances.

## **ARTICLE 15 GENERAL CONTRACT PROVISIONS**

### **15.1 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 or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver and/or the Companies

shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

## **15.2 Survival Following Completion.**

Notwithstanding any other provision of this Agreement, section 4.5, Article 8, Article 9, section 14.2 and section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of BDO Canada Limited as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof. None of the representations, warranties and covenants of the Receiver set forth in this Agreement, in any other Transaction Document or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the Transaction shall survive Closing.

## **15.3 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 Receiver:

BDO Canada Limited  
25 Main Street West, Suite 805  
Hamilton, ON L8P1H1

Attention: Christopher Mazur, CIRP, LIT  
Tel: (905) 524-1008  
Email: cmazur@bdo.ca

and a copy to the Receiver's counsel to:

Aird & Berlis LLP  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: Steven L. Graff and Kathryn Esaw  
Tel: (416) 865-7726 and (416) 865-4707  
Email: sgraфф@airdberlis.com and kesaw@airdberlis.com

(b) to the Purchaser:

<\*>  
<\*>  
<\*>

Attention: <\*>  
Tel: <\*>  
Email: <\*>

and a copy to the Purchaser's counsel to:

<\*>  
<\*>  
<\*>

Attention: <\*>  
Tel: <\*>  
Email: <\*>

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 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 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 Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

#### **15.4 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.

#### **15.5 Consent.**

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.



### **15.6 Governing Law.**

This Agreement will be interpreted 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 courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

### **15.7 Entire Agreement.**

This Agreement and the other Transaction Documents constitutes the entire agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. 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.

### **15.8 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.

### **15.9 Time Periods.**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **15.10 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 shall not assign this Agreement without the Receiver's prior written approval, which approval shall not be unreasonably withheld. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided 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 Receiver forthwith after having been entered into, upon which the Purchaser shall be fully released from any and all further obligations and liabilities hereunder. The Receiver covenants and agrees to deliver a full and final release and discharge in favour of the Purchaser upon the Purchaser's delivery of an executed Assumption Agreement other than in respect of the Deposit.

### **15.11 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.

### **15.12 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.

### **15.13 No Strict Construction.**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

### **15.14 Currency.**

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

### **15.15 Receiver's Capacity.**

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

### **15.16 No Third Party Beneficiaries.**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum, save and except in the event of any action, suit, proceeding, hearing or other forum as it pertains to matters of confidentiality and any particular representative in connection therewith.

### **15.17 Number and Gender.**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

### **15.18 Counterparts.**

This Agreement may be executed in counterparts and by facsimile, PDF, DocuSign, or other form of electronic signature, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

### **15.19 Misapplied Funds**

If the Receiver or the Purchaser receives in its possession or control (such Party, the “**Receiving Party**”) after the Closing Time an amount that is properly payable to the account of the other Party pursuant to the terms of this Agreement, such amount shall be held by the Receiving Party in trust for the benefit of the other Party, and the Receiving Party shall promptly give notice to the other Party that the Receiving Party is in possession or control of such amount and promptly pay such amount so received to the other Party.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly Court-appointed and since discharged Receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity

By: \_\_\_\_\_  
Name: Christopher J. Mazur, CIRP, LIT  
Title: Senior Vice President



By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A  
FORM OF DRAFT APPROVAL AND VESTING ORDER**

Court File No. CV-19-00628293-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) MONDAY, THE <\*>TH DAY  
)  
JUSTICE HAINEY ) OF <\*>, 2020  
BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of 908593 Ontario Limited, operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited (the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and <\*> (the “**Purchaser**”) dated <\*> and appended to the Report of the Receiver dated <\*> (the “**Report**”), and vesting in the

Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hailey dated September 30, 2019 (as subsequently amended); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of **[Kent (LRO #24) and/or Lambton (LRO #25)]** of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule B hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company’s records pertaining to the Debtors’ past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

---



**Schedule A – Form of Receiver’s Certificate**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**PLAINTIFF**

Plaintiff

- and -

**DEFENDANT**

Defendant

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the “Court”) dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of [DEBTOR] (the “Debtor”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Receiver [Debtor] and [NAME OF PURCHASER] (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section •

of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**[NAME OF RECEIVER], in its capacity as  
Receiver of the undertaking, property and  
assets of [DEBTOR], and not in its personal  
capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Claims to be deleted and expunged from title to Real Property**

**[NTD: To be determined.]**

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**[NTD: To be determined.]**

**SCHEDULE B  
CONTRACTS**

The Contracts include, without limitation:

**[NTD: Bidder to complete.]**

**SCHEDULE C  
PURCHASED ASSETS**

**[NTD: Bidder to complete, including the Purchase Price allocation contemplated at section 4.4 hereof.]**

**SCHEDULE D  
EXCLUDED ASSETS**

**[NTD: Bidder to complete.]**

**SCHEDULE E**  
**PERMITTED ENCUMBRANCES**

**GENERAL**

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing;
2. subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements and other similar agreements with Governmental Authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation, value or marketability of the Property;
3. restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation, value or marketability of the Property;
4. minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation, value or marketability of the Property;
5. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land (including, the Property) or interests therein, reservations of under surface rights to mines and minerals of any kind such as, rights to coal, petroleum and minerals of any kind and rights to enter, prospect and remove the same whether or not such subsisting reservations, limitations, provisos, conditions or exceptions are reserved to or vested in any Governmental Authority by any Applicable Laws;
6. any assigned leases and any registrations or notices in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any Encumbrance of any nature whatsoever charging the interest of persons (other than the Vendor) under any such assigned lease (including subleases, amendments to leases or assignments of leases or subleases) and leasehold mortgages or security interests relating to any tenant secured by such tenant's interest in its assigned lease;
7. the provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning such as, airport zoning regulations, use, development and building by laws and ordinances and other restrictions as to the use of the Property and all active permits and inspection files regarding tenant work at the building;



8. any title defects or irregularities, which are of a minor nature and will not impair the use, operation, value or marketability of the Property for the purposes for which it is presently used;
9. easements, servitudes, rights-of-way or other discrepancies in title or possession relating to the Property as disclosed by the plan of survey, certificate of location or technical description, if any, of the Property made available by the Vendor to the Purchaser;
10. the exceptions and qualifications contained in paragraphs 2, 3, 8, 9, 10 and 12 of Section 44(1) of the Land Titles Act;
11. any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or the Province of Ontario;
12. any unregistered interest in the Property (including without limitation, leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has actual notice;
13. any unregistered easements regarding the provision of utilities to the Property;
14. permits, licences, agreements, easements, rights of way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons or Governmental Authority (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons (including, without in any way limiting the generality of the foregoing, permits, licences, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) that in any such case, individually or in the aggregate, do not materially impair the use, operation, value or marketability of the Property;
15. security given to a governmental authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property;
16. undetermined or inchoate liens incidental to construction, renovation or current operations, which relate to obligations not yet due or delinquent and a claim for which shall not at the time have been registered against the Property and of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario);
17. any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held

by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any Applicable Laws;

18. any lien, together with any certificate of action registered in respect thereof relating to the assigned leases, (a “**tenant lien**”) a claim for which, although registered or of which notice has been given, relates solely to work done by or on behalf of a tenant under an assigned lease if and so long as the Vendor has not assumed or otherwise become liable for the payment of such work and the claimant is not pursuing such tenant lien against the Property;
19. any reference plans or plans registered pursuant to the Boundaries Act;
20. the rights reserved to or vested in any governmental authorities by any applicable laws.

### **SPECIFIC**

#### PIN 00809-0087 (LT):

1. Instrument No. 184129 registered on June 19, 1967 being a Right-of-way Agreement.
1. Instrument No. 455693 registered on February 17, 1988 being an Agreement to authorize installation and use of a sanitary sewer.
2. Instrument No. LT27550 registered on January 17, 2000 being a Transfer.

#### PIN 43138-0087 (LT):

3. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
4. Instrument No. 25R-1530 registered on September 8, 1975 being a Reference Plan.
5. Instrument No. L378397 registered on November 14, 1975 being a Transfer of Easement.
6. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
7. Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
8. Instrument No. L517092 registered on January 24, 1983 being a Redevelopment Agreement.
9. Instrument No. 25R-4686 registered on February 20, 1987 being a Reference Plan.
10. Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.

