

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and
SUNSHINE PROPANE INC.**

Respondents

FOURTH REPORT OF THE RECEIVER

September 13, 2019

Table of Contents

I.	INTRODUCTION.....	1
II.	BACKGROUND	7
III.	RELEASE OF HOLDBACK.....	10
IV.	BOOKS AND RECORDS	11
V.	SALE OF THE GODERICH PROPERTY	11
VI.	THE GODERICH APS	12
VII.	APPROVAL OF THE SALE.....	12
VIII.	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS	13
IX.	PROPOSED INTERIM DISTRIBUTION	14
X.	PROFESSIONAL FEES	15
XI.	CONCLUSION AND REQUEST OF THE COURT	16

Appendices

Appointment Order	A
First Report (without appendices).....	B
February 21 Endorsement.....	C
March 4 Distribution Order	D
March 4 Endorsement	E
March 21 Order	F
Second Report (without appendices).....	G
Port Elgin Approval and Vesting Order.....	H
Second Report Order	I
Amended March 4 Distribution Order	J
Supplemental Report to the First Report (without appendices)	K
Port Colborne Amended Approval and Vesting Order and the Endorsement of Justice Hainey	L
Third Report (without appendices).....	M
July 29 Order and Endorsement.....	N
Interim Statement of Receipts and Disbursements.....	O
Affidavit of Daniel Weisz	P
Affidavit of Sarita Sanasie	Q
Confidential Appendix – Goderich Property.....	R

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 29, 2018 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd. ("**1496765 (Etobicoke)**"), 1651033 Ontario Ltd. ("**1651033 (Burlington)**"), 1527020 Ontario Inc. ("**1527020 (Port Colborne)**"), 2495087 Ontario Inc. ("**2495087 (Port Elgin)**"), 2496800 Ontario Inc. ("**2496800 (Goderich)**"), and Sunshine Propane Inc. ("**Sunshine**") (collectively the "**Debtors**" or the "**Companies**") acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (the "**Property**"). A copy of the Appointment Order is attached to this report as Appendix "**A**".
2. On February 13, 2019, the Receiver brought a motion, returnable on February 21, 2019, for the purpose of, *inter alia*:
 - (a) seeking approval of the sale of the Etobicoke Property (defined below), the Burlington Property (defined below) and the Port Colborne Property (defined below); and
 - (b) seeking the Court's authorization of certain payments including an interim distribution.

A copy of the Receiver's first report to the Court dated February 13, 2019 (the "**First Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "**B**".

-
3. On February 21, 2019, the Debtors attended at the motion hearing to oppose the Receiver's sale of the Etobicoke Property, the Burlington Property and the Port Colborne Property and to seek an adjournment of the motion in order to allow them to prepare a response. A copy of the Endorsement of Justice McEwen adjourning the motion to March 4, 2019 (the "**February 21 Endorsement**") is attached hereto as Appendix "**C**".
 4. On March 4, 2019, the Receiver's motion was heard and Justice Chiappetta:
 - (a) granted Approval and Vesting Orders in respect of each of the Etobicoke Property, the Burlington Property and the Port Colborne Property; and
 - (b) granted a Distribution Order (the "**March 4 Distribution Order**") authorizing the Receiver to make certain payments as contemplated in the First Report, to make an interim distribution to Bank of Montreal ("**BMO**") on account of its outstanding indebtedness and authorizing various ancillary relief. A copy of the March 4 Distribution Order is attached hereto as Appendix "**D**".
 5. A copy of Justice Chiappetta's Endorsement made on March 4, 2019 (the "**March 4 Endorsement**") is attached hereto as Appendix "**E**".
 6. On March 21, 2019, Justice Hainey issued an order amending the Approval and Vesting Order of March 4, 2019 in respect of the Burlington Property (the "**March 21 Order**") to add Instrument No. HR1589610 to Schedule C listing the claims to be deleted and expunged from title to that property. A copy of the March 21 Order is attached hereto as Appendix "**F**".
 7. On April 1, 2019, the Receiver brought a motion, returnable on April 12, 2019, for the purpose of, *inter alia*, seeking:

-
- (a) approval of the sale of the Port Elgin Property (defined below), including the approval to terminate a lease in respect of the Port Elgin Property between 2495087 Ontario Inc. and Naveed Amin, operating as “Shawarma King”, dated July 27, 2018 (the “**Shawarma King Lease**”);
 - (b) the Court’s authorization to destroy certain documents; and
 - (c) the Court’s authorization of certain payments including an interim distribution.

A copy of the Receiver’s second report to the Court dated March 29, 2019 (the “**Second Report**”) in support of the Receiver’s motion is attached hereto, without appendices, as Appendix “G”.

8. On April 12, 2019, the Receiver’s motion was heard and Justice Chiappetta:
 - (a) granted an Approval and Vesting Order (the “**Port Elgin Approval and Vesting Order**”) in respect of the Port Elgin Property, a copy of which is attached hereto as Appendix “H”; and
 - (b) granted an Order (the “**Second Report Order**”) authorizing (i) the Receiver to make certain payments as contemplated in the Second Report, (ii) the Receiver to destroy certain records, (iii) the Receiver to terminate the Shawarma King Lease; (iv) the Receiver to make an interim distribution to BMO on account of its outstanding indebtedness and (v) various ancillary relief. A copy of the Second Report Order is attached hereto as Appendix “I”.
9. On April 12, 2019, Justice Chiappetta issued an Amended Distribution Order (“the “**Amended March 4 Distribution Order**”) to clarify in Paragraph 8 of the

-
- March 4 Distribution Order the amount the Receiver was authorized to pay to BMO from the sale of the Burlington Property. A copy of the Amended March 4 Distribution Order is attached hereto as Appendix "J".
10. On April 24, 2019, the Receiver brought a motion, returnable on April 25, 2019, for the purpose of seeking certain amendments to the March 4, 2019 Order in order to accommodate the Port Colborne Purchaser's request that, for the purpose of completing the sale of the Port Colborne Property, title to the Port Colborne Property be conveyed to 2684697 Ontario Inc. (the "**Substituted Port Colborne Purchaser**"), and not the Port Colborne Purchaser, on closing. A copy of the Receiver's Supplemental Report to the First Report of the Receiver to the Court dated April 24, 2019 (the "**Supplemental Report to the First Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "K".
11. On April 25, 2019, Justice Hainey issued an Order amending the Approval and Vesting Order dated March 4, 2019 in respect of the sale of the Port Colborne Property (the "**Port Colborne Amended Approval and Vesting Order**") to provide for the conveyance of the Port Colborne Property to the Substituted Port Colborne Purchaser. A copy of the Port Colborne Amended Approval and Vesting Order and the Endorsement of Justice Hainey made April 25, 2019, are attached hereto as Appendix "L".
12. On July 23, 2019, the Receiver brought a motion, returnable on July 29, 2019, for the purpose of, *inter alia*, seeking an order authorizing the Receiver to release the holdback of \$254,948.40 held from the proceeds of sale of the Burlington

Property and to distribute those funds to BMO. A copy of the Receiver's Third Report in support of the Receiver's motion is attached hereto, without appendices, as Appendix "M".

13. On July 29, 2019, Justice Conway made an order the ("**July 29 Order**"), *inter alia*, authorizing the Receiver to release the holdback of \$254,948.40 and distribute those funds to BMO. A copy of the July 29 Order and Endorsement of Justice Conway made July 29, 2019, are attached hereto as Appendix "N".
14. The Orders made by the Court and the reports of the Receiver referred to in this report, together with related Court documents, have been posted on the Receiver's website which can be found at rsmcanada.com/2495087-ontario-et-al.

Purpose of Fourth Report

15. The purpose of this fourth report of the Receiver (the "**Fourth Report**") is to:
 - (a) report to the Court on the activities of the Receiver since the date of the Third Report to September 4, 2019;
 - (b) report to the Court on the results of the sales process for the Goderich Property;
 - (c) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period August 29, 2018 to August 31, 2019; and
 - (d) seek Orders:
 - i) authorizing and directing the Receiver to enter into and carry out the terms of the Goderich APS (as defined below), together with any further amendments thereto deemed necessary by the Receiver in its sole

opinion, and vesting title to the Goderich Property in the Goderich Purchaser (each as defined below), or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Goderich APS and the delivery of a Receiver's certificate to the Goderich Purchaser;

- ii) sealing Confidential Appendix "R" to the Fourth Report until the closing of the sale of the Goderich Property;
- iii) approving the Goderich Interim Distribution (as defined below);
- iv) authorizing the Receiver to destroy the Port Colborne Records;
- v) approving the Fourth Report and the Receiver's conduct and activities to September 4, 2019;
- vi) approving the fees and disbursements of the Receiver incurred from June 1, 2019 to July 31, 2019, including the fees and disbursements of the Receiver in respect of Sunshine Propane Inc. that are for the period March 1, 2019 to July 31, 2019; and
- vii) approving the fees and disbursements of Paliare Roland Rosenberg Rothstein LLP ("**Paliare**") incurred from May 1, 2019 to July 31, 2019.

Terms of Reference

16. In preparing the Fourth Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Fourth Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter,

the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, 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 pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

17. Defined terms in the Fourth Report have, unless indicated otherwise herein, the same meanings as set out in the First Report, the Supplemental Report to the First Report, the Second Report and the Third Report.
18. Unless otherwise stated, all dollar amounts contained in the Fourth Report are expressed in Canadian dollars.
19. As set out in the First Report, the Receiver is not in possession of any recent financial information of the Debtors. Accordingly, the Receiver is administering the receiverships of the Debtors on the assumption that the only assets of the Debtors are the Etobicoke Property, the Burlington Property, the Port Colborne Property, the Port Elgin Property and the Goderich Property (collectively, the **"Properties"**), cash on hand and miscellaneous chattels.

II. BACKGROUND

The Parties

Bank of Montreal

20. This section provides a condensed summary of the parties primarily involved in this proceeding. Additional information in respect of the parties, as well as to the

background information relating to the Receiver's appointment, can be found in Paragraphs 9 to 32 of the First Report.

21. BMO is the Applicant in these proceedings and is the primary secured creditor of each of the Companies. As of July 27, 2018, the Debtors were indebted to BMO in the aggregate amount of \$9,992,297.94.
22. The security held by BMO consists of mortgages over the Properties, as well as security agreements over the other assets of the Companies. Certain Debtors have guaranteed certain other Debtors' indebtedness to BMO.

1496765 (Etobicoke)

23. 1496765 (Etobicoke) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 0.4 acre real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the "**Etobicoke Property**"). As at the date of the Appointment Order, 1496765 (Etobicoke) operated an automatic car wash and auto detailing business at the Etobicoke Property. A propane refill centre was also located at the Etobicoke Property.
24. The Etobicoke Property, with the exception of the propane refill centre, has been sold by the Receiver.

1651033 (Burlington)

25. 1651033 (Burlington) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), on which was located a car wash. As at the date of the Appointment

Order, the renovations to the Burlington Property had not been completed and the car wash was not in operation.

26. The Burlington Property has been sold by the Receiver.

1527020 (Port Colborne)

27. 1527020 (Port Colborne) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") from which, as at the date of the Appointment Order, 1527020 (Port Colborne) operated a self-service and automatic car wash.

28. The Port Colborne Property has been sold by the Receiver.

2495087 (Port Elgin)

29. 2495087 (Port Elgin) is an Ontario Corporation that as of the date of the Receiver's appointment, held title to the real property municipally known as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**"). As at the date of the Appointment Order, located on the Port Elgin Property were a self-serve gas bar, a commercial building consisting of a convenience store, retail store and residential apartment, and a Tim Horton's restaurant.

30. The Port Elgin Property has been sold by the Receiver.

2496800 (Goderich)

31. 2496800 (Goderich) is an Ontario Corporation that holds legal and beneficial title to a 0.5 acre real property municipally known as 274 Bayfield Road, Goderich, Ontario (the "**Goderich Property**"). As at the date of the Appointment Order, located on the Goderich Property were a self-serve gas bar, an ExpressMart

convenience store and an automatic car wash. 2496800 (Goderich) operated the gas station, the convenience store and the car wash.

32. The Receiver has entered into an agreement of purchase and sale for the Goderich Property and is seeking the Court's approval of the Goderich APS.

Sunshine

33. Sunshine is an Ontario Corporation incorporated on January 28, 2010.
34. The head office and mailing address for Sunshine is registered as 5462 Dundas St. West, which is the same address as that of 1496765 (Etobicoke), being the Etobicoke Property. Upon its appointment, the Receiver thought that Sunshine's operations consisted of the propane refill business. However, based on the Receiver's enquiry, the Ontario Fuels Safety License for the propane business is issued to Sam Propane Inc., and not to Sunshine.

Relationship between Respondent Parties

35. The Respondents are independent from each other, but appear connected or otherwise related and/or owned by members of the same extended family.

III. RELEASE OF HOLDBACK

36. Further to the July 29 Order, the holdback of \$254,948.40 from the proceeds of sale of the Burlington Property, that was the subject of the Amended March 4 Distribution Order, was released and the funds were distributed to BMO on July 29, 2019.