11. Instrument No. 25R-5108 registered on November 2, 1988 being a Reference Plan.
12. Instrument No. L822872 registered on November 6, 1998 being a Release.
13. Instrument No. 25R-8674 registered on September 17, 2003 being a Reference Plan.
14. Instrument No. L916054 registered on April 30, 2004 being a Transfer.
15. Instrument No. 25R-8841 registered on August 4, 2004 being a Reference Plan.
16. Instrument No. L922907 registered on August 18, 2004 being a Site Plan Control Agreement.
17. Instrument No. L925923 registered on October 15, 2004 being a Transfer.
18. Instrument No. L927108 registered on November 4, 2004 being an Amendment to Site Plan Control Agreement.

PIN 43132-0051 (LT):

19. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
20. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
21. Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
22. Instrument No. L543418 registered on July 3, 1984 being a Development or Redevelopment Agreement.
23. Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.
24. Instrument No. L638086 registered on October 26, 1988 being an Site Plan Agreement.
25. Instrument No. LA191296 registered on September 6, 2017 being a Transfer.

**SCHEDULE F**  
**PERSONAL PROPERTY LEASES**

The Personal Property Leases include, without limitation:

**[NTD: Bidder to complete.]**

**SCHEDULE G  
LEGAL DESCRIPTION OF LANDS**

**Municipal Address:** 3613 Queens Line, Tilbury, Ontario

**PIN:** 00809-0087 (LT)

**Legal Description:** PT LT 16, CON 5 (TILBURY EAST) AS IN 494859 S/T 184129  
TILBURY EAST

**Municipal Address:** 1670 London Line, Sarnia, Ontario

**PIN:** 43138-0087 (LT)

**Legal Description:** PT LT 14 CON 7 SARNIA TWP - PT 1 (EXCEPT PT 1  
25R9403),2,3,4,6,13,15 ,16 & 17 25R8674 ; SARNIA ; S/T EASE ON  
PTS 2,3,4 25R8674 AS IN L378397

**Municipal Address:** 2097 London Line, Sarnia, Ontario

**PIN:** 43132-0051 (LT)

**Legal Description:** LT 26 RCP 647 EXCEPT PT 1, 25R5091; SARNIA

**SCHEDULE H  
WORKING CAPITAL**

**I) Current Assets**

<\*>

**II) Current Liabilities**

<\*>

**[NTD: To be determined as of the Closing Time.]**

37885298.9

**APPENDIX H**  
**SALE AGREEMENT (REDACTED)**

---

See attached.

## **ASSET PURCHASE AGREEMENT**

### **BETWEEN**

#### **BDO CANADA LIMITED**

solely in its capacity as court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly court-appointed and since discharged receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity

- and -

#### **K2 GROUP INC.**

a corporation duly formed and validly subsisting under the laws of the Province of Ontario



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## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** is made as of April 24, 2020

**BETWEEN:**

**BDO CANADA LIMITED**

solely in its capacity as court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly court-appointed and since discharged receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity

(the “**Receiver**”)

- and -

**K2 GROUP INC.**

a corporation duly formed and validly subsisting under the laws of the Province of Ontario

(the “**Purchaser**”)

**WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on September 30, 2019 (the “**Receivership Order**”), the Receiver was appointed as the court-appointed receiver of all of the assets, undertakings and properties of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc., 2123618 Ontario Limited, 1849722 Ontario Ltd., 2469244 Ontario Limited, 2364507 Ontario Limited, 1254044 Ontario Limited and 2612550 Ontario Limited;

**AND WHEREAS** pursuant to an order of the Court issued on October 16, 2019 and amended on October 30, 2019 (and as may be subsequently amended), the Receiver was discharged as the court-appointed receiver of all of the assets, undertakings and properties of 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited;

**AND WHEREAS** pursuant to an order of the Court issued on December 16, 2019 (and as may be subsequently amended), the Receiver was discharged as the court-appointed receiver of all of the assets, undertakings and properties of 2145744 Ontario Limited;

**AND WHEREAS** pursuant to order of the Court issued on December 16, 2019 and amended on December 18, 2019 (and as may be subsequently amended), the Receiver was discharged as the court-appointed receiver of the property municipally known as 22216 Bloomfield Road,

Chatham, Ontario, including pumps and related operating assets (the “**Bloomfield Property**”), but, for clarity, the Receiver was not discharged as the court-appointed receiver of any of the other assets, properties and undertakings of 1393382 Ontario Limited;

**AND WHEREAS** all of the assets, undertakings and properties except the Bloomfield Property (collectively, the “**Property**”) of 908593 Ontario Limited operating as Eagle Travel Plaza and 1393382 Ontario Limited (together, the “**Companies**”), *inter alia*, remain subject to the Receivership Order;

**AND WHEREAS** pursuant to an order of the Court issued on December 16, 2019 (the “**Sale Process Order**”), the Receiver was authorized to offer the Purchased Assets (as defined hereafter) for sale under a marketing and sales process established in the Fifth Report of the Receiver dated November 26, 2019, and to apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Receiver’s right, title and interest in and to the Purchased Assets;

**AND WHEREAS** the Purchaser acknowledges its receipt and review of a confidential information memorandum making certain confidential disclosures with respect to the Companies and the Property;

**AND WHEREAS** the Purchaser wishes to purchase, and the Receiver wishes to sell, the Purchased Assets 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, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

## **ARTICLE 1 DEFINED TERMS**

### **1.1 Definitions.**

In this Agreement:

“**Accounts Payable**” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services by the Companies or the Receiver in the ordinary course of business;

“**Accounts Receivable**” means all accounts receivables, bills receivable, trade accounts, trade debts and book debts and insurance claims due or accruing due to by the Companies or the Receiver in connection with the Business;

“**Agreement**” means this asset purchase agreement, 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 issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule A hereto;

“**Assignable Assets**” has the meaning given in section 3.1(2) hereof;

“**Assumed Obligations**” has the meaning given in section 3.3 hereof;

“**Books and Records**” means, other than the Excluded Books and Records, all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) used or intended for use in connection with the operation or conduct of the Business or the Purchased Assets, including the Contracts, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records and other data;

“**Business**” means the business carried on by the Companies, including, without limitation, the operation, ownership and management of the Property;

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

“**Cash**” means any and all of the Companies’ cash and liquid assets easily convertible into cash, including, without limitation, any such cash, cash equivalents (including bank account balances and marketable securities), including the amounts of any received but uncleared checks and wires issued to the Companies or the Receiver (in connection with the Business) prior to Closing;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Companies or the Property, and “**Claim**” means any one of them;

“**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 days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) June 16, 2020. Notwithstanding the above, the Receiver may, in its sole

discretion, determine that the Closing Date should be 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.