IV. BOOKS AND RECORDS

37. The Receiver is in possession of corporate records for Young Bros. Garage Limited ("**Young Bros**") dated 1967 to 2006 and for 1515477 Ontario Inc. ("**1515477**") dated 2002 that were located at the Port Colborne Property. The 1515477 and Young Bros records are collectively referred to as the "**Port Colborne Records**".
38. The Receiver understands that 1515477 and Young Bros amalgamated in 2002 and that the amalgamated company which operated under the name Young Bros changed its name in 2008 to 1527020 Ontario Inc.
39. The Receiver intends to destroy the Port Colborne Records and requests the Court's authority to do so.

V. SALE OF THE GODERICH PROPERTY

40. On July 5, 2019, an offer was received from Anil Ahluwalia In Trust (the "**Goderich Purchaser**") for the Goderich Property. The agreement of purchase and sale was fully executed and accepted on July 31, 2019 (the "**Goderich APS**").
41. The Goderich APS was subject to a 30-day conditional period, which was due to expire on August 30, 2019.
42. On August 29, 2019, the Goderich Purchaser waived its condition.

VI. THE GODERICH APS

43. Salient terms of the Goderich APS include (all capitalized terms in this section not defined in the Goderich APS are as otherwise defined in the Fourth Report):
- (a) the purchased assets include the Goderich Property;
 - (b) a deposit of 10% of the Purchase Price has been received from the purchaser;
 - (c) the offer is firm as the Purchaser has waived the Purchaser's Condition;
 - (d) the Goderich APS is conditional on court approval and the issuance of an order vesting title to the purchased assets in the purchaser free and clear of claims and encumbrances, other than those specifically itemized in the Goderich APS;
 - (e) the purchaser is buying the Property on an "as is, where is" basis; and
 - (f) closing of the sale provided for in the Goderich APS is scheduled to occur on the tenth Business Day following the date on which the Vesting Order is granted, or such other date as agreed between the purchaser and the Receiver.
44. A copy of the Goderich APS, including information relating to the Receiver's marketing efforts, is attached to this report at Confidential Appendix "R".

VII. APPROVAL OF THE SALE

45. The Receiver believes that the marketing process undertaken by the Receiver was appropriate for the type of property in question, and provided sufficient market exposure to the Goderich Property for the following reasons:

-
- (a) notice of the sale of the Properties was sent to more than 1,200 parties;
 - (b) the Goderich Property was listed for sale on MLS, Avison's website and Loopnet; and
 - (c) the Goderich Property was exposed to the market for a period of seven months.
46. The terms of the Goderich APS are acceptable to BMO.
47. The Receiver therefore recommends the approval of the Goderich APS by this Honourable Court.
48. The Receiver believes that details of the Goderich APS and information relating to the Receiver's marketing efforts should be kept confidential until the closing of the transaction. The Receiver is of the view that public disclosure thereof would have a negative impact on the future marketing of the Goderich Property should the transaction not be approved or completed.
49. The Receiver therefore respectfully requests that Confidential Appendix "R" be sealed until after the closing of the sale of the Goderich Property.

VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

50. Attached to this report as Appendix "O" is the Receiver's Interim Statement of Receipts and Disbursements for the period August 29, 2018 to August 31, 2019 (the "R&D"). The R&D sets out the Receiver's receipts and disbursements for each of the Debtors, as well as on a combined basis.

51. On a summary combined basis, total receipts were \$10,313,236 and total disbursements were \$2,273,609 resulting in a net cash balance of \$8,039,626 prior to distributions to BMO, as follows:

Company Name	Cash Receipts	Cash Disbursements	Excess of Receipts over Disbursements	Payments to Secured Creditor	Net Funds on Hand
1496765 (Etobicoke)	\$ 3,811,676	\$ (699,986)	\$ 3,111,690	\$ (2,202,185)	\$ 909,505
1651033 (Burlington)	\$ 2,590,515	\$ (473,202)	\$ 2,117,313	\$ (2,054,948)	\$ 62,364
1527020 (Port Colborne)	\$ 980,350	\$ (366,685)	\$ 613,665	\$ (540,000)	\$ 73,665
2495087 (Port Elgin)	\$ 2,625,739	\$ (512,689)	\$ 2,113,049	\$ (2,050,000)	\$ 63,049
2496800 (Goderich)	\$ 298,661	\$ (214,912)	\$ 83,749	\$ -	\$ 83,749
Sunshine	\$ 6,296	\$ (6,135)	\$ 161	\$ -	\$ 161
Total	\$ 10,313,236	\$ (2,273,609)	\$ 8,039,626	\$ (6,847,133)	\$ 1,192,493

IX. PROPOSED INTERIM DISTRIBUTION

52. Upon the closing of the sale of the Goderich Property and receipt by the Receiver of the net sales proceeds therefrom, the Receiver proposes to make the following payments from the net proceeds, after payment of the property taxes and commission payable to Avison (the “**Goderich Interim Distribution**”):
- (a) to BMO, the advances totaling \$99,000 under Receiver Certificates # 5 and 13, plus accrued interest;
 - (b) to 1496765 (Etobicoke), the advances totaling \$195,000 that the Receiver transferred on March 20, 2019 from the Receiver’s trust account in respect of 1496765 (Etobicoke) to the Receiver’s bank account in respect of 2496800 (Goderich), to fund disbursements incurred by 2496800 (Goderich) during the receivership; and

- (c) to BMO, an amount not exceeding the outstanding indebtedness of 2496800 (Goderich) to BMO secured by BMO's first mortgage over the Goderich Property.

X. PROFESSIONAL FEES

53. The Receiver's accounts total \$19,055.50 in fees plus HST of \$2,477.24 for a total amount of \$21,532.74 for the period June 1, 2019 to July 31, 2019, including the fees and disbursements of the Receiver in respect of Sunshine Propane Inc. that are for the period March 1, 2019 to July 31, 2019 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Daniel Weisz sworn September 12, 2019 attached to this report as Appendix "**P**".
54. The accounts of the Receiver's counsel, Paliare, total \$7,910.85 in fees and disbursements and \$986.82 in HST for a total of \$8,897.67 for the period May 1, 2019 to July 31, 2019 (the "**Paliare Roland Accounts**"). A copy of the Paliare Roland Accounts, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Accounts, is set out in the Affidavit of Sarita Sanasie sworn September 12, 2019 attached to this report as Appendix "**Q**".
55. The Receiver is seeking approval of the Receiver's Accounts and the Paliare Roland Accounts.

XI. CONCLUSION AND REQUEST OF THE COURT

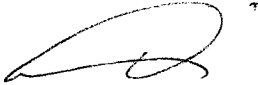
56. The Receiver respectfully requests that the Court grant orders:

- (a) authorizing and directing the Receiver to enter into and carry out the terms of the Goderich APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Goderich Property in the Goderich Purchaser, or as the Goderich Purchaser may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Goderich APS and the delivery of a Receiver's certificate to the Goderich Purchaser;
- (b) sealing Confidential Appendix "R" to the Fourth Report until the closing of the sale of the Goderich Property;
- (c) authorizing the Receiver to destroy the Port Colborne Records;
- (d) approving the Goderich Interim Distribution;
- (e) approving the Fourth Report and the Receiver's conduct and activities to September 4, 2019;
- (f) approving the fees and disbursements of the Receiver incurred from June 1, 2019 to July 31, 2019 including the fees and disbursements of the Receiver in respect of Sunshine Propane Inc. that are for the period March 1, 2019 to July 31, 2019; and
- (g) approving the fees and disbursements of Paliare incurred from May 1, 2019 to July 31, 2019.

All of which is respectfully submitted to this Court as of this 13th day of September, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager of
1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc.,
2495087 Ontario Inc., 2496800 Ontario Inc., and Sunshine Propane Inc.
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

TAB A

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

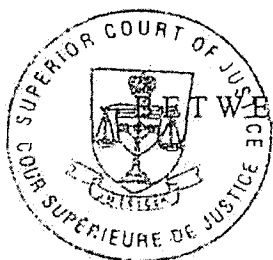
WEDNESDAY, THE 29TH

JUSTICE HANEY

)

DAY OF AUGUST, 2018

)



BETWEEN:

BANK OF MONTREAL

Applicant

-and-

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO ~~INC~~ LTD., 1496765 ONTARIO ~~INC~~ LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER
(appointing Receiver)

THIS MOTION made by the Applicant 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 RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (collectively, the "Debtors") acquired for, or used in relation to businesses carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jason Locke sworn July 30, 2018 and the Exhibits thereto, on reading the consent of RSM Canada Limited to act as the Receiver and on hearing the submissions of counsel for the Applicant *and counsel for the Respondents,*



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, RSM 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 the businesses 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 any or all of the Debtors, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, 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 Debtors, 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,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
 - (ii) 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;

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, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 any or all of the Debtors;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any or all 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;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) 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 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.

NO PROCEEDINGS AGAINST THE RECEIVER

8. 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

9. 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

10. 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

11. 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

12. 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

13. 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

14. 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

15. 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

16. 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

17. 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

18. 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.

19. 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.

20. 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

21. 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 \$500,000 (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.

22. 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.

23. 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.

24. 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

25. 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 '<rsmcanada.com/2495087-ontario-et-al>'.

26. 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

27. 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.

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

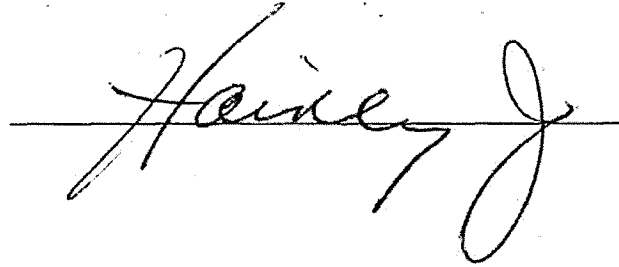
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

30. 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.

31. 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' estate with such priority and at such time as this Court may determine.

32. 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.

A handwritten signature in cursive script, appearing to read "Heiney J.", written over a horizontal line.

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

AUG 29 2018

PER / PAR:

A handwritten signature in cursive script, appearing to be a stylized "M" or "W", written over a horizontal line.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited the receiver and manager (the "Receiver") of the assets, undertakings and properties 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (collectively, the "Debtors") 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 29th day of August, 2018 (the "Order") made in an action having Court file number Court File No. CV-18-00602537-00CL, 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.

2. 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.

3. 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.

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

5. 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.

6. 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.

7. 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__.

RSM CANADA LIMITED, solely in its capacity
as Receiver of the Debtors, and not in its
personal or corporate capacity

Per: _____

Name:

Title:

00802.0279/11607923_1

BANK OF MONTREAL
Applicant

-and- 2495087 ONTARIO INC. et al.
Respondents

Court File No. CV-18-00602537-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Applicant, Bank of Montreal

RCP-E 4C (May 1, 2016)

TAB B

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and
SUNSHINE PROPANE INC.

Respondents

FIRST REPORT OF THE RECEIVER

February 13, 2019

Table of Contents

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	7
III.	RECEIVER'S ACTIVITIES TO DATE.....	12
IV.	LEASE – BURLINGTON	16
V.	INSURANCE.....	17
VI.	BOOKS AND RECORDS AND FINANCIAL STATEMENTS	18
VII.	RECEIVER'S DECISION TO NOT RE-COMMENCE OPERATIONS	19
VIII.	COMPUTERS AND PERSONAL PROPERTY CLAIMED.....	22
IX.	SUNSHINE AND SAM PROPANE	25
X.	PARKLAND/ULTRAMAR LEASES	27
XI.	TIM HORTONS AND TDL RIGHT OF FIRST REFUSAL	28
XII.	PROPERTY TAXES	29
XIII.	APPRAISALS.....	29
XIV.	ENVIRONMENTAL SITE ASSESSMENTS	30
XV.	MARKETING AND SALES ACTIVITIES	30
XVI.	OFFERS RECEIVED.....	31
XVII.	THE ETOBOCOKE APS, THE BURLINGTON APS AND THE PORT COLBORNE APS	33
XVIII.	APPROVAL OF SALES	35
XIX.	CIBC ACCOUNTS	36
XX.	OTHER ENTITIES	38
XXI.	SECURED OR PRIORITY CLAIMS	39
XXII.	STATUTORY NOTICES AND REPORTS	44
XXIII.	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS	44
XXIV.	PROPOSED INTERIM DISTRIBUTION.....	45
XXV.	PROFESSIONAL FEES	47
XXVI.	CONCLUSION AND REQUEST OF THE COURT	48

Appendices

Appointment Order	A
Corporation Profile Report – 1496765 (Etobicoke)	B
Corporation Profile Report -1651033 (Burlington)	C
Corporation Profile Report - 1527020 (Port Colborne)	D
Corporation Profile Report - 2495087 (Port Elgin)	E
Corporation Profile Report - 2496800 (Goderich)	F
Corporation Profile Report - Sunshine	G
August 24 Endorsement	H
August 29 Endorsement	I
Corporation Profile Report – Sam Propane	J
Sublease Terminations (excluding Schedule C)	K
Lease Terminations (excluding Schedule C)	L
Marketing Information	M
Title Search - Etobicoke	N
Title Search - Burlington	O
Title Search – Port Colborne	P
Title Search – Port Elgin	Q
Title Search - Goderich	R
PPSA Search - 1496765 (Etobicoke)	S
PPSA Search - 1651033 (Burlington)	T
PPSA Search - 1527020 (Port Colborne)	U
PPSA Search - 2495087 (Port Elgin)	V
PPSA Search - 2496800 (Goderich)	W
PPSA Search - Sunshine	X
Security Opinions	Y
BMO Statements	Z
CRA Correspondence and Notice of Assessment	AA

MOF Correspondence	BB
Notice and Statement of Receiver	CC
Interim Statement of Receipts and Disbursements.....	DD
Summary of Receiver Certificates	EE
Affidavit of Daniel Weisz.....	FF
Affidavit of Michelle Jackson	GG
Confidential Appendix – Etobicoke Property	HH
Confidential Appendix – Burlington Property	II
Confidential Appendix – Port Colborne Property	JJ

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 29, 2018 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd. ("**1496765 (Etobicoke)**"), 1651033 Ontario Ltd. ("**1651033 (Burlington)**"), 1527020 Ontario Inc. ("**1527020 (Port Colborne)**"), 2495087 Ontario Inc. ("**2495087 (Port Elgin)**"), 2496800 Ontario Inc. ("**2496800 (Goderich)**"), and Sunshine Propane Inc. ("**Sunshine**") (collectively the "**Debtors**" or the "**Companies**") acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (the "**Property**"). A copy of the Appointment Order is attached to this report as Appendix "**A**".
2. The Appointment Order authorizes the Receiver to, among other things:
 - (a) 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) manage, operate, and carry on the business of any or all of the Debtors, 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 Debtors;
 - (c) 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; and

(d) sell, convey, lease or assign the Property or any part or parts thereof out of the ordinary course of business;

a) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and

b) with the approval of the 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.

3. Paragraph 21 of the Appointment Order authorizes the Receiver to borrow monies to fund the exercise of the powers and duties conferred upon the Receiver by the Appointment Order from time to time, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as the Court may by further order authorize). The Receiver's borrowings are secured by way of a fixed and specific charge over the Property 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 (as defined therein) and the charges as set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*.
4. The Appointment Order referred to in this report, together with related Court documents, has been posted on the Receiver's website which can be found at rsmcanada.com/2495087-ontario-et-al.

Purpose of First Report

5. The purpose of this first report of the Receiver (the "**First Report**") is to:
- (i) report to the Court on the activities of the Receiver since the date of the Appointment Order to February 11, 2019;
 - (ii) report to the Court on the condition of, and status of the Receiver's activities in connection with, the real property owned by the Debtors;
 - (iii) report to the Court on the results of the sales process and activities leading to receipt of offers for properties owned by the Debtors;
 - (iv) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period August 29, 2018 to January 31, 2019;
 - (v) provide the Court with information on the fees incurred to January 31, 2019 by the Receiver and the Receiver's independent legal counsel, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"); and
 - (vi) seek Orders:
 - a. authorizing and directing the Receiver to enter into and carry out the terms of the Etobicoke APS (as defined below), together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Etobicoke Property in the Etobicoke Purchaser (each as defined below), or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Etobicoke APS and the delivery of a Receiver's certificate to the Etobicoke Purchaser;

-
- b. authorizing and directing the Receiver to enter into and carry out the terms of the Burlington APS (defined below), together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Burlington Property in the Burlington Purchaser (each as defined below), or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Burlington APS and the delivery of a Receiver's certificate to the Burlington Purchaser;
 - c. authorizing and directing the Receiver to enter into and carry out the terms of the Port Colborne APS (defined below), together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Port Colborne Property in the Port Colborne Purchaser (each as defined below), or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Port Colborne APS and the delivery of a Receiver's certificate to the Port Colborne Purchaser;
 - d. sealing the following Confidential Appendices:
 - i) Confidential Appendix "HH" to the First Report until the closing of the sale of the Etobicoke Property;
 - ii) Confidential Appendix "II" to the First Report until the closing of the sale of the Burlington Property; and
 - iii) Confidential Appendix "JJ" to the First Report until the closing of the sale of the Port Colborne Property;

-
- e. authorizing and directing the Receiver to deposit the Cash (defined below) into the receivership trust account for the benefit of 1496765 (Etobicoke)'s creditors;
 - f. authorizing and directing the Receiver to attempt to access any data saved on the hard drives of the computers found at the Etobicoke Property, the Port Colborne Property and the Goderich Property or if that cannot be done, to destroy the hard drives;
 - g. authorizing the Receiver to sell or otherwise dispose of any remaining items at the Properties, including personal property that may belong to individuals related to the Debtors, that are not removed from those Properties, under the Receiver's supervision, within three business days of the date of the Approval and Vesting Order issued in respect of that Property;
 - h. authorizing the Receiver to make the Interim Distribution (defined below);
 - i. approving the First Report and the Receiver's conduct and activities to February 11, 2019;
 - j. approving the fees and disbursements of the Receiver incurred to January 31, 2019; and
 - k. approving the fees and disbursements of Paliare Roland incurred to January 31, 2019.

Terms of Reference

6. In preparing the First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the **"Information"**). Certain of the information contained in the First Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, 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 pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
7. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.
8. As set out below, the Receiver is not in possession of any recent financial information of the Debtors. Accordingly, the Receiver is administering the receiverships of the Debtors on the assumption that the only assets of the Debtors are the Properties, cash on hand and miscellaneous chattels.

II. BACKGROUND

The Parties

Bank of Montreal

9. Bank of Montreal ("**BMO**") is the Applicant in these proceedings and is the primary secured creditor of each of the Companies. As of July 27, 2018, the Debtors were indebted to BMO in the aggregate amount of \$9,992,297.94, as set out below:

Company	Indebtedness at July 27 , 2018
1496765 (Etobicoke)	\$2,083,285.97
1651033 (Burlington)	\$2,531,062.35
1527020 (Port Colborne)	\$1,411,643.42
2495087 (Port Elgin)	\$2,291,385.27
2496800 (Goderich)	\$1,674,920.93
Total	\$9,992,297.94

10. Sunshine has guaranteed the obligations of 1496765 (Etobicoke) and 1651033 (Burlington).
11. 1496765 (Etobicoke) and 1651033 (Burlington) have guaranteed the indebtedness of the other Debtors (excluding Sunshine).
12. 1527020 (Port Colborne) has guaranteed the indebtedness of 2495087 (Port Elgin).
13. As described later herein, the security held by BMO consists of mortgages over the Properties, as well as security agreements over the other assets of the Companies.

1496765 (Etobicoke)

14. 1496765 (Etobicoke) is an Ontario Corporation incorporated on October 16, 2001. According to a corporate search dated July 25, 2018, Aisha Ashad is 1496765 (Etobicoke)'s President, Secretary, Treasurer and sole Director. A copy of the Corporation Profile report for 1496765 (Etobicoke) is attached to this report as Appendix "B".
15. 1496765 (Etobicoke) holds legal and beneficial title to a 0.4 acre real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the "**Etobicoke Property**"). As at the date of the Appointment Order, 1496765 (Etobicoke) operated an automatic car wash and auto detailing business at the Etobicoke Property.
16. In addition to the car wash, located at the Etobicoke Property is a propane refill centre.

1651033 (Burlington)

17. 1651033 (Burlington) is an Ontario Corporation incorporated on February 23, 2005. According to a corporate search dated July 25, 2018, Aisha Ashad is 1651033 (Burlington)'s President and sole Director. A copy of the Corporation Profile report for 1651033 (Burlington) is attached to this report as Appendix "C".
18. 1651033 (Burlington) holds legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), on which is located a car wash. The car wash had operated as a nine bay self-serve coin wash, plus one automatic wash, until 2017 when renovations began on the car wash. As at the date of the Appointment Order, the renovations had not been completed and the car wash was not in operation.

1527020 (Port Colborne)

19. 1527020 (Port Colborne) is an Ontario Corporation incorporated on August 1, 2002 as Young Bros. Garage Limited (from the amalgamation of Young Bros. Garage Limited and 1515477 Ontario Inc.) that subsequently changed its name to 1527020 Ontario Inc. on May 8, 2008. According to a corporate search dated July 25, 2018, Rauf Khan is 1527020 (Port Colborne)'s President and sole Director, while Aisha Ashad is Secretary. A copy of the Corporation Profile report for 1527020 (Port Colborne) is attached to this report as Appendix "D".
20. 1527020 (Port Colborne) holds legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") from which, as at the date of the Appointment Order, 1527020 (Port Colborne) operated a self-service and automatic car wash.

2495087 (Port Elgin)

21. 2495087 (Port Elgin) is an Ontario Corporation incorporated on December 8, 2015. According to a corporate search dated July 25, 2018, the corporation had, as of the date of the commencement of this proceeding, four directors, but no officers. An updated corporate profile search for 2495087 (Port Elgin) dated February 11, 2019 indicates that Rauf Khan is now the sole Director of 2495087 (Port Elgin), and that the address of the Port Colborne Property is recorded as the mailing address of 2495087 (Port Elgin) and Mr. Khan. A copy of the February 11, 2019 Corporation Profile report for 2495087 (Port Elgin) is attached to this report as Appendix "E".
22. 2495087 (Port Elgin) holds legal and beneficial title to the real property municipally known as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port**

Elgin Property"). The Port Elgin Property is situated on approximately 0.6 acres of land. As at the date of the Appointment Order, located on the Port Elgin Property were:

- (a) a self-serve gas bar operating under the Ultramar brand;
- (b) a two-storey commercial building (approximately 4,000 sq. ft.) consisting of
 - (i) an ExpressMart convenience store, (ii) a retail store on the ground floor and (iii) a residential apartment on the second floor; and
- (c) a separate one-storey building (approximately 3,000 sq. ft.) occupied by a Tim Horton's restaurant.

23. 2495087 (Port Elgin) operated the gas station and convenience store and leased the other premises to tenants.

2496800 (Goderich)

24. 2496800 (Goderich) is an Ontario Corporation incorporated on December 17, 2015. According to a corporate search dated July 25, 2018, Mian Abdul Wadood is the corporation's President, Secretary and Treasurer. Mr. Wadood and Aisha Ashhad are listed as the two Directors. A copy of the Corporation Profile report for 2496800 (Goderich) is attached to this report as Appendix "F".
25. 2496800 (Goderich) holds legal and beneficial title to a 0.5 acre real property municipally known as 274 Bayfield Road, Goderich, Ontario (the "**Goderich Property**"). As at the date of the Appointment Order, located on the Goderich Property were:
- (a) a self-serve gas bar operating under the Ultramar brand;
 - (b) a one-storey commercial building containing an ExpressMart convenience store (approximately 860 sq. ft.); and

(c) an automatic car wash (approximately 1,200 sq. ft.).

26. 2496800 (Goderich) operated the gas station, the convenience store and the car wash.

Sunshine

27. Sunshine is an Ontario Corporation incorporated on January 28, 2010. According to a corporate search dated July 25, 2018, Hashmi Begum is the corporation's President, Secretary and sole Director. A copy of the Corporation Profile report for Sunshine is attached to this report as Appendix "G".
28. The head office and mailing address for Sunshine is registered as 5462 Dundas St. West, which is the same address as that of 1496765 (Etobicoke), being the Etobicoke Property. As noted above, there is located on the Etobicoke Property a propane refill centre for cylinders and vehicles. Upon its appointment, the Receiver thought that Sunshine's operations consisted of the propane refill business. However, based on the Receiver's enquiry, the Ontario Fuels Safety License for the propane business is issued to Sam Propane Inc. ("**Sam Propane**"), and not to Sunshine.
29. The Etobicoke Property, the Burlington Property, the Port Colborne Property, the Port Elgin Property and the Goderich Property are collectively referred to in the First Report as the "**Properties**".
30. The Respondents are independent from each other, but appear connected or otherwise related and/or owned by members of the same extended family.

Appointment of the Receiver

31. For the reasons set out in the Applicant's Notice of Application dated July 31, 2018, the Applicant sought the appointment of the Receiver. The Application was

initially returnable on August 24, 2018 before Justice Hainey but was adjourned until August 29, 2018. A copy of Justice Hainey's Endorsement made on August 24, 2018 is attached to this report as Appendix "H".

32. On August 29, 2018, at the reconvened Application, Justice Hainey issued the Appointment Order appointing the Receiver. A copy of Justice Hainey's Endorsement made on August 29, 2018 is attached to this report as Appendix "I".