“**Closing Time**” means 12:01 a.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Closing Working Capital**” means (a) Current Assets; minus (b) Current Liabilities, in each case determined as of the Closing Time;

“**Consents and Approvals**” means the consents and approvals of all relevant third parties;

“**Contracts**” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Companies is a party, including, without limitation, those contracts listed in Schedule B hereto;

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

“**Current Assets**” means the current assets of the Business included in the line items set forth in Schedule H, and only to the extent acquired under the terms of this Agreement;

“**Current Liabilities**” means the current liabilities of the Business included in the line items set forth in Schedule H, and only to the extent assumed under the terms of this Agreement.;

“**Companies**” has the meaning set out in the recitals hereof;

“**Deposit**” has the meaning given in section 4.2 hereof;

“**Encumbrances**” means all liens, charges, security interests, pledges, leases, 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;

“**Equipment**” means all of the equipment and other machinery used by the Companies in connection with the Business;

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

“**Excluded Assets**” means the following assets of the Companies:

- (a) any assets (other than fuel) related to the provision and administration of fuel fleet card services regarding fuel purchased from locations owned or operated by Pilot Travel Centers LLC, Flying J Canada Inc. or their respective affiliates and partners (the “**Fuel Card Business**”), including but not limited to the customer lists and any other Books and Records related to the Fuel Card Business;
- (b) the Excluded Books and Records;

- (c) all the Accounts Receivable;
- (d) the benefit of any refundable Taxes payable or paid by the Companies net of any amounts withheld by any taxing authority, and any claim or right of the Companies to any refund, rebate, or credit of Taxes;
- (e) the rights that accrue to the Companies and the Receiver under the Transaction Documents;
- (f) all Cash; and
- (g) any other asset(s) set out in Schedule D hereto,

and any other rights, title and interest of the Receiver in and to any other asset(s) of the Companies that the Purchaser elects to be an Excluded Asset prior to the Closing Time. The exclusion of any of the foregoing Excluded Assets from the Transaction shall not give rise to any reduction or adjustment of the Purchase Price;

**“Excluded Books and Records”** means the Books and Records related to the Fuel Card Business, the original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers, all employee-related or employee benefit-related files or records, other than personnel files of employees transferred to the Purchaser, other documents relating to the organization, maintenance and existence of the Companies that do not relate exclusively or primarily to any of the Purchased Assets, and any other books and records that the Receiver is prohibited from disclosing or transferring to the Purchaser under Applicable Law and is required by Applicable Law to retain;

**“Excluded Liabilities”** has the meaning given in section 3.4 hereof;

**“GAAP”** means generally accepted accounting principles as set forth in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis;

**“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; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **“Governmental Authority”** means any one of them;

**“HST”** means harmonized sales tax imposed under Part IX of the ETA;

**“Interim Period”** means the period from and including the date of this Agreement to and including the Closing Date;



**“Intellectual Property”** means, collectively, all of the Receiver’s and the Companies’ right, title and interest in and to:

- (a) all business and trade names, corporate names, brand names and slogans related to the Business;
- (b) all inventions, patents, patent rights, patent applications (including all reissues, divisions, continuations, continuations-in-part and extensions of any patent or patent application), industrial designs and applications for registration of industrial designs related to the Business;
- (c) all copyrights and trade-marks (whether used with wares or services and including the goodwill attaching to such trade-marks), registrations and applications for trade-marks and copyrights (and all future income from such trade-marks and copyrights) related to the Business;
- (d) all rights and interests in and to processes, notebooks, data, trade secrets, designs, know-how, product formulae and information, manufacturing, engineering and other drawings and manuals, technology, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar materials recording or evidencing expertise or information related to the Business;
- (e) all other intellectual and industrial property rights throughout the world related to the Business;
- (f) all licences of the intellectual property listed in items (a) to and including (e) above;
- (g) all future income and proceeds from all the intellectual property listed in items (a) to and including (e) above; and
- (h) all rights to damages and profits by reason of the infringement of any of the intellectual property listed in items (a) to and including (e) above.

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

**“Lands”** means all of the lands and premises municipally described as

- (a) 3613 Queens Line, Tilbury, Ontario;
- (b) 1670 London Line, Sarnia, Ontario; and
- (c) 2097 London Line, Sarnia, Ontario;

the legal descriptions of which Lands are attached as Schedule G hereto;

**“Licences”** means all licences and licence agreements relating to the Business and in favour of the Companies, the Receiver or both the Companies and the Receiver, to the extent that the foregoing are transferable to the Purchaser or the Purchaser’s permitted assignees;

**“Notice”** has the meaning set out in section 15.2 hereof;

**“Parties”** means the Receiver and the Purchaser;

**“Permits”** means all the authorizations, registrations, permits, certificates of approval, approvals, licences, leases, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Business or necessary for the conduct of the Business;

**“Permitted Encumbrances”** means all those Encumbrances described in Schedule E hereto;

**“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;

**“Personal Property Leases”** means all leases of personal or moveable property that relate to the Business, including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof;

**“Post-Closing Adjustment”** means (a) the Closing Working Capital; minus (b) the Estimated Closing Working Capital;

**“Priority Indebtedness”** means the indebtedness arising pursuant to the Receiver’s Charge, the Receiver’s Borrowings Charge and any other charge created under the Receivership Order, including, without limitation, all reasonable fees and expenses of the Receiver and its counsel, that are owing and outstanding on the Closing Date;

**“Property”** has the meaning set out in the recitals hereof;

**“Purchase Price”** has the meaning set out in section 4.1 hereof;

**“Purchased Assets”** means all of the Receiver’s and the Companies’ right, title and interest in and to all of the tangible and intangible assets, properties, rights and Claims, wherever located, used, intended for use or arising in connection with the ownership, operation or conduct of the Business, including, without limitation:

- (a) the full benefit of all prepaid expenses of the Business and all deposits with any Person, public utility, lessor or Governmental Authority;
- (b) all the Property that is machinery, Equipment, furnishings, furniture, parts, tools, computer hardware, supplies, accessories and other tangible personal and moveable property (including fuel and other inventory) owned or used or held for use in or relating to the Business, whether located on the Lands or elsewhere;

- (c) all the Personal Property Leases;
- (d) all the Real Property that is used in the Business, wherever situate, including, without limitation, the Lands;
- (e) all the Contracts;
- (f) all the Intellectual Property;
- (g) all the software and documentation therefor used in the Business, including, without limitation, all electronic data processing systems, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material;
- (h) all the goodwill of the Business, and information and documents relevant thereto including, without limitation, lists of customers and suppliers, credit information, telephone and facsimile numbers, research materials, research and development files (including working papers) and the exclusive right of the Purchaser to represent itself as carrying on the Business;
- (i) all the Books and Records, including without limitation, the general ledger and accounting records relating to the Business, all customer lists and lists of suppliers, all operating manuals, plans and specifications and all of the right, interest and benefit, if any, thereunder and to and in the domain names, telephone numbers and facsimile numbers used in the conduct of the Business, provided, however, that the Receiver may retain copies of all Books and Records to the extent necessary or useful for the discharge of its obligations as Receiver of the Property or the filing of any tax return by or on behalf of the Companies;
- (j) all the Permits, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees;
- (k) all the Licences; and
- (l) all the Warranty Rights,
- (m) any other asset(s) set out in Schedule C hereto,

provided, however, that the Purchased Assets shall not include the Excluded Assets;

**“Purchaser”** means K2 Group Inc., a corporation duly formed and validly subsisting under the laws of the Province of Ontario;

**“Real Property”** means all the land and premises owned by the Companies, together with all buildings and structures thereon and the fixtures (other than trade fixtures) affixed thereto, as well as all plans, designs and specifications in connection therewith, including, without limitation, the Lands;

“**Receiver**” has the meaning set out in the recitals hereof;

“**Receiver’s Borrowings Charge**” has the meaning set out in the Receivership Order;

“**Receiver’s Charge**” has the meaning set out in the Receivership Order;

“**Receivership Order**” has the meaning set out in the recitals hereof;

“**Rights**” has the meaning given in section 3.1(2) hereof, but only has such meaning in such section;

“**Sale Process Order**” has the meaning set out in the recitals hereof;

“**Target Working Capital**” means \$0.

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any 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;

“**Transaction Documents**” means this Agreement and the other agreements, instruments, and documents required to be delivered at the Closing; and

“**Warranty Rights**” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Companies against manufacturers, contractors or any other Person which apply to any of the Purchased Assets or the Business, but only to the extent that the same are capable of being assigned.