III. RECEIVER'S ACTIVITIES TO DATE

Possession and Control

33. Following the issuance of the Appointment Order, the Receiver attended on August 29, 2018 at each of the Properties. The locks and padlocks at the buildings at each of the Properties were changed and additional locks and padlocks were installed as required.
34. The Receiver met at the Etobicoke Property with Azeem (Sam) Mohammed and Aisha Ashad who the Receiver understands are the primary principals of the Debtors, and discussed with them the Receiver's appointment and the Receiver's duties and responsibilities. The Receiver has not met with nor corresponded with any other parties identifying themselves as principals of the Debtors.
35. Pending its determination as to whether the Receiver would operate the gas stations in Port Elgin and Goderich, the Receiver arranged for a representative of Parkland Corporation/Ultramar ("**Parkland**") to accompany the Receiver to the gas stations in Port Elgin and Goderich in order to turn off the gas pumps at those

-
- locations. The Point of Sale systems at those locations, which were controlled by Parkland from its offices in Montreal, were turned off remotely.
36. During the Receiver's attendance at the Port Colborne Property, an individual informed the Receiver that he lived at the Port Colborne Property. The individual did not produce a lease supporting his tenancy claim when requested to do so by the Receiver. After negotiations, the Receiver made a small monetary payment to the individual and he agreed to leave the premises and the Receiver arranged for a security guard to supervise his removal/retrieval of his property by September 1, 2018.
37. The Receiver requested keys for the coin machines and the combinations for the safes at the Port Colborne Property. The Debtors advised they did not have combinations for the safes as they had never used them and numerous keys for the Port Colborne Property were provided, but only one of the keys unlocked a coin box.
38. When the Receiver attended at the Port Elgin Property, it determined that three tenants occupied the upstairs apartment. As of one month following the Receiver's appointment, the three tenants had vacated the premises, as they claimed the apartment was not being properly maintained including that there was no hot water in the premises. The tenants informed the Receiver that they had not been paying rent since they moved in other than first and last months' rent. The Receiver has not pursued the three tenants for any rent that may be owing.

-
39. In order to meet the Receiver's insurance requirements, mobile security patrols were set up at each of the Properties commencing the evening of August 29 to check on the respective properties. The mobile patrols will remain in place until the Properties are sold.

Cash on Hand

40. The Receiver took possession of all cash that it was able to access at the individual Properties. Small amounts of cash were found at the gas stations while only coins were found in the till at the Etobicoke Property car wash.
41. The Receiver was unable to open the car wash coin machines at the Port Colborne Property without a key. When the Debtors subsequently provided the Receiver with keys for the Port Colborne Property on or around October 9, 2018, the Receiver was able to unlock the main coin box, which contained less than \$6. The other coin boxes could not be opened with the keys provided but appeared to be substantially empty. Given that the main coin box contained less than \$6 and that Mr. Mohammed advised the Receiver on September 3, 2018 that the principals had recently emptied the coin boxes, it is unlikely that the other coin boxes contain significant sums of cash. The locksmith who attended to change the locks was unable to open the coin boxes. As of the date of the First Report, no further attempts to open the coin boxes have been made by the Receiver.

Banking

42. The Receiver opened trust accounts for each of the Companies at Bank of Montreal and deposited to those accounts the cash it retrieved from each of the Companies' premises.
43. The Debtors' accounts at Bank of Montreal were frozen.
44. Based on documents found at the Etobicoke Property, it appeared that the Debtors may have had bank accounts at financial institutions other than BMO. Accordingly, on or around August 29, 2018, the Receiver sent letters to TD Canada Trust ("**TD**"), Royal Bank of Canada ("**RBC**") and CIBC, requesting that those banks freeze any accounts of the Debtors that may be at their banks. The Receiver was advised by TD and RBC that there were no active accounts in the names of the Debtors at those banks.
45. CIBC advised of the existence of two accounts in the names of 1496765 (Etobicoke) and Sunshine that Ms. Ashad and Mr. Mohammed did not disclose to the Receiver. The initial information provided by CIBC was that:
 - (a) an account for 1496765 (Etobicoke) was opened on June 14, 2018. As of August 29, 2018 (the date of the Receiver's appointment), the balance in the account was \$2,061.24. As of November 30, 2018, the account balance was \$310.67; and
 - (b) an account for 2496800 (Goderich) was opened on March 6, 2018. As of August 29, 2018, the balance in the account was \$2,796.65. As of November 30, 2018, the account balance was overdrawn.

-
46. The Receiver has, to date, not pursued CIBC for payment of the funds that were in the 1496765 (Etobicoke) and 2496800 (Goderich) accounts as of the date of the letters sent to CIBC.
 47. Further information with respect to the accounts at CIBC is set out later in this report.

IV. LEASE – BURLINGTON

48. On September 13, 2018, the Receiver was contacted by Pro Oil Tanks on behalf of its franchisee, 2614898 Ontario Inc. / Steven Aiken (the “**Franchisee**”). The Franchisee had signed a lease with 1651033 (Burlington) for the operation of an oil change facility to be constructed at the Burlington Property. A copy of the lease dated January 22, 2018 was provided to the Receiver by Pro Oil Tanks.
49. After a review of the lease, the Receiver determined that the lease was not enforceable as the work on the Burlington Property had not reached substantial completion and the lease had not commenced as of the date of receivership. The Receiver set out its position in a letter to the Franchisee dated November 21, 2018. The Receiver also advised the Franchisee that the Receiver would shortly be listing the Burlington Property for sale and that if the Franchisee wished the Receiver to notify prospective purchasers of its interest in leasing the Burlington Property, it should advise the Receiver in writing. However, the Receiver made no representation as to whether a purchaser of the Burlington Property would want to enter into a lease with the Franchisee.

-
50. On November 21, 2018, the Franchisee responded in writing that it was interested in becoming a tenant to the prospective new owner of the Burlington Property.
51. On November 21, 2018, counsel for Pro Oil Tanks advised the Receiver that it was taking the position that the lease is a binding obligation, irrespective of whether the term has commenced. Paliare Roland spoke with counsel for Pro Oil Tanks on December 5, 2018 at which time Pro Oil Tanks acknowledged that it did not have any direct interest in the lease and it was aware that the Franchisee's claim in the receivership may be simply an unsecured claim.

V. INSURANCE

52. The Receiver contacted McDougall Insurance Brokers Ltd. ("**McDougall**"), the insurance broker for 1496765 (Etobicoke), 1651033 (Burlington), 1527020 (Port Colborne) and 2496800 (Goderich) to notify it of the receivership. McDougall confirmed that the insurance policies were in effect and advised the Receiver that the insurer's coverage did not include pollution coverage.
53. The Receiver contacted Federated Insurance ("**Federated**"), the broker for 2495087 (Port Elgin) to notify it of the receivership. The broker confirmed that the policy was in effect until March 17, 2019. Insurance documents provided to the Receiver indicate that 2495087 (Port Elgin) does not have pollution insurance. As the Port Elgin Property was partially vacant, Federated advised that the policy would be adjusted to only cover the building and that coverage for business operations and in respect of any contents or stock would be deleted from the policy.

-
54. The Receiver arranged for its own liability insurance through HUB International Insurance Brokers ("HUB"). The Receiver also arranged for property insurance coverage through HUB as it considered necessary.
 55. On October 16, 2018, McDougall notified the Receiver that the insurer requested that the policies be re-marketed as soon as possible and that the insurer would provide only limited coverage with vacancy permission for up to 60 days. After reviewing its options, the Receiver renewed its liability and property insurance with HUB and cancelled coverage provided through McDougall.
 56. Based on the Port Colborne Property's condition including a leaking roof and the presence of mould in the building, HUB has reduced the amount of its property insurance coverage for that property.

VI. BOOKS AND RECORDS AND FINANCIAL STATEMENTS

57. Upon taking possession of the Properties on August 29, 2018, the Receiver located books and records only at the Etobicoke Property and those records were limited in scope. The Receiver did not find financial records relating to the Companies' sales, payroll records, statutory filings, nor any recent financial statements, accounting ledgers, income tax returns, or tenant leases.
58. On September 4, 5, 6, and 13 and November 13, 2018, and again on January 30, 2019, the Receiver requested of the Debtors, or their counsel, that the Debtors provide to the Receiver financial records of the Debtors. To date, the Debtors have not provided any records to the Receiver.
59. As a result, the Receiver does not have the records it requires to: (i) assess whether the Company's filings are current and the quantum of any liabilities,

- including to Canada Revenue Agency ("CRA"), or (ii) enable CRA to conduct an audit of each of the Companies' source deductions or HST.
60. The Receiver obtained from BMO copies of 2016 or 2017 unaudited financial statements for 1496765 (Etobicoke), 1651033 (Burlington) and 1527020 (Port Colborne) to which Review Engagement reports from Hotay Professional Corporation ("**Hotay**") were appended.
61. On September 25, 2018, the Receiver contacted Hotay to request copies of accounting/financial records for the Debtors in Hotay's possession.
62. On November 12, 2018, Hotay forwarded to the Receiver copies of 2012 or 2013 financial statements for 1496765 (Etobicoke), 1651033 (Burlington), 1527020 (Port Colborne) and Sunshine. As the statements received from Hotay were older than the 2016 or 2017 statements that BMO had provided to the Receiver, on November 12, 2018, the Receiver inquired of Hotay whether Hotay had prepared the 2016 and 2017 statements. Hotay advised that it did not prepare any statements for the Debtors for the years 2014 to 2017. In addition, Hotay stated that it did not prepare any statements for 2495087 (Port Elgin) and 2496800 (Goderich), perform any bookkeeping for any of the Debtors or have any other financial information for the Debtors in its possession.

VII. RECEIVER'S DECISION TO NOT RE-COMMENCE OPERATIONS

63. Upon the Receiver taking possession of the Properties, the Receiver discontinued the operations at the car washes and gas stations pending the Receiver's assessment of the potential costs/risks/benefits of resuming operations during the receivership.

64. The Receiver was of the view that the operations should be continued only if the operations would be profitable taking into account (i) the additional supervisory costs inherent in a receivership, (ii) the Receiver being able to mitigate the risks of the Receiver assuming operations and (iii) that continuing operations would enhance the value of the respective Properties.
65. As set out above, the Receiver did not have any records of the Companies with which to assess the profitability of any of the Company's operations.
66. The Etobicoke Property consisted of a car detailing business as well as a propane refill centre. The car detailing business is an employee intensive business which, if resumed, would require on site supervision by the Receiver. Additionally, the Receiver was uncertain whether the operations of the car wash would have been profitable without the propane refill centre being in operation. The Receiver's insurer has advised the Receiver that it will not provide insurance coverage if the propane operations are continued.
67. The Port Colborne Property car wash is a self-service car wash, largely coin-operated. The Receiver was not able to determine the profitability of that car wash since, as noted above, the Receiver was not in possession of any records with which to assess financial results. In addition, a representative of the neighbouring property informed the Receiver, when the Receiver initially attended at the Port Colborne Property, that the neighbouring business was often called over to rescue cars that had become stuck on the metal grates while attempting to use the car wash located on the premises.

-
68. With reference to the gas stations at the Port Elgin Property and the Goderich Property, the Receiver obtained from Parkland information relating to the number of litres sold at each gas station. Based on its assessment of the number of litres sold, it did not appear to the Receiver that the operations of the gas stations would be profitable, particularly after taking into account the Receiver's costs of supervising the operations of the gas stations.
69. The Receiver understands that the fuel operations of a gas station can be a "loss leader" to draw customers to the convenience store that typically sells product at a high gross margin. However, without any financial records, the Receiver was not able to assess the operations of the convenience store at the two gas station locations.
70. Lastly, prior to being in a position to recommence operations, the Receiver would need to determine whether the requisite insurance coverage and safety certificates/licenses were, or could be, put in place and would need to arrange for an inspection of the gas tanks in order to confirm there were no pollution or other issues.
71. The Receiver also consulted with Avison Young which expressed its belief that a decision by the Receiver not to recommence operations would not negatively impact on the selling values of the Properties.
72. After considering the above matters, the Receiver decided not to recommence operations at any of the Properties.
73. As a result of the Receiver's decision not to recommence operations, and with the approach of winter, the Receiver arranged for the car washes at the the

Etobicoke Property, the Burlington Property, the Port Colborne Property and the Goderich Property to be winterized in November 2018. The winterization process included draining of the lines/pipes and the removal or disposal of chemicals (car wash fluids) on the premises.

74. In order to monitor the condition of the Properties on an ongoing basis, on October 22, 2018, the Receiver entered into an agreement with Moreau On Site Property Services ("**Moreau**") for Moreau to provide certain property management services including:
- i) weekly site inspections of the Properties;
 - ii) obtaining quotes for repairs and maintenance; and
 - iii) granting access to the premises and overseeing work to be done, as required.
75. The Receiver has engaged in regular communication with Moreau to address various issues that arise with respect to each of the Properties.

VIII. COMPUTERS AND PERSONAL PROPERTY CLAIMED

76. When the Receiver attended at the Etobicoke Property to take possession and control of that property, Ms. Ashad and Mr. Mohammed advised the Receiver that they had personal belongings at the Etobicoke Property including books and records pertaining to other businesses.
77. In particular, Ms. Ashad stated that there was a safe in the office and that there was cash inside the safe. Ms. Ashad explained that the cash in the safe represented funds that she collected from donors for a charity and that the funds did not represent assets of the Debtors. Ms. Ashad informed the Receiver that

she did not know how much cash was in the safe. Ms. Ashad provided the Receiver with the key to the safe and, upon opening the safe, the Receiver determined that it contained cash of \$2,560 (the "**Cash**"). The Receiver requested that Ms. Ashad provide documentation to support that the Cash was her personal property and on August 31, 2018 sent Ms. Ashad documentation to complete in order to assert her claim.