## **ARTICLE 2 SCHEDULES**

### **2.1 Schedules.**

The following schedules are incorporated in and form part of this Agreement:

| <u>Schedule</u> | <u>Description</u>                       |
|-----------------|------------------------------------------|
| Schedule A      | Form of Draft Approval and Vesting Order |
| Schedule B      | Contracts                                |
| Schedule C      | Purchased Assets                         |
| Schedule D      | Excluded Assets                          |
| Schedule E      | Permitted Encumbrances                   |

|            |                            |
|------------|----------------------------|
| Schedule F | Personal Property Leases   |
| Schedule G | Legal Description of Lands |
| Schedule H | Working Capital            |

**ARTICLE 3**  
**AGREEMENT TO PURCHASE**

**3.1 Purchase and Sale of Purchased Assets.**

- (1) Upon and subject to the provisions hereof, the Receiver agrees to sell the Purchased Assets to the Purchaser, and the Purchaser agrees to purchase the Purchased Assets from the Receiver, in each case at the Closing Time.
- (2) Notwithstanding anything to the contrary in this Agreement, this Agreement or the Transaction Documents shall not constitute an assignment of any rights, benefits or remedies (in this section 3.1(2), collectively, the “**Rights**”) under any Contracts, Licences, Permits, Personal Property Leases, or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained prior to the Closing Date, then, to the extent permitted by Applicable Law and provided that the Purchaser hold the Receiver harmless of and pay all liabilities, costs and expenses incurred by the Receiver or its agents arising out of the Receiver’s performance of its obligations in this section 3.1(2):
  - (a) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
  - (b) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
  - (c) the Receiver will use all reasonable commercial efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
  - (d) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Assignable Assets.

### **3.2 Excluded Assets.**

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

### **3.3 Assumed Obligations.**

On the terms and subject to the conditions set forth in this Agreement, the Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, the following liabilities and obligations of the Companies and the Receiver, as applicable, with respect to the Purchased Assets, other than the Excluded Liabilities (collectively, the “**Assumed Obligations**”):

- (a) all liabilities and obligations arising under or relating to the Contracts;
- (b) if any employees are being transferred: all liabilities and obligations of the Companies or the Receiver with respect to employee benefits, compensation, or other arrangements arising on or after the Closing, with respect to employees of the Companies who accept employment with the Purchaser and commence employment upon the Closing;
- (c) all other liabilities and obligations arising out of or relating to Purchaser’s ownership or operation of the Business or the Purchased Assets on or after the Closing;
- (d) all liabilities and obligations arising under or relating to the Personal Property Leases; and
- (e) all the Accounts Payable that remain unpaid as of the Closing Date.

### **3.4 Excluded Liabilities.**

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Companies or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Companies’ ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Companies arising before the Closing Date;
- (b) any liability resulting from an Encumbrance that is not a Permitted Encumbrance;
- (c) any liabilities associated with any of the Excluded Assets; and

- (d) any liabilities in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date, with the exception of the Assumed Obligations.

**ARTICLE 4**  
**PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE**

**4.1 Purchase Price.**

The purchase price for the Purchased Assets shall be the aggregate of [REDACTED] plus the assumption of the Assumed Obligations (the “**Purchase Price**”), subject to any adjustments contemplated herein, and plus applicable taxes as contemplated by Article 5 of this Agreement.

**4.2 Deposit.**

- (1) The Receiver acknowledges receipt of a deposit equal to 15% of the Purchase Price (the “**Initial Deposit**”).
- (2) The Purchaser agrees to pay an additional deposit of [REDACTED] (together with the Initial Deposit, the “**Deposit**”) in the following three installments:
  - (a) [REDACTED] upon the execution of this Agreement;
  - (b) [REDACTED] on May 15, 2020; and
  - (c) [REDACTED] on May 30, 2020.
- (3) The Purchaser agrees that the Deposit is not refundable in any event, notwithstanding anything to the contrary in this Agreement.
- (4) The Deposit shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (5) The Parties agree that the Receiver shall cause the Deposit to be placed in an interest bearing account, which Deposit shall be credited to the Purchaser on the Closing Date.

**4.3 Satisfaction of Purchase Price.**

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit and any accrued interest on the Deposit shall be applied against the Purchase Price; and
- (b) the balance shall be paid by the Purchaser to the Receiver on Closing, being the net amount owing after deducting the Deposit and any accrued interest on the Deposit from the Purchase Price.

#### 4.4 Allocation of Purchase Price.

The Purchase Price shall be allocated among the Purchased Assets in a manner to be agreed upon by the Parties prior to the Closing Time, acting reasonably.

#### 4.5 Adjustment of Purchase Price.

- (1) Without duplication of items included in the Closing Working Capital, the Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes, utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale.
- (2) Other than as provided for in this Article, there shall be no adjustments to the Purchase Price.

#### 4.6 Working Capital Statement

- (1) Not later than five Business Days prior to the Closing Date, the Receiver shall deliver to the Purchaser a written statement (the “**Working Capital Statement**”) setting forth the Receiver’s good faith estimate of the Closing Working Capital (such amount, the “**Estimated Closing Working Capital**”), together with supporting documentation and calculations. Should the Purchaser object to any of the amounts or calculations in the Working Capital Statement, Purchaser and the Receiver shall cooperate in a diligent and good faith manner to resolve such objections prior to the Closing, and the Working Capital Statement shall be adjusted prior to the Closing to reflect any changes agreed to by the Purchaser and the Receiver prior to the Closing. If the Purchaser and the Receiver cannot agree, the Receiver’s estimate of any items in dispute shall be used for the purposes of Closing.
- (2) At Closing, the Purchase Price shall be adjusted by an amount (the “**Closing Adjustment**”) equal to (a) the Estimated Closing Working Capital; minus (b) the Target Working Capital. If the Closing Adjustment is a positive number, the Purchase Price shall be increased by the amount of the Closing Adjustment. If the Closing Adjustment is a negative number, the Purchase Price shall be reduced by the absolute value of the Closing Adjustment.
- (3) To the extent that the calculation of the Closing Working Capital requires an on-site accounting of inventory, the Receiver shall arrange for a third party to attend the applicable Lands at an appropriate time to determine the value of such inventory. The determinations by the third party shall be binding on the Parties for the purposes of calculating the Closing Working Capital, unless the determination by the third party is made fraudulently or in bad faith. The Receiver shall use commercially reasonable efforts to provide reasonable advanced notice of the time that such determinations will take place, and the Purchaser shall be permitted to attend (or have a representative attend) the Lands at the time of the determination.



- (4) No later than 90 days following the Closing Date, the Purchaser shall deliver to the Receiver a written statement (the “**Post-Closing Working Capital Statement**”) setting forth the Purchaser’s good faith determination of the Closing Working Capital. Within 15 days of the Receiver’ receipt of the Post-Closing Working Capital Statement, the Receiver must notify the Purchaser in writing if it objects to any of the amounts or calculations in the Post-Closing Working Capital Statement and identify the objectionable amounts or calculations in its written notice to the Purchaser. The Purchaser and the Receiver shall cooperate in a diligent good faith manner to resolve such objections as soon as possible after the Purchaser’s receipt of the Receiver’ objections, but not later than 30 days after the Receiver’ receipt of the Post-Closing Working Capital Statement, and the Post-Closing Working Capital Statement shall be adjusted to reflect any changes agreed to by the Purchaser and the Receiver. In the event of an unresolved dispute regarding the Post-Closing Working Capital Statement, the Parties shall utilize the dispute resolution procedure set forth in Section 4.7 as the exclusive mechanism to resolve such dispute.
- (5) Following delivery and agreement, or a determination by the Accounting Referee in accordance with Section 4.7 below with respect to the Post-Closing Working Capital Statement:
  - (a) if the Post-Closing Adjustment is a positive number, the Purchaser shall promptly pay to the Receiver an amount equal to the Post-Closing Adjustment; and
  - (b) if the Post-Closing Adjustment is a negative number, the Receiver shall promptly pay to the Purchaser an amount equal to the absolute value of the Post-Closing Adjustment.

Any payments made pursuant to this Section 4.6 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Applicable Law.

- (6) The Working Capital Statement and the Post-Closing Working Capital Statement shall be prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the financial statements of the Companies for the most recent financial year end.

#### **4.7 Dispute Resolution Procedure**

In the event the Parties are unable to agree upon the Post-Closing Working Capital Statement, such dispute shall be submitted to, and all issues having a bearing on such dispute shall, subject to any order of the Court, be resolved by the Accounting Referee, in consultation with the Receiver. In resolving any such dispute, the Accounting Referee shall consider only those items or amounts in disagreement and shall act as an expert and not an arbitrator. Unless otherwise ordered by the Court, the Accounting Referee’s determination of any of the matters set forth above shall be final and binding on the parties to this Agreement. The Accounting Referee

shall use commercially reasonable efforts to complete its work within thirty (30) days following its engagement. All fees and expenses of the Accounting Referee shall be borne equally by Purchaser, on the one hand, and the Receiver on the other hand, and each of the Purchaser and the Receiver shall bear their own costs in the dispute.