78. As of the date of this Report, Ms. Ashad has not provided any documentation in respect of the Cash. Based on Ms. Ashad's assertion that the Cash was not funds of the Debtors, the Receiver has not to date deposited the Cash into the Receiver's 1496765 (Etobicoke) bank account.
79. On September 5, 2018, Olubunmi Ogunniyi, legal counsel for the Debtors, wrote to the Receiver to ask when his clients might attend at the Etobicoke Property to retrieve their personal property. The Receiver requested that the Debtors provide a list of their personal belongings in order for the Receiver to determine if the Receiver would require the Debtors to provide proof of ownership for some or all of the items claimed.
80. On September 5, September 13 and October 11, 2018, the Receiver wrote to Ms. Ashad to ask for a list of personal items.
81. Notwithstanding that no list was provided to the Receiver and Mr. Ogunniyi did not respond to the Receiver's emails, the Receiver agreed to meet at the Etobicoke Property with Ms. Ashad and Mr. Mohammed in order for them to remove personal items claimed by them. At the time the meeting was being arranged, the Receiver informed Ms. Ashad and Mr. Mohammed that, should

they wish to claim any equipment or other items considered by the Receiver to be of high value, the Receiver would require them to provide documentation to prove their ownership of those items. On October 18, 2018, Ms. Ashad and Mr. Mohammed attended at the Etobicoke Property and removed most of their personal documents but did not remove, nor request the removal of, any other items.

82. The Receiver wrote to Ms. Ashad and Mr. Mohammed on October 24, 2018 to ask for a list of personal items and schedule a time for them to attend to remove the rest of any remaining personal property. As of the date of this report, Ms. Ashad and Mr. Mohammed have not responded.
83. On August 31, 2018, the Receiver requested from Ms. Ashad passwords to access the computers that were at the Etobicoke Property. On October 18, 2018, Mr. Mohammed advised the Receiver that they did not have a password for the computer at that time and the only person with the password was out of the country. No passwords have been provided to date.
84. In addition to the computers at the Etobicoke location, three computers were also located on the premises of the Port Colborne location and a computer was found at the Goderich Property. The Receiver has not been able to access the data, if any, on the hard drives of the computers.
85. As the Debtors have not claimed the return of the computers at the Properties, it appears to the Receiver that those computers are the property of the Companies. Accordingly, the Receiver intends to attempt to access any data saved on the hard drives of the computers in order to determine if there is any financial

information relating to the Debtors. As noted above, the Debtors have not provided the Receiver with any financial information nor any passwords to access the information on the computers.

86. Based on the above and taking into account that the Debtors have not responded to the Receiver's requests for a list of personal items, passwords for the computers or documents to support ownership of the Cash, the Receiver respectfully seeks an Order authorizing and directing the Receiver to:

- i) deposit the Cash into the Receiver's 1496765 (Etobicoke) trust account for the benefit of 1496765 (Etobicoke)'s creditors;
- ii) attempt to access any data saved on the hard drives of the computers found at the Etobicoke Property the Port Colborne Property and the Goderich Property or if that cannot be done, destroy the hard drives; and
- iii) sell or otherwise dispose of any personal items, including any remaining personal documents, at the Properties that are not removed under the Receiver's supervision from those properties within three business days of the date of the Approval and Vesting Order in respect of that Property.

IX. SUNSHINE AND SAM PROPANE

87. As noted earlier in the First Report, the Ontario Fuels Safety License for the propane refill centre located at the Etobicoke Property is issued to Sam Propane, not to Sunshine. Sam Propane is an Ontario Corporation incorporated on October 26, 2015. According to a corporate search dated September 4, 2018, the corporation's Treasurer is Azeem Mohammed and its directors are Mr. Mohammed and Abdul Quddus. A copy of the Corporation Profile report is

attached to this report as Appendix "J". The registered addresses of Sam Propane and its officer and directors are 5462 Dundas Street West, which is the address of the Etobicoke Property.

88. The Debtors advised the Receiver that Sam Propane has been operating the propane refill centre since mid-2016 and owns the propane tank, and that Sam Propane is owned by Azeem Mohammed and Abdul Quddus. The Receiver has requested from the Debtors, but has not received, documentation to support the claim that Sam Propane owns the propane tank.
89. On September 17, 2018, the Receiver contacted Primemax Energy ("**Primemax**"), the supplier of the propane gas, who subsequently confirmed to the Receiver that Primemax does not own the propane tank and that the propane for the tank was sold to Sam Propane. Primemax advised it was owed in excess of \$38,000 for propane fuel supplied to Sam Propane.
90. As the car wash operations were not recommenced and the Etobicoke Property was vacant, the Receiver was concerned that fuel remaining in the propane tank might present a safety concern. Accordingly, the Receiver arranged for Primemax to attend at the Etobicoke Property to determine how much fuel was in the tank and to drain the tank.
91. Prior to the tank being drained, on September 27, 2018, the Receiver sent a letter to Sam Propane c/o Mr. Mohammed advising that the Receiver would be arranging to have the propane tank drained. The Receiver requested that Sam Propane contact the Receiver by 5:00 p.m. October 2, 2018 if it was not in agreement with the Receiver's intended course of action. No response was

received from Sam Propane. On October 23, 2018, Primemax attended at the Etobicoke Property and drained the remaining propane in the tank.

92. As Mr. Mohammed advised the Receiver that the propane tank is owned by Sam Propane, and since the Receiver does not have any documentation to support that the propane tank is owned by any of the Debtors, the Receiver is excluding the propane tank from the sale of the Etobicoke Property.

X. PARKLAND/ULTRAMAR LEASES

93. Parkland Fuel Corporation ("**Parkland**"), which operates as, among other names, "Ultramar", provided the Receiver with copies of the lease and sublease agreements for the two gas stations (the "**Leases**"). The Receiver became concerned that certain terms of the Leases would have a negative impact on the sales process to be conducted by the Receiver. In particular, the Receiver was concerned that the Leases contained (i) a right of first refusal ("**ROFR**") to Parkland upon a sale of the Port Elgin Property and the Goderich Property and (ii) restrictions related to the purchase of fuel and other products.
94. Avison Young confirmed to the Receiver that the above terms contained in the Leases would likely have a detrimental effect on the sales processes for the Port Elgin Property and the Goderich Property.
95. Accordingly, on November 21, 2018, the Receiver issued an Early Termination Notice of Sublease in respect of each of the Port Elgin Property and the Goderich Property (the "**Sublease Terminations**"), notifying Parkland that the Receiver was terminating the subleases effective December 1, 2018 as the subleases

were in default. Copies of the Sublease Terminations (without Schedule C) are attached to this report as Appendix "K".

96. In addition, on November 21, 2018, the Receiver issued an Early Termination Notice of Lease in respect of each of the Port Elgin Property and the Goderich Property (the "**Lease Terminations**"), notifying Parkland that the Receiver was terminating the leases effective December 21, 2018 as the leases were in default. Copies of the Lease Terminations (without Schedule C) are attached to this report as Appendix "L".
97. Parkland did not respond to the Sublease Terminations or the Lease Terminations issued by the Receiver.

XI. TIM HORTONS AND TDL RIGHT OF FIRST REFUSAL

98. As noted earlier in this report, the Port Elgin Property includes a separate one-storey building occupied by a Tim Horton's restaurant. The TDL Group Ltd. ("**TDL**") is the lessee for the Tim Horton's restaurant.
99. The lease provides TDL with a right of first refusal (the "**Tim Hortons ROFR**") with respect to a bona fide offer to purchase all or part of the Port Elgin Property received by the landlord during the tenancy period. Before accepting any such offer, the landlord is required to give TDL the sole and exclusive right for a period of ten (10) banking days after the receipt of such notice, to elect to purchase the property upon the same terms and conditions as are contained in the offer.
100. As the Receiver was of the view that the Tim Horton's restaurant enhances the value of the Port Elgin Property, the Receiver did not take any steps towards the termination of the TDL lease.

101. The agreement of purchase and sale for the Port Elgin Property includes provisions to address the Receiver's obligations in respect of the Tim Hortons ROFR. The Receiver is not presently seeking approval for the sale of the Port Elgin Property.

XII. PROPERTY TAXES

102. As per tax notices received in January or February 2019, the outstanding 2018 property taxes (including interest and penalty) for each of the Properties is set out below:

Property	Arrears
Etobicoke	\$ 5,213.80
Burlington	\$ 77,573.82
Port Colborne	\$ 15,098.81
Port Elgin	\$ 25,131.19
Goderich	\$ 2,081.95
Total	\$125,099.57

103. The Receiver has not paid any property taxes since its appointment. The property taxes will be paid from the closing proceeds from the sales of the individual properties.

XIII. APPRAISALS

104. The Receiver commissioned appraisals for the Properties. The results of the appraisals for the Etobicoke Property, the Burlington Property and the Port Colborne Property, as well copies thereof, are attached to this report in Confidential Appendices HH, II and JJ, respectively.

XIV. ENVIRONMENTAL SITE ASSESSMENTS

105. The Receiver contacted the consultants that had previously prepared environmental site assessments for the Properties to request that they prepare updates to their reports that could be included in the data room being made available to parties expressing interest in purchasing the Properties.
106. Supplemental updates were obtained from Trafalgar Environmental Consultants for the Etobicoke Property, the Burlington Property and the Port Colborne Property and from Rubicon Environmental (2008) Inc. for the Port Elgin Property and the Goderich Property. Based on the updates, it appears that no further environmental investigation by the Receiver is required at this time.

XV. MARKETING AND SALES ACTIVITIES

107. On August 30, 2018, the Receiver invited three realtors, Avison Young ("**Avison**"), CBRE Limited ("**CBRE**"), and Colliers International ("**Colliers**") to each submit listing proposals for the marketing and sale of the Properties. Listing proposals were received from Avison and Colliers; CBRE informed the Receiver that it would not be submitting a listing proposal. After considering the Avison and Colliers listing proposals, including the commission rates proposed by each realtor, on October 2, 2018, the Receiver, with BMO's concurrence, executed a listing agreement with Avison to market the Properties for sale.
108. Avison launched its marketing campaign on December 3, 2018. The process ran from December 3, 2018 to January 18, 2019 and interested parties were informed that the Receiver would consider offers for the Properties on or after

January 18, 2019. The Receiver provided Avison with forms of agreement of purchase and sale for each of the Properties on which offers for the Properties were to be submitted.

109. A summary of the marketing activities undertaken by Avison is set out below:

- (a) on December 3, 2018 and on January 10, 2019, an email communication ("**E-mail Blast**") was sent to over 1,200 contacts on Avison's mailing list;
- (b) marketing brochures ("**Brochures**") for each of the Properties, and on a combined basis, were prepared and distributed to parties that contacted Avison for more information;
- (c) on or about December 17, 2018, the properties were listed on the TREB MLS, and on the local MLS of the real estate boards for Port Colborne, Port Elgin and Goderich (the "**MLS Listings**");
- (d) the Properties were listed on Avison's website and on Loopnet; and
- (e) an electronic data room was set up to provide access to confidential information on the Properties to parties who signed a confidentiality agreement.

Copies of the E-mail Blast, the Brochures and the MLS Listings are attached collectively to this report as Appendix "**M**".

XVI. OFFERS RECEIVED

110. As set out above, interested parties were advised that offers for the Properties would be reviewed on or after January 18, 2019. As at that date, Confidentiality

Agreements were signed by 46 prospective purchasers or brokers, all of whom were given access to the electronic data room.

111. As of January 22, 2019, twenty offers had been submitted to Avison for the various Properties, substantially all of which offers were presented on the form of agreement of purchase and sale provided by the Receiver. A summary of the offers received for the Etobicoke Property, the Burlington Property and the Port Colborne Property are attached at Tab 1 to Confidential Appendices "HH", "II" and "JJ", respectively.
112. The Receiver reviewed with Avison and BMO the offers received, after which time Avison went back to certain offerors to give them an opportunity to improve or amend their offers. Those parties were requested to submit their revised offers by January 24, 2019, or in the case of the Port Colborne Property, by close of business on January 28, 2019.
113. A copy of the summary of offers received at the conclusion of the second round of offers for the Etobicoke Property, the Burlington Property and the Port Colborne Property are attached at Tab 2 to Confidential Appendices "HH", "II" and "JJ", respectively. The Receiver reviewed the offers received, including any amended offers, and worked through Avison to have the terms of the offers that the Receiver proposed to accept finalized in order that the Receiver would be in a position to accept those offers.
114. As of February 4, 2019, the Receiver had entered into the following agreements of purchase and sale, which are subject to approval of the Court:

- i) with 2677323 Ontario Inc. (the "**Etobicoke Purchaser**") for the Etobicoke Property (the "**Etobicoke APS**");
 - ii) with Harsha Nimrani in trust corporation to be incorporated (the "**Burlington Purchaser**") for the Burlington Property (the "**Burlington APS**"); and
 - iii) with 2573702 Ontario Inc. (the "**Port Colborne Purchaser**") for the Port Colborne Property (the "**Port Colborne APS**").
115. The Receiver has entered into an agreement of purchase and sale for the Port Elgin Property (the "**Port Elgin APS**") that is subject to a 30-day conditional period for the condition referenced in that agreement. The Receiver will at a later date bring an application for Court approval of the Port Elgin APS after the purchaser waives its condition and the Receiver addresses the Tim Hortons ROFR.
116. With reference to the Goderich Property, Avison has recommended to the Receiver that Avison continue its marketing activities for that property.

XVII. THE ETOBOCOKE APS, THE BURLINGTON APS AND THE PORT COLBORNE APS

117. Salient terms of the Etobicoke APS, the Burlington APS and the Port Colborne APS (collectively, the "**Three APS**") and matters relating thereto include (all capitalized terms in this section not defined in the Three APS are as otherwise defined in the First Report):
- i) the purchased assets include the Etobicoke Property, the Burlington Property and Port Colborne Property, as applicable. In the Etobicoke APS,

the definition of Property excludes the propane tank located on the Etobicoke Property;

- ii) a deposit of 10% of the Purchase Price has been received from each of the purchasers;
- iii) the offers are firm as the Purchasers have waived conditions;
- iv) the Etobicoke APS, the Burlington APS and the Port Colborne APS are each conditional on court approval and the issuance of an order vesting title to the purchased assets in the respective purchasers free and clear of claims and encumbrances, other than those specifically itemized in the Agreement;
- v) the respective purchasers are buying the Property on an "as is, where is" basis; and
- vi) closing of the sales provided for in the Etobicoke APS and the Port Colborne APS are scheduled to occur on the tenth Business Day following the date on which the Vesting Order is granted, or such other date as agreed between the respective purchasers and the Receiver. Closing of the sale provided for in the Burlington APS is scheduled to occur on the twentieth Business Day following the date on which the Vesting Order is granted, or such other date as agreed between the Burlington Purchaser and the Receiver.

118. Copies of the Etobicoke APS, the Burlington APS and the Port Colborne APS are attached to this report at Tab 3 to Confidential Appendices "HH", "II" and "JJ", respectively.

XVIII. APPROVAL OF SALES

119. The Receiver believes that the marketing process undertaken by the Receiver was appropriate for the type of property in question, and provided sufficient market exposure to the Etobicoke Property, the Burlington Property and the Port Colborne Property, for the following reasons:

- (i) notice of the sale of the Properties was sent to more than 1,200 parties;
- (ii) the Etobicoke Property, the Burlington Property and the Port Colborne Property were each listed for sale on MLS;
- (iii) the Etobicoke Property, the Burlington Property and the Port Colborne Property were listed on Avison's website and Loopnet; and
- (iv) the Etobicoke Property, the Burlington Property and the Port Colborne Property were exposed to the market for a period of approximately six weeks.

120. The Receiver therefore recommends the approval of the Etobicoke APS, the Burlington APS and the Port Colborne APS by this Honourable Court.

121. The Receiver believes that details of the listing proposals and the offers submitted for the Properties including matters relating thereto should be kept confidential until the closing of the transactions of each of the Etobicoke Property, the Burlington Property and the Port Colborne Property. The Receiver is of the view that public disclosure thereof would have a negative impact on the future marketing of the Etobicoke Property, the Burlington Property and the Port Colborne Property should the respective transactions with the purchasers of each not be approved or completed.

122. The Receiver therefore respectfully requests that:

- i) Confidential Appendix "HH" be sealed until after the closing of the sale of the Etobicoke Property;
- ii) Confidential Appendix "II" be sealed until after the closing of the sale of the Burlington Property; and
- iii) Confidential Appendix "JJ" be sealed until after the closing of the sale of the Port Colborne Property.

XIX. CIBC ACCOUNTS

123. CIBC provided to the Receiver copies of bank statements for three bank accounts; one for 1496765 (Etobicoke), one for 2496800 (Goderich) and one for Sunshine. The Receiver reviewed the bank statements and noted that there were certain transactions for which additional information was required in order for the Receiver to determine (i) if the transactions were of a nature that the Receiver should pursue; and/or (ii) if there were other bank accounts at CIBC for which the Receiver did not receive the information requested.

124. Below are descriptions of the transactions of note for which CIBC has provided additional detail:

(a) 1496765 (Etobicoke)

- on June 14, 2018, a cheque for \$529,726.81 from SK Lawyers Professional Corporation, made payable to 1496765 Ontario Ltd., was deposited to the CIBC bank account. On the same day, \$529,000 was paid out by way of three bank drafts for \$250,000 to Sunil Bhardwaj,

\$199,000 to Mian Afzalaqif, and \$50,000 to Rozina Jessani, and via a transfer for \$30,000 to Auto Car Wash or Auto-Car Wash Co.;

- five cheques for \$6,673.00 each cleared every month from July to November 2018. The cheques were payable to 10831824 Canada Inc.; and
- personal cheques for \$7,500 and \$7,800 from Mian Afzalaqif were deposited on September 6, 2018 and October 9, 2018, respectively;

(b) 2496800 (Goderich)

- on March 6, 2018, there was a deposit of a \$350,000 bank draft from Mian Adnan Aqif payable to 2496800 (Goderich) and a same day transfer out of that account to a bank account held by Sunil Bhardwaj and Saneh Lata Bhardwaj;
- on March 21, 2018, a bank draft for \$500,000 from SMV Financial Service was deposited. On the same day, a bank draft for that amount was issued to Sunil Bhardwaj; and
- on September 4, 2018, there was a withdrawal of \$2,700 from the account. The name of the individual signing the withdrawal slip is not legible.

125. The Receiver has not yet determined whether it will proceed further with inquiries into any of the above transactions. The Receiver will discuss with key stakeholders whether it is prudent to pursue one or more of these transactions and will report further to the Court going forward.

XX. OTHER ENTITIES

126. During the course of the receivership administration, the Receiver has come across the names of other entities that appear to be related to one or more of the Debtors, including the following:

1401151 Ontario Ltd.
1944563 Ontario Inc.
Auto Car Wash / Auto-Car Wash Co.
Clean In Comfort
Dundas & Kipling Car Wash
Dundas Propane and Car Wash
Kipling and Dundas Propane
Kipling-Dundas Propane Co.
North Queen Propane
Shark Car Wash
Shark Car Wash Burlington
Sparkle Kleen Car Wash
Sparkle-Kleen-Carwash & Propane Ltd.

127. The Receiver has observed that many of the above entities share the same mailing or business address as 1496765 (Etobicoke), that some of the names are referenced on correspondence to the Debtors or appear to be used as operating names for the car washes operated by the Debtors. In addition, the Receiver found two credit card terminals at the Etobicoke Property for which two Moneris accounts were set up in the name of 1944563 Ontario Inc. ("**1944563**") operating as Dundas & Kipling Car Wash and as Dundas Propane & Car Wash. The Receiver has no information to determine whether revenues from the

operations conducted at the Etobicoke Property were deposited to the account of 1944563, to the account of 1496765 (Etobicoke) or elsewhere.

128. On January 30, 2019, the Receiver corresponded with the Debtors' legal counsel to obtain information regarding the relationship between the above entities and the Debtors and has not yet received a response to its correspondence.

XXI. SECURED OR PRIORITY CLAIMS

129. Attached to this report as **Appendices "N" to "R"** are copies of searches of the Parcel Register for Property Identifier reports from the Ontario Land Registry Office dated June 20, 2018 for the Etobicoke Property, the Burlington Property, the Port Colborne Property, the Port Elgin Property and the Goderich Property, respectively (the "**Title Searches**").
130. Attached to this report as **Appendices "S" to "X"** are copies of searches conducted against the Respondents under the Personal Property Security Registration System dated September 6, 2018 for 1496765 (Etobicoke), 1651033 (Burlington), 1527020 (Port Colborne), 2495087 (Port Elgin), 2496800 (Goderich) and Sunshine, respectively (the "**PPSA Searches**").
131. The claims registered against the Debtors, based on the information set out in the Title Searches and the PPSA Searches and which have not been audited or verified by the Receiver, are as follows:

Name of Registrant	Amount*	PPSA	PIN
1496765 (Etobicoke)			
Bank of Montreal	\$3,450,000	Y	Y
10831824 Canada Inc.	\$ 572,000		Y
1651033 (Burlington)			
Bank of Montreal	\$4,180,000	Y	Y
SDM Construction Inc.	\$2,549,484		Y
1527020 (Port Colborne)			
Bank of Montreal	\$1,550,000	Y	Y
2495087 (Port Elgin)			
Bank of Montreal	\$2,360,000	Y	Y
2496800 (Goderich)			
Bank of Montreal	\$1,825,000	Y	Y
Sunshine Propane Inc.			
Bank of Montreal		Y	
Her Majesty in right of Ontario, represented by the Minister of Finance	\$ 136,562	Y	
Merchant Advance Capital		Y	
Roynat Inc.		Y	
Thinking Capital		Y	

* Amounts as registered.

132. The Receiver has received legal opinions from Paliare Roland that, subject to the assumptions and qualifications contained in Paliare Roland's opinion letters, the mortgages granted in favour of BMO on each of the Etobicoke Property, the Burlington Property and the Port Colborne Property create valid first-ranking charges against the respective Property (the "**Security Opinions**"). Copies of the Security Opinions are attached to this report at Appendix "Y".
133. As set out on statements provided by BMO to the Receiver ("the "**BMO Statements**"), as of February 4, 2019, the amount owed by each of the Debtors to BMO is set out below:

1496765 (Etobicoke)	\$ 2,227,185
1651033 (Burlington)	2,628,839
1527020 (Port Colborne)	1,544,162
2495087 (Port Elgin)	2,478,332
2496800 (Goderich)	1,805,822
Total	\$ 10,684,340

The above amounts include advances made by BMO for which Receiver Certificates were issued. Copies of the BMO Statements are attached to this report at Appendix "Z".

Deemed Trust Claims of Canada Revenue Agency

134. In September 2018, CRA advised the Receiver that, with the exception of 1527020 (Port Colborne), the Debtors were not up-to-date in the filing of their respective returns.
135. CRA also informed the Receiver that certain of the Debtors did not have accounts registered at CRA. CRA has provided the amounts owing by the Debtors on account of source deductions and HST for those Debtors that did have accounts at CRA. A summary of the information provided by CRA is as follows:

Name	Source Deductions Liability	HST Liability
1496765 (Etobicoke)	\$2,601.00	\$44,050.97 (estimated)
1651033 (Burlington)	No account	Account closed Dec. 31, 2012
1527020 (Port Colborne)	Nil	(\$7,917.74) credit
2495087 (Port Elgin)	No account	Nil
2496800 (Goderich)	No account	Nil
Sunshine	\$966.22	\$2,194.69

Copies of correspondence from CRA dated September 14 and 19, 2018 summarizing the above are attached to this report as Appendix "AA".

136. With respect to 1527020 (Port Colborne), CRA has indicated that, according to its records, 1527020 (Port Colborne) ceased operating on January 31, 2010, has no overdue HST returns and has a credit of \$7,917.74 on its HST account that has been withheld and not refunded to 1527020 (Port Colborne) due to the non-filing of corporate tax returns for the years 2010 to 2018.
137. Subsequent to CRA's aforementioned correspondence, on January 10, 2019, CRA issued a Notice of Assessment for 2496800 (Goderich) assessing its estimated HST liability for the period November 1, 2016 to August 29, 2018 to be \$26,197.73. A copy of the Notice of Assessment is also attached to this report at Appendix "AA".
138. Based on the above, it appears to the Receiver that substantially all (if not all) of the Companies have not filed returns to CRA on account of source deductions and HST. For example, the Receiver is not aware of the basis upon which 2495087 (Port Elgin) and 2496800 (Goderich) paid employees who, the Receiver would expect, would be employed to conduct the operations of the respective gas stations and convenience stores in Port Elgin and Goderich since no payroll accounts appear to have been set up for 2495087 (Port Elgin) and 2496800 (Goderich).
139. The Receiver does not have possession and or access to accounting and financial records of the Debtors and thus is unable to attempt to calculate the potential source deductions and HST liabilities of the Companies.

-
140. As a result, the quantum of the Companies' liabilities for source deductions and HST are, for the most part, unknown.
141. On September 10, 2018, the Receiver wrote to CRA to request that CRA contact the Receiver to schedule a trust exam of the Companies' HST and payroll accounts. On September 14, 2018, in response to CRA's inquiry as to the location of the Companies' books and records, the Receiver provided CRA with the contact information that it had for representatives of the Debtors and for the Debtors' legal counsel, Mr. Ogunniyi. As the Receiver had not received any update from CRA, the Receiver wrote to CRA on February 1, 2019 to inquire as to the status of the trust exams.
142. The Receiver has submitted Form RC342 to CRA on account of all the Debtors' accounts to request that CRA waive the requirement for corporate tax returns to be filed by the Receiver in order that the Receiver may recover HST Input Tax Credits to which it may be entitled as a result of the receivership proceedings.

Deemed Trust Claim of Minister of Finance ("MOF")

143. The Receiver has received from MOF notice of MOF's Deemed Trust Claim against Sunshine for \$118,810.38 in respect of estimated liabilities under the Gasoline Tax Act. As noted above, MOF has a PPSA registration against Sunshine. A copy of correspondence from MOF setting out its claim is attached to this report as Appendix "BB".
144. The Receiver's only receipt to date in respect of Sunshine's assets is a refund of \$3,292.96 from Toronto Hydro representing a refund of a security deposit. The

Receiver will review with Paliare Roland the Receiver's position in respect of MOF's deemed trust claim.

Wage Earner Protection Program Act ("WEPPA")

145. As set out earlier in the First Report, the Receiver is not in possession of any financial information relating to the operations of the Companies, including any payroll or other information which would provide any details regarding employees, if any, who were employed by the Companies.
146. As a result, the Receiver has not been able to carry out its obligations pursuant to the provisions of WEPPA in respect of each of the Companies.