## **ARTICLE 5 TAXES**

### **5.1 Taxes.**

- (1) The Purchaser is completely and solely liable and responsible for the full payment of all Taxes in respect to the purchase and sale of the Purchased Assets and shall provide the Receiver at Closing or on such other date as expressly provided herein with proof of payment of such Taxes or, if applicable, provide the Receiver with appropriate tax exemption certificates.
- (2) The Purchaser hereby agrees to indemnify and hold the Receiver harmless from and against all Claims in connection with the payment of any Taxes under this Agreement and in respect of the Transaction, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.

## **ARTICLE 6 CLOSING ARRANGEMENTS**

### **6.1 Closing.**

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's lawyers, Aird & Berlis LLP, located in Toronto, Ontario, or on such other time and at such other place 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, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

### **6.3 Receiver's Closing Deliverables.**

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

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.5 hereof, to be delivered not less than five Business Days prior to Closing;

- (3) the Working Capital Statement, to be delivered not less than five Business Days prior to Closing;
- (4) an undertaking by the Receiver to readjust the adjustments set out in section 4.5 hereof;
- (5) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time; and
- (6) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

#### **6.4 Purchaser's Closing Deliverables.**

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

- (1) upon the execution of this Agreement, statutory declarations, in a form acceptable to the Receiver, by each of Kailash Kasal, President of the Purchaser, and Raj Grewal, the lawyer representing the Purchaser in connection with the Transaction, declaring that such persons do not now, and have not in the past had, any financial, business, personal, or solicitor-client relationship with certain related persons;
- (2) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (3) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;
- (4) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time;
- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
  - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time in all material respects, with the same effect as though made on and as of the Closing Time (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (6) if necessary, payment or evidence of payment of applicable Taxes or, if applicable, appropriate tax exemption certificates in accordance with article 5 hereof;
- (7) if desired, a direction directing the Receiver to convey title to any of the Purchased Assets to an entity other than the Purchaser; and

- (8) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

## **ARTICLE 7**

### **CONDITIONS PRECEDENT TO CLOSING**

#### **7.1 Conditions in Favour of the Receiver.**

The obligation of the Receiver 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 on the Closing Date in all material respects (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified 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 in all material respects by the Purchaser;
- (3) the Purchaser shall have complied with all the terms and conditions contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (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 Purchased Assets, 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.

#### **7.2 Conditions in Favour of Receiver Not Fulfilled.**

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date, then the Receiver 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 Receiver 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:

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (2) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed in all material respects by the Receiver;
- (3) the Receiver shall have complied in all material respects with all the terms and conditions contained in this Agreement applicable to the Receiver prior to the Closing Date; and
- (4) the Court shall have issued the Approval and Vesting Order.

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

If any of the conditions contained in section 7.3 hereof are not fulfilled on or prior to the Closing Date, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their 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 RECEIVER**

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has been duly appointed as the receiver of the Property, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Receiver and the Companies in and to the Purchased Assets; and
- (2) the Receiver is not a non-resident of Canada for the purposes of the ITA.

**ARTICLE 9**  
**REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

**ARTICLE 10**  
**COVENANTS**

**10.1 Mutual Covenants.**

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement.

**10.2 Receiver Covenants.**

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Companies and the Property reasonably required to complete the applicable tax elections in accordance with any tax elections contemplated by this Agreement and to execute all necessary forms related thereto.

### **10.3 Purchaser Covenants.**

- (1) The Purchaser hereby covenants and agrees that, except as expressly contemplated in this Agreement, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with any tax elections contemplated by this Agreement hereof and to execute all necessary forms related thereto. The Purchaser covenants and agrees to use commercially reasonable efforts following the Closing Time to assist the Receiver with the collection of Accounts Receivable.
- (2) On or before Closing, the Purchaser shall notify the Receiver as to which employees of the Companies the Purchaser has agreed to hire upon Closing.

## **ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING**

### **11.1 Possession of Purchased Assets.**

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Receiver has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets 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 and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

### **11.2 Examination of Title and Access to Assets.**

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Real Property, including, without limitation, the Lands, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Lands, satisfy itself as to the use of the Lands being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Lands may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding work orders, deficiency notices or order to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title.
- (2) The Purchaser and its agents and representatives may have reasonable access to the Purchased Assets (with the prior written consent of the Receiver, not to be unreasonably withheld) during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Purchased Assets as it deems appropriate, provided that such inspections shall not unduly interfere (and the

Purchaser undertakes to use its best efforts, which the Purchaser represents and warrants shall not be less than reasonable commercial efforts, not to so interfere) with the use, operation and enjoyment of the Purchased Assets by the Receiver. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.

- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Purchased Assets to the condition same were in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, or as a result of any unauthorized tests or inspections by Government Authorities.

### **11.3 Risk.**

The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Purchased Assets are substantially 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 within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event 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 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 damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).

## **ARTICLE 12 AS IS, WHERE IS**

### **12.1 Condition of the Purchased Assets.**

The Purchaser acknowledges that the Receiver is selling, and the Purchaser is purchasing, the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies 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 Receiver nor the Companies has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets 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, encumbrance, description, fitness for purpose, environmental state or compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

### **ARTICLE 13 POST-CLOSING MATTERS**

#### **13.1 Books and Records.**

The Purchaser shall keep and maintain the Books and Records which relate to the Purchased Assets for a period of two years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Receiver and the Companies and, in the event the Companies is adjudged bankrupt, any trustee of the estate of the Companies and their respective representatives, reasonable access during normal business hours, and a licence free of charge, to use and copy the Books and Records and other documentation related to the Purchased Assets, including, without limitation, computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

### **ARTICLE 14 TERMINATION**

#### **14.1 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 Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser; or
- (4) pursuant to section 11.3 hereof.

## **14.2 Effect of Termination.**

- (1) If the Receiver terminates this Agreement as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser, the Receiver's right to pursue all legal remedies with respect to such breach shall survive such termination.
- (2) If the Purchaser terminates this Agreement, the Receiver and the Companies shall have no liability in connection with this Agreement except to the extent arising from wilful misconduct.

## **14.3 Termination If No Breach of Agreement.**

If this Agreement is terminated, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein; and
- (3) the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances.

## **ARTICLE 15 GENERAL CONTRACT PROVISIONS**

### **15.1 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 or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver and/or the Companies shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

### **15.2 Survival Following Completion.**

Notwithstanding any other provision of this Agreement, section 4.5, Article 8, Article 9, section 14.2 and section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of BDO Canada Limited as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof. None of the representations, warranties and covenants of the Receiver set forth in this Agreement, in any

other Transaction Document or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the Transaction shall survive Closing.

### 15.3 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 Receiver:

BDO Canada Limited  
25 Main Street West, Suite 805  
Hamilton, ON L8P1H1

Attention: Christopher Mazur, CIRP, LIT  
Tel: (905) 524-1008  
Email: cmazur@bdo.ca

and a copy to the Receiver’s counsel to:

Aird & Berlis LLP  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: Steven L. Graff and Kathryn Esaw  
Tel: (416) 865-7726 and (416) 865-4707  
Email: sgraff@airdberlis.com and kesaw@airdberlis.com

(b) to the Purchaser:

K2 Group Inc.  
c/o RSG Law Professional Corporation  
20 Maritime Ontario Boulevard, Suite 215  
Brampton, Ontario L6S 0E7

Attention: Kailash Kasal  
Email: [kkasal@k2group.ca](mailto:kkasal@k2group.ca)

and a copy to the Purchaser’s counsel to:

RSG Law Professional Corporation  
20 Maritime Ontario Boulevard, Suite 215  
Brampton, Ontario L6S 0E7

Attention: Raj Grewal  
Tel: (416) 948-3665  
Email: raj@rajgrewal.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 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 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 Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

#### **15.4 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.

#### **15.5 Consent.**

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

#### **15.6 Governing Law.**

This Agreement will be interpreted 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 courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

#### **15.7 Entire Agreement.**

This Agreement and the other Transaction Documents constitutes the entire agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. 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.

### **15.8 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.

### **15.9 Time Periods.**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **15.10 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 shall not assign this Agreement without the Receiver's prior written approval, which approval shall not be unreasonably withheld. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided 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 Receiver forthwith after having been entered into, upon which the Purchaser shall be fully released from any and all further obligations and liabilities hereunder. The Receiver covenants and agrees to deliver a full and final release and discharge in favour of the Purchaser upon the Purchaser's delivery of an executed Assumption Agreement other than in respect of the Deposit.

### **15.11 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.

### **15.12 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.

### **15.13 No Strict Construction.**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

#### **15.14 Currency.**

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

#### **15.15 Receiver's Capacity.**

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

#### **15.16 No Third Party Beneficiaries.**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum, save and except in the event of any action, suit, proceeding, hearing or other forum as it pertains to matters of confidentiality and any particular representative in connection therewith.

#### **15.17 Number and Gender.**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

#### **15.18 Counterparts.**

This Agreement may be executed in counterparts and by facsimile, PDF, DocuSign, or other form of electronic signature, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

#### **15.19 Misapplied Funds**

If the Receiver or the Purchaser receives in its possession or control (such Party, the "**Receiving Party**") after the Closing Time an amount that is properly payable to the account of the other Party pursuant to the terms of this Agreement, such amount shall be held by the Receiving Party in trust for the benefit of the other Party, and the Receiving Party shall promptly give notice to the other Party that the Receiving Party is in possession or control of such amount and promptly pay such amount so received to the other Party.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly Court-appointed and since discharged Receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity



By: \_\_\_\_\_

Name: Christopher J. Mazur, CIRP, LIT

Title: Senior Vice President

**K2 GROUP INC.**

By: \_\_\_\_\_

Name: Kailash Kasal


Title: Director

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly Court-appointed and since discharged Receiver of 2145744 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity

By: \_\_\_\_\_  
Name: Christopher J. Mazur, CIRP, LIT  
Title: Senior Vice President

**K2 GROUP INC.**

By:  \_\_\_\_\_  
Name: Kailash Kasal  
Title: Director





dated <\*> and appended to the Report of the Receiver dated <\*> (the “**Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated September 30, 2019 (as subsequently amended); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for

greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of [Kent (LRO #24) and/or Lambton (LRO #25)] of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule B hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company’s records pertaining to the Debtors’ past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

---

**Schedule A – Form of Receiver’s Certificate**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**PLAINTIFF**

Plaintiff

- and –

**DEFENDANT**

Defendant

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the “Court”) dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of [DEBTOR] (the “Debtor”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Receiver [Debtor] and [NAME OF PURCHASER] (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section •

of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**[NAME OF RECEIVER], in its capacity as  
Receiver of the undertaking, property and  
assets of [DEBTOR], and not in its personal  
capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Claims to be deleted and expunged from title to Real Property**

**[NTD: To be determined.]**

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**[NTD: To be determined.]**



**SCHEDULE B  
CONTRACTS**

All Contracts in the data room located at [https://wwwna2.dfsvenue.com/p/2019038171/\\_layouts/v01/rrdsunprogs/documentlibrary.aspx#/docLib](https://wwwna2.dfsvenue.com/p/2019038171/_layouts/v01/rrdsunprogs/documentlibrary.aspx#/docLib), other than any employment agreements with employees of either of the Companies.

**SCHEDULE C  
PURCHASED ASSETS**

N/A

**SCHEDULE D  
EXCLUDED ASSETS**

- Any computers owned by the Companies

**SCHEDULE E**  
**PERMITTED ENCUMBRANCES**

**GENERAL**

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing;
2. subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements and other similar agreements with Governmental Authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation, value or marketability of the Property;
3. restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation, value or marketability of the Property;
4. minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation, value or marketability of the Property;
5. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land (including, the Property) or interests therein, reservations of under surface rights to mines and minerals of any kind such as, rights to coal, petroleum and minerals of any kind and rights to enter, prospect and remove the same whether or not such subsisting reservations, limitations, provisos, conditions or exceptions are reserved to or vested in any Governmental Authority by any Applicable Laws;
6. any assigned leases and any registrations or notices in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any Encumbrance of any nature whatsoever charging the interest of persons (other than the Vendor) under any such assigned lease (including subleases, amendments to leases or assignments of leases or subleases) and leasehold mortgages or security interests relating to any tenant secured by such tenant's interest in its assigned lease;
7. the provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning such as, airport zoning regulations, use, development and building by laws and ordinances and other restrictions as to the use of the Property and all active permits and inspection files regarding tenant work at the building;

8. any title defects or irregularities, which are of a minor nature and will not impair the use, operation, value or marketability of the Property for the purposes for which it is presently used;
9. easements, servitudes, rights-of-way or other discrepancies in title or possession relating to the Property as disclosed by the plan of survey, certificate of location or technical description, if any, of the Property made available by the Vendor to the Purchaser;
10. the exceptions and qualifications contained in paragraphs 2, 3, 8, 9, 10 and 12 of Section 44(1) of the Land Titles Act;
11. any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or the Province of Ontario;
12. any unregistered interest in the Property (including without limitation, leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has actual notice;
13. any unregistered easements regarding the provision of utilities to the Property;
14. permits, licences, agreements, easements, rights of way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons or Governmental Authority (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons (including, without in any way limiting the generality of the foregoing, permits, licences, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) that in any such case, individually or in the aggregate, do not materially impair the use, operation, value or marketability of the Property;
15. security given to a governmental authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property;
16. undetermined or inchoate liens incidental to construction, renovation or current operations, which relate to obligations not yet due or delinquent and a claim for which shall not at the time have been registered against the Property and of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario);
17. any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held

by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any Applicable Laws;

18. any lien, together with any certificate of action registered in respect thereof relating to the assigned leases, (a “**tenant lien**”) a claim for which, although registered or of which notice has been given, relates solely to work done by or on behalf of a tenant under an assigned lease if and so long as the Vendor has not assumed or otherwise become liable for the payment of such work and the claimant is not pursuing such tenant lien against the Property;
19. any reference plans or plans registered pursuant to the Boundaries Act;
20. the rights reserved to or vested in any governmental authorities by any applicable laws.

### **SPECIFIC**

#### PIN 00809-0087 (LT):

1. Instrument No. 184129 registered on June 19, 1967 being a Right-of-way Agreement.
1. Instrument No. 455693 registered on February 17, 1988 being an Agreement to authorize installation and use of a sanitary sewer.
2. Instrument No. LT27550 registered on January 17, 2000 being a Transfer.

#### PIN 43138-0087 (LT):

3. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
4. Instrument No. 25R-1530 registered on September 8, 1975 being a Reference Plan.
5. Instrument No. L378397 registered on November 14, 1975 being a Transfer of Easement.
6. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
7. Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
8. Instrument No. L517092 registered on January 24, 1983 being a Redevelopment Agreement.
9. Instrument No. 25R-4686 registered on February 20, 1987 being a Reference Plan.
10. Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.

11. Instrument No. 25R-5108 registered on November 2, 1988 being a Reference Plan.
12. Instrument No. L822872 registered on November 6, 1998 being a Release.
13. Instrument No. 25R-8674 registered on September 17, 2003 being a Reference Plan.
14. Instrument No. L916054 registered on April 30, 2004 being a Transfer.
15. Instrument No. 25R-8841 registered on August 4, 2004 being a Reference Plan.
16. Instrument No. L922907 registered on August 18, 2004 being a Site Plan Control Agreement.
17. Instrument No. L925923 registered on October 15, 2004 being a Transfer.
18. Instrument No. L927108 registered on November 4, 2004 being an Amendment to Site Plan Control Agreement.

PIN 43132-0051 (LT):

19. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
20. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
21. Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
22. Instrument No. L543418 registered on July 3, 1984 being a Development or Redevelopment Agreement.
23. Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.
24. Instrument No. L638086 registered on October 26, 1988 being an Site Plan Agreement.
25. Instrument No. LA191296 registered on September 6, 2017 being a Transfer.