XXII. STATUTORY NOTICES AND REPORTS

147. Attached to this report as **Appendix "CC"** is the Notice and Statement of Receiver prepared pursuant to Sections 245(1) and 246(1) of the Bankruptcy and Insolvency Act in respect of each of the Debtors.

XXIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

148. Attached to this report as **Appendix "DD"** is the Receiver's Interim Statement of Receipts and Disbursements for the period August 29, 2018 to January 31, 2019 (the "**R&D**"). The R&D sets out the Receiver's receipts and disbursements for each of the Debtors, as well as on a combined basis.
149. On a summary combined basis; total receipts were \$506,719 and total disbursements were \$337,828, resulting in a net cash surplus of \$168,891, as follows:

Company Name	Cash Receipts	Cash Disbursements	Excess of Receipts over Disbursements
1496765 (Etobicoke)	\$ 99,036	\$ 74,471	\$ 24,565
1651033 (Burlington)	\$ 87,000	\$ 51,279	\$ 35,721
1527020 (Port Colborne)	\$ 99,000	\$ 63,691	\$ 35,309
2495087 (Port Elgin)	\$ 115,462	\$ 74,107	\$ 41,355
2496800 (Goderich)	\$ 102,928	\$ 72,421	\$ 30,507
Sunshine	\$ 3,293	\$ 1,858	\$ 1,435
Total	\$ 506,719	\$ 337,828	\$ 168,891

150. On or about September 6, October 30 and December 7, 2018, the aggregate amounts of \$105,000, \$35,000 and \$343,000, respectively, for a total amount of \$483,000, were advanced to the Receiver by BMO. A summary of the Receiver Certificates issued by the Receiver to BMO is attached as Appendix "EE" to this report.

XXIV. PROPOSED INTERIM DISTRIBUTION

151. Upon the closing of the sale of each of the Etobicoke Property, the Burlington Property and the Port Colborne Property and receipt by the Receiver of the net sales proceeds therefrom, funds will be available for the Receiver to make an interim distribution.
152. As set out above, the Receiver has received Security Opinions indicating that the mortgages granted by the Debtors to BMO in respect of the Etobicoke Property, the Burlington Property and the Port Colborne Property are validly registered and that those mortgages rank first in priority to the security interests of other parties in respect of those Properties.

153. On the closing of the sales of the Etobicoke Property, the Burlington Property and/or the Port Colborne Property, the Receiver proposes to make the following payments from the net proceeds, after payments of the property taxes and commissions payable to Avison in respect of any Property sold, (the “**Interim Distribution**”):

- (a) to the Receiver an amount equal to the unpaid accounts of the Receiver on account of operating expenses and the Receiver's professional fees and disbursements;
- (b) to Paliare Roland an amount equal to the unpaid accounts of Paliare Roland;
- (c) to BMO, following the sale of the Etobicoke Property, the advances totaling \$99,000 under Receiver Certificates # 2, 6 and 9 plus accrued interest;
- (d) to CRA, \$2,601.00 owed on account of 1496765 (Etobicoke)'s source deductions deemed trust liability;
- (e) to BMO, following the sale of the Etobicoke Property, an amount not exceeding the outstanding indebtedness of 1496765 (Etobicoke) to BMO secured by BMO's first mortgage over the Etobicoke Property;
- (f) to BMO, following the sale of the Burlington Property, the advances totaling \$87,000 under Receiver Certificates # 1, 8 and 11 plus accrued interest;
- (g) to BMO, following the sale of the Burlington Property, an amount not exceeding the outstanding indebtedness of 1651033 (Burlington) to BMO secured by BMO's first mortgage over the Burlington Property;

(h) to BMO, following the sale of the Port Colborne Property, the advances totaling \$99,000 under Receiver Certificates # 3, 7 and 10 plus accrued interest; and

(i) to BMO, following the sale of the Port Colborne Property, an amount not exceeding the outstanding indebtedness of 1527020 (Port Colborne) to BMO secured by BMO's first mortgage over the Port Colborne Property.

154. The Receiver proposes to hold back, in respect of each of the Companies, amounts to cover unpaid operating expenses, potential deemed trust claims and future professional fees.

XXV. PROFESSIONAL FEES

155. The Receiver's accounts total \$233,515.50 in fees plus HST of \$30,357.02 for a total amount of \$263,872.52 for the period ending January 31, 2019 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn February 11, 2019 attached to this report as Appendix "**FF**".

156. The accounts of the Receiver's counsel, Paliare Roland total \$34,092.15 in fees and disbursements and \$4,431.98 in HST for a total of \$38,524.13 (the "**Paliare Roland Accounts**") for the period ending January 31, 2019. A copy of the Paliare Roland Accounts, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Accounts, is set out in the Affidavit of Michelle Jackson sworn February 12, 2019 attached to this report as Appendix "**GG**".

157. The Receiver is seeking approval of the Receiver's Accounts and the Paliare Roland Accounts.

XXVI. CONCLUSION AND REQUEST OF THE COURT

158. The Receiver respectfully requests that the Court grant Orders which provide for the following:

- (a) authorizing and directing the Receiver to enter into and carry out the terms of the Etobicoke APS together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Etobicoke Property in the Etobicoke Purchaser, or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Etobicoke APS and the delivery of a Receiver's certificate to the Etobicoke Purchaser;
- (b) authorizing and directing the Receiver to enter into and carry out the terms of the Burlington APS together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Burlington Property in the Burlington Purchaser, or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Burlington APS and the delivery of a Receiver's certificate to the Burlington Purchaser;
- (c) authorizing and directing the Receiver to enter into and carry out the terms of the Port Colborne APS together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Port Colborne Property in the Port Colborne Purchaser, or as it may

further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Port Colborne APS and the delivery of a Receiver's certificate to the Port Colborne Purchaser;

(d) sealing the following Confidential Appendices:

- (i) Confidential Appendix "HH" to the First Report until the closing of the sale of the Etobicoke Property;
- (ii) Confidential Appendix "II" to the First Report until the closing of the sale of the Burlington Property; and
- (iii) Confidential Appendix "JJ" to the First Report until the closing of the sale of the Port Colborne Property;

(e) authorizing and directing the Receiver to deposit the Cash into the receivership trust account for the benefit of 1496765 (Etobicoke)'s creditors;

(f) authorizing and directing the Receiver to attempt to access any data saved on the hard drives of the computers found at the Etobicoke Property, the Port Colborne Property and the Goderich Property or if that cannot be done, to destroy the hard drives;

(g) authorizing the Receiver to sell or otherwise dispose of any remaining items at the Properties, including personal property and documents that may belong to individuals related to the Debtors, that are not removed under the Receiver's supervision from those Properties within three business days of the date of the Approval and Vesting Order issued in respect of that Property;

(h) authorizing the Receiver to make the Interim Distribution;

-
- (i) approving the First Report and the Receiver's conduct and activities to February 11, 2019;
 - (j) approving the R&D;
 - (k) approving the fees and disbursements of the Receiver incurred to January 31, 2019; and
 - (l) approving the fees and disbursements of Paliare Roland incurred to January 31, 2019.

All of which is respectfully submitted to this Court as of this 13th day of February, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager of
1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc.,
2495087 Ontario Inc., 2496800 Ontario Inc., and Sunshine Propane Inc.
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

TAB C

COUNSEL SLIP

Court File No. CV-18-00602537-00CLDate: FEB 21, 2019No. On List 4Title of
Proceeding

BANK OF MONTREAL-v-2495087 ONTARIO INC. et al

Counsel for:

Plaintiff(s)	<input type="checkbox"/>
Applicant(s)	<input type="checkbox"/>
Petitioner(s)	<input type="checkbox"/>

Jeffrey Lavery & Elizabeth
Far Receiver Rabinov

Phone No.

416 646 4330

Fax No.

416 646 4301

Counsel for:

Defendant(s)	<input type="checkbox"/>
Respondent(s)	<input checked="" type="checkbox"/>

OLUBUNMI OGUNNIRI

Phone No.

416-997-3010

Fax No.

1-877-201-3476

Stewart D Thom T 416-777-5197
F 416 863-0305

stthom@torlinmone.com

Bank of Montreal

SDM CONSTRUCTION INC.

416 8
905 857 2626

21 Feb 19

Debtor conference opposing the sales. Will
be heard March 4/19 90 mins. any judge.
Confirmed. Debtor conference to serve notices
asap. Lien claimant issue also needs to
be resolved

McEnt

Addendum to

Confidential docs to remain sealed.

McEnt

TAB D

Court File No: CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

JUSTICE *Cniappet*)
)
)MONDAY, THE 4TH DAY OF
MARCH, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-
B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

DISTRIBUTION ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the "**Debtors**"), for an order authorizing the Receiver to, among other things, sell the real properties municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the

"**Etobicoke Property**"), 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), and 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") (each a "**Property**" and collectively, the "**Properties**") and to distribute certain of the proceeds therefrom, as described further in the First Report of the Receiver dated February 13, 2019 (the "**First Report**"), was heard this day at Toronto, Ontario.

ON READING the First Report and the Confidential Appendices attached thereto, and on hearing the submissions of respective counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn February 13, 2019, filed:

1. **THIS COURT ORDERS** that the time for service 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.
2. **THIS COURT ORDERS AND DECLARES** that the First Report and the conduct and activities of the Receiver to February 11, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel for the period ended January 31, 2019 as set out in the First Report be and are hereby approved.
4. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements as of January 31, 2019 as set out in the First Report, be and are hereby approved.
5. **THIS COURT ORDERS** that the following Confidential Appendices be sealed as follows:
 - (a) Confidential Appendix "HH" to the First Report until the closing of the sale of the Etobicoke Property;

- (b) Confidential Appendix "II" to the First Report until the closing of the sale of the Burlington Property; and
- (c) Confidential Appendix "JJ" to the First Report until the closing of the sale of the Port Colborne Property;

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay from the proceeds of sale of the Properties or any of them, the following:

- (a) unpaid accounts relating to operating expenses;
- (b) to the Receiver, an amount equal to the unpaid accounts of the Receiver relating to the Receiver's fees; and
- (c) to Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), an amount equal to the unpaid accounts of Paliare Roland.

vs (d) a hold back equal to the maximum amount of a potential construction lien claim on the Burlington Property by some construction l.e.

7. **THIS COURT ORDERS** that following the payments contemplated in paragraph 6, the Receiver is authorized and directed to pay from the proceeds of sale of the Etobicoke Property the following:

- (a) to CRA, \$2,601.00 owed on account of 1496765 Ontario Ltd.'s source deductions deemed trust liability;
- (b) to BMO:
 - (i) the advances totaling \$99,000 under Receiver Certificates # 2, 6 and 9 plus accrued interest; and
 - (ii) an amount not exceeding the outstanding indebtedness of 1496765 Ontario Ltd. to BMO;

8. **THIS COURT ORDERS** that following the payments contemplated in paragraph 6, the Receiver is authorized and directed to pay from the proceeds of sale of the Burlington Property the following:

(a) to BMO:

- (i) the advances totaling \$87,000 under Receiver Certificates # 1, 8 and 11 plus accrued interest; and
- (ii) an amount not exceeding the outstanding indebtedness of 1651033 Ontario Ltd. to BMO.

9. **THIS COURT ORDERS** that following the payments contemplated in paragraph 6, the Receiver is authorized and directed to pay from the proceeds of sale of the Port Colborne Property the following:

(a) to BMO:

- (i) the advances totaling \$99,000 under Receiver Certificates # 3, 7 and 10 plus accrued interest; and
- (ii) an amount not exceeding the outstanding indebtedness of 1527020 Ontario Inc. to BMO.

10. **THIS COURT ORDERS** that the Receiver may hold back, in respect of each of the Debtors, amounts to cover unpaid operating expenses, potential deemed trust claims and future professional fees.

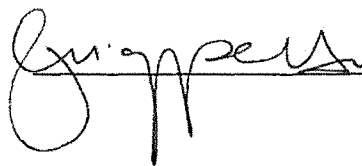
11. **THIS COURT ORDERS** the Receiver may attempt to access any data saved on the hard drives of the computers found at the Etobicoke Property, the Port Colborne Property, and the real property known municipally as 274 Bayfield Road, Goderich,

Ontario (the "**Goderich Property**") or if that cannot be done, to destroy the hard drives of such computers.

12. **THIS COURT ORDERS** the Receiver may deposit the Cash (as such term is defined in the First Report) into the receivership trust account for the benefit of 1496765 Ontario Ltd.'s creditors.

13. **THIS COURT ORDERS** the Receiver may sell or otherwise dispose of any remaining items at any of the Properties, the Goderich Property or the real property known municipally as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**") and with the Properties and the Goderich Property, the "**Real Properties**") including personal property that may belong to individuals related to the Debtors, that are not removed from those Real Properties, under the Receiver's supervision, within three business days of the date of the Approval and Vesting Order issued in respect of that Property.

14. **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.