**SCHEDULE F  
PERSONAL PROPERTY LEASES**

[Intentionally Deleted]



**SCHEDULE G  
LEGAL DESCRIPTION OF LANDS**

**Municipal Address:** 3613 Queens Line, Tilbury, Ontario

**PIN:** 00809-0087 (LT)

**Legal Description:** PT LT 16, CON 5 (TILBURY EAST) AS IN 494859 S/T 184129  
TILBURY EAST

**Municipal Address:** 1670 London Line, Sarnia, Ontario

**PIN:** 43138-0087 (LT)

**Legal Description:** PT LT 14 CON 7 SARNIA TWP - PT 1 (EXCEPT PT 1  
25R9403),2,3,4,6,13,15 ,16 & 17 25R8674 ; SARNIA ; S/T EASE ON  
PTS 2,3,4 25R8674 AS IN L378397

**Municipal Address:** 2097 London Line, Sarnia, Ontario

**PIN:** 43132-0051 (LT)

**Legal Description:** LT 26 RCP 647 EXCEPT PT 1, 25R5091; SARNIA

**SCHEDULE H  
WORKING CAPITAL**

**I) Current Assets**

- Inventory
- Fuel

**II) Current Liabilities**

- Accounts payable with respect to inventory and fuel

39261826.4

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

-and-

SIMRANJIT DHILLON et al.

Defendants

Court File No. CV-19-00628293-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**SEVENTH REPORT OF THE RECEIVER**

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**AIRD & BERLIS LLP**

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181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

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*Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.*

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 20TH DAY  
 )  
JUSTICE HAINEY ) OF MAY, 2020

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of 908593 Ontario Limited operating as Eagle Travel Plaza (“**908**”), 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 2612550 Ontario Limited and 1393382 Ontario Limited (the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and K2 Group Inc. (the “**Purchaser**”) dated April 24, 2020 and appended to the Seventh Report of the Receiver dated May 8, 2020 (the “**Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in

the Sale Agreement (the “**Purchased Assets**”), by judicial teleconference via Zoom at Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, and those parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Bradley Cook sworn May 8, 2020, filed:

### **SALE APPROVAL AND VESTING**

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hailey dated September 30, 2019 (as subsequently amended); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registrations in the Land Registry Offices for the Land Titles Divisions of Kent (LRO #24) and Lambton (LRO #25) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule B hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company’s records pertaining to the Debtors’ past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **SEALING**

8. **THIS COURT ORDERS** that, until further Order of this Court, Confidential Appendix 1 and Confidential Appendix 2 to the Seventh Report shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.

### **GENERAL**

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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**Schedule A – Form of Receiver’s Certificate**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the “Court”) dated September 30, 2010, BDO Canada Limited was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of 908593 Ontario Limited operating as Eagle Travel Plaza (“**908**”), 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 2612550 Ontario Limited and 1393382 Ontario Limited (the “**Debtor**”).

B. Pursuant to an Order of the Court dated May [8], 2020, the Court approved the agreement of purchase and sale made as of April 24, 2020 (the “Sale Agreement”) between the Receiver and K2 Group Inc (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO Canada Limited, in its capacity as Receiver of the undertaking, property and assets of in its capacity as court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – Claims to be deleted and expunged from title to Real Property**

All claims other than the permitted encumbrances, easements and restrictive covenants listed in Schedule “C”.

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**GENERAL**

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing;
2. subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements and other similar agreements with Governmental Authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation, value or marketability of the Property;
3. restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation, value or marketability of the Property;
4. minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation, value or marketability of the Property;
5. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land (including, the Property) or interests therein, reservations of under surface rights to mines and minerals of any kind such as, rights to coal, petroleum and minerals of any kind and rights to enter, prospect and remove the same whether or not such subsisting reservations, limitations, provisos, conditions or exceptions are reserved to or vested in any Governmental Authority by any Applicable Laws;
6. any assigned leases and any registrations or notices in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any Encumbrance of any nature whatsoever charging the interest of persons (other than the Vendor) under any such assigned lease (including subleases, amendments to leases or assignments of leases or subleases) and leasehold mortgages or security interests relating to any tenant secured by such tenant's interest in its assigned lease;
7. the provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning such as, airport zoning regulations, use, development and building by laws and ordinances and other restrictions as to the use of the Property and all active permits and inspection files regarding tenant work at the building;
8. any title defects or irregularities, which are of a minor nature and will not impair the use, operation, value or marketability of the Property for the purposes for which it is presently used;
9. easements, servitudes, rights-of-way or other discrepancies in title or possession relating to the Property as disclosed by the plan of survey, certificate of location or technical description, if any, of the Property made available by the Vendor to the Purchaser;
10. the exceptions and qualifications contained in paragraphs 2, 3, 8, 9, 10 and 12 of Section 44(1) of the Land Titles Act;

11. any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or the Province of Ontario;
12. any unregistered interest in the Property (including without limitation, leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has actual notice;
13. any unregistered easements regarding the provision of utilities to the Property;
14. permits, licences, agreements, easements, rights of way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons or Governmental Authority (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons (including, without in any way limiting the generality of the foregoing, permits, licences, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) that in any such case, individually or in the aggregate, do not materially impair the use, operation, value or marketability of the Property;
15. security given to a governmental authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property;
16. undetermined or inchoate liens incidental to construction, renovation or current operations, which relate to obligations not yet due or delinquent and a claim for which shall not at the time have been registered against the Property and of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario);
17. any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any Applicable Laws;
18. any lien, together with any certificate of action registered in respect thereof relating to the assigned leases, (a “**tenant lien**”) a claim for which, although registered or of which notice has been given, relates solely to work done by or on behalf of a tenant under an assigned lease if and so long as the Vendor has not assumed or otherwise become liable for the payment of such work and the claimant is not pursuing such tenant lien against the Property;
19. any reference plans or plans registered pursuant to the Boundaries Act;
20. the rights reserved to or vested in any governmental authorities by any applicable laws.

### **SPECIFIC**

PIN 00809-0087 (LT):

1. Instrument No. 184129 registered on June 19, 1967 being a Right-of-way Agreement.

1. Instrument No. 455693 registered on February 17, 1988 being an Agreement to authorize installation and use of a sanitary sewer.
2. Instrument No. LT27550 registered on January 17, 2000 being a Transfer.

PIN 43138-0087 (LT):

3. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
4. Instrument No. 25R-1530 registered on September 8, 1975 being a Reference Plan.
5. Instrument No. L378397 registered on November 14, 1975 being a Transfer of Easement.
6. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
7. Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
8. Instrument No. L517092 registered on January 24, 1983 being a Redevelopment Agreement.
9. Instrument No. 25R-4686 registered on February 20, 1987 being a Reference Plan.
10. Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.
11. Instrument No. 25R-5108 registered on November 2, 1988 being a Reference Plan.
12. Instrument No. L822872 registered on November 6, 1998 being a Release.
13. Instrument No. 25R-8674 registered on September 17, 2003 being a Reference Plan.
14. Instrument No. L916054 registered on April 30, 2004 being a Transfer.
15. Instrument No. 25R-8841 registered on August 4, 2004 being a Reference Plan.
16. Instrument No. L922907 registered on August 18, 2004 being a Site Plan Control Agreement.
17. Instrument No. L925923 registered on October 15, 2004 being a Transfer.
18. Instrument No. L927108 registered on November 4, 2004 being an Amendment to Site Plan Control Agreement.

PIN 43132-0051 (LT):

19. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
20. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
21. Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.
22. Instrument No. L543418 registered on July 3, 1984 being a Development or Redevelopment Agreement.
23. Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.

24. Instrument No. L638086 registered on October 26, 1988 being an Site Plan Agreement.
25. Instrument No. LA191296 registered on September 6, 2017 being a Transfer.

38475383.6



# TAB 4

Revised: January 21, 2014

Court File No. CV-19-00628293-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE \_\_\_\_\_ ) WEEKDAY, THE #  
JUSTICE \_\_\_\_\_ ) DAY OF MONTH, 20YR

~~BETWEEN:-~~

~~PLAINTIFF~~

THE HONOURABLE MR. \_\_\_\_\_ ) WEDNESDAY, THE 20TH DAY  
JUSTICE HAINEY \_\_\_\_\_ ) OF MAY, 2020

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED

~~DEFENDANT~~

~~Defendant~~

Defendants

## APPROVAL AND VESTING ORDER

**THIS MOTION**, made by ~~[RECEIVER'S NAME]~~BDO Canada Limited (“BDO”) in its capacity as the Court-appointed receiver (the **“Receiver”**) of the undertaking, property and assets of ~~[DEBTOR]~~908593 Ontario Limited operating as Eagle Travel Plaza (“908”), 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 2612550 Ontario Limited and 1393382 Ontario Limited (the **“Debtor”**/**“Debtors”**) for an order approving the sale transaction (the **“Transaction”**) contemplated by an agreement of purchase and sale (the **“Sale Agreement”**) between the Receiver and ~~[NAME OF PURCHASER]~~K2 Group Inc. (the **“Purchaser”**) dated ~~[DATE]~~April 24, 2020 and appended to the Seventh Report of the Receiver dated ~~[DATE]~~May 8, 2020 (the **“Report”**), and vesting in the Purchaser the ~~Debtor~~Debtors’s right, title and interest in and to the assets described in the Sale Agreement (the **“Purchased Assets”**), ~~was heard this day at 330 University Avenue, by judicial teleconference via Zoom at~~ Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~and those parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~Bradley Cook sworn ~~[DATE]~~May 8, 2020, filed<sup>1</sup>:

### SALE APPROVAL AND VESTING

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby

<sup>1</sup>~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup>~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup>~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the ~~Debtor's~~Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Hainey dated ~~[DATE]~~September 30, 2019 (as subsequently amended); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule ~~CB~~EB hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule ~~DC~~EC) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the ~~registration~~registrations in the Land Registry ~~Office~~Offices for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~[Land Titles Division~~Division~~s of ~~{LOCATION}~~Kent (LRO #24) and Lambton (LRO #25) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* ~~and/or the Land Registration~~

<sup>4</sup>~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

<sup>5</sup>~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

~~Reform Act~~<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule ~~CB~~ hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company’s records pertaining to the ~~Debtor's~~Debtors’ past and current employees, ~~including personal information of those employees listed on Schedule "C" to the Sale Agreement~~. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the DebtorDebtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the DebtorDebtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the DebtorDebtors and shall not be void or voidable by creditors of the DebtorDebtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### SEALING

8. **THIS COURT ORDERS ~~AND DECLARES~~ that ~~the Transaction is exempt from the application of the Bulk Sales Act (Ontario)~~, until further Order of this Court, Confidential Appendix 1 and Confidential Appendix 2 to the Seventh Report shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.**

#### GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Schedule A – Form of Receiver’s Certificate

Court File No. \_\_\_\_\_

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

B E T W E E N:

~~PLAINTIFF~~

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED

~~DEFENDANT~~

Defendant

Defendants

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Hainey of the Ontario Superior Court of Justice (the ~~“Court”~~) dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ September 30, 2010, BDO Canada Limited was appointed as the receiver (the



"Receiver") of the undertaking, property and assets of ~~{DEBTOR}~~908593 Ontario Limited operating as Eagle Travel Plaza ("908"), 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 2612550 Ontario Limited and 1393382 Ontario Limited (the "Debtor").

B. Pursuant to an Order of the Court dated May ~~[DATE]~~8, 2020, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~April 24, 2020 (the "Sale Agreement") between the Receiver ~~{Debtor}~~ and ~~[NAME OF PURCHASER]~~K2 Group Inc (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section 8 of~~ the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section 8 of~~ the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~{NAME OF RECEIVER}~~ BDO Canada Limited, in its capacity as Receiver of the undertaking, property and assets of ~~{DEBTOR}~~ in its capacity as court-appointed receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

Revised: January 21, 2014

**Schedule B – ~~Purchased Assets~~**

**~~Schedule C~~—Claims to be deleted and expunged from title to Real Property**

All claims other than the permitted encumbrances, easements and restrictive covenants listed in Schedule “C”.

**Schedule DC – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

**GENERAL**

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing;
2. subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements and other similar agreements with Governmental Authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation, value or marketability of the Property;
3. restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation, value or marketability of the Property;
4. minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation, value or marketability of the Property;
5. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land (including, the Property) or interests therein, reservations of under surface rights to mines and minerals of any kind such as, rights to coal, petroleum and minerals of any kind and rights to enter, prospect and remove the same whether or not such subsisting reservations, limitations, provisos, conditions or exceptions are reserved to or vested in any Governmental Authority by any Applicable Laws;
6. any assigned leases and any registrations or notices in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any Encumbrance of any nature whatsoever charging the interest of persons (other than the Vendor) under any such assigned lease (including subleases, amendments to leases or assignments of leases or subleases) and leasehold mortgages or security interests relating to any tenant secured by such tenant's interest in its assigned lease;
7. the provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning such as, airport zoning regulations, use, development and building by laws and ordinances and other restrictions as to the use of the Property and all active permits and inspection files regarding tenant work at the building;
8. any title defects or irregularities, which are of a minor nature and will not impair the use, operation, value or marketability of the Property for the purposes for which it is presently used;

9. easements, servitudes, rights-of-way or other discrepancies in title or possession relating to the Property as disclosed by the plan of survey, certificate of location or technical description, if any, of the Property made available by the Vendor to the Purchaser;
10. the exceptions and qualifications contained in paragraphs 2, 3, 8, 9, 10 and 12 of Section 44(1) of the Land Titles Act;
11. any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or the Province of Ontario;
12. any unregistered interest in the Property (including without limitation, leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has actual notice;
13. any unregistered easements regarding the provision of utilities to the Property;
14. permits, licences, agreements, easements, rights of way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons or Governmental Authority (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons (including, without in any way limiting the generality of the foregoing, permits, licences, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) that in any such case, individually or in the aggregate, do not materially impair the use, operation, value or marketability of the Property;
15. security given to a governmental authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property;
16. undetermined or inchoate liens incidental to construction, renovation or current operations, which relate to obligations not yet due or delinquent and a claim for which shall not at the time have been registered against the Property and of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario);
17. any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any Applicable Laws;
18. any lien, together with any certificate of action registered in respect thereof relating to the assigned leases, (a “**tenant lien**”) a claim for which, although registered or of which notice has been given, relates solely to work done by or on behalf of a tenant under an assigned lease if and so long as the Vendor has not assumed or otherwise become liable for the payment of such work and the claimant is not pursuing such tenant lien against the Property;
19. any reference plans or plans registered pursuant to the Boundaries Act;
20. the rights reserved to or vested in any governmental authorities by any applicable laws.

## SPECIFIC

PIN 00809-0087 (LT):

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16. Instrument No. L922907 registered on August 18, 2004 being a Site Plan Control Agreement.
17. Instrument No. L925923 registered on October 15, 2004 being a Transfer.
18. Instrument No. L927108 registered on November 4, 2004 being an Amendment to Site Plan Control Agreement.

PIN 43132-0051 (LT):

19. Instrument No. L296791 registered on June 2, 1971 being an Order in Council re: Notice of Sarnia Airport Zoning Regulations.
20. Instrument No. L477353 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.

21. [Instrument No. L477354 registered on July 23, 1980 being a Notice of Airport Zoning Regulations.](#)
22. [Instrument No. L543418 registered on July 3, 1984 being a Development or Redevelopment Agreement.](#)
23. [Instrument No. L630391 registered on July 7, 1988 being a Notice of Airport Zoning Regulations.](#)
24. [Instrument No. L638086 registered on October 26, 1988 being an Site Plan Agreement.](#)
25. [Instrument No. LA191296 registered on September 6, 2017 being a Transfer.](#)

[38475383.6](#)

Document comparison by Workshare 10.0 on May 7, 2020 10:55:18 PM

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CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

-and-

SIMRANJIT DHILLON et al.

Defendants

Court File No. CV-19-00628293-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**MOTION RECORD  
(returnable May 20, 2020)**

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*Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.*