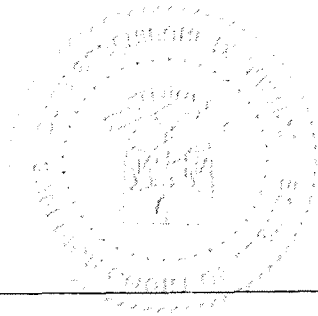
ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 05 2019

PER / PAR: *RW*

BANK OF MONTREAL

Applicant



-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

DISTRIBUTION ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TAB E

Court File Number: CN-18-60602-534-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Bank of Montreal
Plaintiff(s)
AND
2495087 Ontario Inc. et al
Defendant(s)

Case Management ☐ Yes ☐ No by Judge: Chiappetta

Counsel	Telephone No:	Facsimile No:
<u>See attached</u>		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
☐ Adjourned to: _____
☐ Time Table approved (as follows): _____

This is a motion brought by RSM Canada Limited (RSM) in its capacity as court-appointed receiver and manager (the Receiver) of 1496765 Ontario Ltd (1496765), 1651033 Ontario Ltd (1651033), 1527020 Ontario ~~Inc~~ Inc. (152702), 2495087 Ontario Inc (2495087), 249688 Ontario Inc (2496800) and Sunshine Propane Inc. (Sunshine) (collectively the Debtors). The motion is for orders authorizing and directing the

March 4, 2019
Date

Chiappetta
Judge's Signature

☒ Additional Pages 11

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Receiver to enter into and carry out the terms of agreements of purchase and sale to sell the Etobicoke Property (149 675 holds legal and beneficial title to a 0.4 acre real property known as 5462 Dundas Street, Etobicoke Ontario), the Burlington Property (1651033 holds legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington Ontario), and the Port Colborne Property (1527020 holds legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario). The motion seeks further ancillary orders

The Debtors seek to adjourn this motion for two reasons. First they wish to cross-examine the listing agent and second they wish to unseal the Confidential Appendices related to each of

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

the three properties. This matter was originally before the court on Feb 21, 2019. Justice McEwen granted an adjournment, upon what I have been advised by counsel, to be serious allegations of impropriety in the sales process. He ordered the Debtors to serve its responding materials asap and he ordered the Confidential Appendices to remain sealed. The Debtors filed their responding materials. There is no evidence of impropriety, either actual or perceived, in terms of the sales process. At best the evidence demonstrates the agent did not return a couple of calls from a prospective purchaser of the Burlington and Etobicoke properties, Mr. Bhargava of SMV Financial Services and that SMV Financial Service's substantive efforts were made only after the property was sold, pending Court approval and normal closing procedures.

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

This is to be contrasted with the significant and detailed evidence of the marketing efforts by an experienced commercial real estate agency. I see no reason therefore why further costs should be incurred and further delay should be endured by an adjournment to cross-examine the listing agent. There is simply no evidence of impropriety.

The Receiver has filed under seal certain confidential appendices to the First Report which contain among other things, the appraisals on the Etobicoke, Burlington and Port Carbine Properties, summaries of the offers received for each property and the agreements of purchase and sale between the Receiver and the purchaser for each of the three properties. The Debtors want an adjournment to review the

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Confidential Appendices. I do not agree that this is a reason to adjourn a hearing on the merits. Nor do I agree that the Confidential Appendices should be unsealed pending the closing of the sale of the respective properties. I am satisfied that the test in *Sierra Club of Canada v Canada (Minister of Finance)* 2002 CarswellNat 822 (S.C.C.) at para 45 has been met. The Court requires the information and documentation to fulfill its supervising role. If the details of the transactions are made to the general public, however, the Receiver's ability to maximize returns in the event the contemplated transactions do not close may be prejudiced (*Wells Fargo Financial Corporation of Canada v. Algonquin Group Inc*; Court File No. 09-8289-COCL, December 11, 2009). The same is true should the details be made

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

available to the Debtors. Counsel for the Debtors, in his submissions to the Court and put forward in affidavit evidence, advances the interests of Mr. Bhardwaj as a prospective purchase. Mr. Bhardwaj was in court today. In my view, should the Debtors be privy to the information of the Confidential Appendices there is a real risk that a potential purchaser may be privy as well. To this extent, the prejudice to the Receiver in maximizing returns in the event that the contemplated transaction does not close can not practically be extinguished; should the Debtors be granted ~~and~~ disclosure of the Confidential Appendices. The adjournment is therefore not granted.

In considering the merits of the motion, I find the evidence establishes the following:

Page 6 of 12Judges Initials S

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

1. Each of the Properties was publicly listed for sale.
2. Each of the Properties was exposed to the market for a sufficient period of time in the sales process conducted by the Receiver and an experienced commercial real estate agency.
3. Each of the Properties ~~was~~ was heavily marketed.
4. The sale process led to multiple offers for each of the Properties and culminated with three agreements of purchase and sale with third party arm's length purchasers.
5. The selling price for each of the Properties is reasonable given the values set out in the applicable appraisals.
6. All of the agreements of purchase and sale have the support of Bank of Montreal which holds ^{the} primary or only, as the

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Case may be, registered interest on title to the applicable property.

7. The offers for the Properties are all firm, as the Purchasers have waived conditions.

8. The Receiver has received a deposit of 10% ^{of} ~~the~~ the respective purchase prices from each of the purchasers.

9. The Properties are being sold on a "as is, where is" basis.

10. The terms of the agreements of purchase and sale are reasonable in light of the value set out in the appraisals for the respective Property and/or other information received by the Receiver.

11. The marketing process was reasonable and appropriate for the type of property in question and provided sufficient market exposure to the Properties.

12. In accordance with legal opinion, the mortgages over the three properties

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

granted in favour of BMO are each valid and enforceable first ranking security interests against title to those Properties.

13. As of July 27, 2018, the Debtors were indebted to BMO in the amount of \$ 9,992,297.84.

14. The Distribution proposed, with a hold back on the Burlington Property more particularly described below, is reasonable.

The Debtors take no issue and are unopposed to the sale of the Port Carbone Property.

The Debtors oppose the sale of the Etobicoke property arguing that there is a second mortgage on it. The second mortgagee was served with this motion and has neither responded nor attended. I see no reason, considering my reasons above, not to approve

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

the sale of the Etobicoke Property.

Ms. Tbe attends today on behalf of her client SDM Construction Inc to oppose the sale of the Burlington Property. She advises, without evidence before the court from her client or Mr. Bhardwaj, that her client has a construction lien on the Burlington Property of over 2M and Mr. Bhardwaj is willing to purchase the Burlington Property for 2.7 M plus assume the 2M+construction lien. As a result, it is submitted, Mr. Bhardwaj's offer is superior and the court should not approve the sale of the Burlington Property in accordance with the Agreement before the court. I disagree. As noted above, the properties were heavily marketed. There is no evidence as to why Mr. Bhardwaj did not put this offer forward during the bidding process or prior to the bid deadline but puts it forward today

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

in open court, without evidence or a properly formatted offer, 2.5 weeks after the bid deadline. Second, the offer, even accepted as valid and true, is entirely impractical. The evidence demonstrates the value of the Burlington Property in the range of 2.7 M, as offered by Mr. Bhardwaj recently. Counsel asks the court to accept that Mr. Bhardwaj is willing today to personally assume the entire value of the construction lien, effectively doubling the value of his offer to purchase. The offer is without detail, without clarity and most importantly without practicality as it falls millions of dollars outside the appraisal, information received by the Receiver and other offers on the Property.

BMO's mortgage was placed on the property in April 2014. The construction lien was registered on the Property

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

years later in August 2018, for WMC that commenced a couple of years later. It would appear that SDM Construction Inc does not have a priority claim. Nevertheless BMO and the Receiver have agreed to a hold back equal to the maximum amount of the construction lien claim on the Burlington Property ^{if accepted} and an Order shall go in accordance with that agreement. I see no other reason not to approve the sale of the Burlington Property as requested.

Orders to go therefore in accordance with the 4 draft orders signed by me today

TAB F

Court File No: CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	THURSDAY, THE 21 ST DAY OF
)	
JUSTICE HAINEY)	MARCH, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-
B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

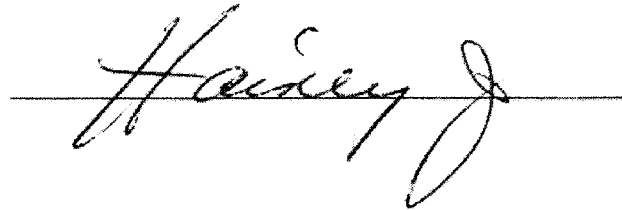
ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the "**Debtors**"), seeking to amend an Order of Chiappetta J. issued on March 4, 2019 authorizing the Receiver to, among other things, sell the real property municipally

known as 5223 Dundas Street, Burlington, Ontario as described further in the First Report of the Receiver dated February 13, 2019 (the "**First Report**"), was heard this day at Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel appearing on behalf of the Receiver:

1. **THIS COURT ORDERS** that the Approval and Vesting Order of Chiappetta J. dated March 4, 2019, attached hereto as Schedule "A", is hereby amended in accordance with the Amended Approval and Vesting Order, attached hereto as Schedule "B".

A handwritten signature in cursive script, appearing to read "Hainey J.", is written over a horizontal line.

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

MAR 21 2019

PER / PAR: *RW*

Schedule "A"

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

JUSTICE *Chiappe Fl*

)
)
)

MONDAY, THE 4TH DAY

OF MARCH, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER
(Re 5223 Dundas Street, Burlington, Ontario)

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") dated January 25, 2019 and accepted on January 30, 2019 and appended to the Report of the Receiver dated February 13, 2019 (the "**Report**"), and vesting in the Purchaser 1651033'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, Toronto, Ontario.

ON READING the Report and on hearing the submissions of respective counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn February 13, 2019, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1651033 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Receiver's and all of 1651033's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto 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 August 29, 2018; (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 C 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 D) 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 Halton (#20) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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 C 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.

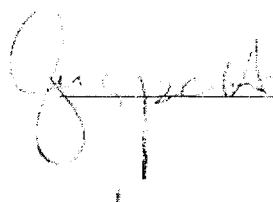
5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, 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 1651033 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 1651033;

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 1651033 and shall not be void or voidable by creditors of 1651033, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

7. **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.



ENTERED IN THE REGISTRY OF THE COURT OF ONTARIO
ON / BOOK NO:
LE / DANS LE REGISTRE NO

MAR 05 2019

PER / PAR: RW

Schedule A – Form of Receiver's Certificate

Court File No. CV-18-00602537-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. ~~INC.~~ LTD., 1496765 ONTARIO INC. ~~INC.~~ LTD. and
SUNSHINE PROPANE INC.

Respondents

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**").

B. Pursuant to an Order of the Court dated February 21, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 25, 2019 (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and 1651033'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 16 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 or the Vesting Order.

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 Date of Closing pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**RSM Canada Limited, solely in its capacity as
Court-appointed Receiver and Manager of 1651033
Ontario Ltd. and not in its personal or corporate
capacity and without personal or corporate liability**

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 1651033's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 5223 Dundas Street, Burlington, ON

LEGAL DESCRIPTION: PT LT 3, CON 1 NEL NDS, PTS 1 & 2, 20R18227 SAVE &
EXCEPT PT 1 20R19559; SUBJECT TO AN EASEMENT IN
GROSS OVER PART 1 PLAN 20R18227 AS IN HR756568;
CITY OF BURLINGTON

PIN: 07201-0178 (LT)

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

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. HR1172775 registered on April 2, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$3,180,000.00.
2. Instrument No. HR1172775 registered on April 2, 2014, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.
3. Instrument No. HR1196588 registered on July 15, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$1,000,000.00.
4. Instrument No. HR1568135 registered on August 31, 2018 is a Construction Lien in favour of SDM Construction Inc.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:
- i. Instrument No. HR746940 registered 2009/04/24 is a NOTICE with THE CORPORATION OF THE CITY OF BURLINGTON.
 - ii. Instrument No. HR756566 registered 2009/06/03 is a NOTICE with THE REGIONAL MUNICIPALITY OF HALTON.
 - iii. Instrument No. HR756568 registered 2009/06/03 is a TRANSFER EASEMENT in favour of THE REGIONAL MUNICIPALITY OF HALTON.

144

Schedule "B"

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 21 ST DAY
)	
JUSTICE HAINEY)	OF MARCH, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

AMENDED APPROVAL AND VESTING ORDER
(Re 5223 Dundas Street, Burlington, Ontario)

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") dated January 25, 2019 and accepted on January 30, 2019 and appended to the Report of the Receiver dated February 13, 2019 (the "**Report**"), and vesting in the Purchaser 1651033'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, Toronto, Ontario.

ON READING the Report and on hearing the submissions of respective counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn February 13, 2019, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1651033 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Receiver's and all of 1651033's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto 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 August 29, 2018; (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 C 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 D) 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 Halton (#20) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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 C 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, 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 1651033 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 1651033;

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 1651033 and shall not be void or voidable by creditors of 1651033, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

7. **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. CV-18-00602537-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC LTD., 1496765 ONTARIO INC LTD. and
SUNSHINE PROPANE INC.

Respondents

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**").

B. Pursuant to an Order of the Court dated March 21, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 25, 2019 (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and 1651033'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 16 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 or the Vesting Order.

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 Date of Closing pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**RSM Canada Limited, solely in its capacity as
Court-appointed Receiver and Manager of 1651033
Ontario Ltd. and not in its personal or corporate
capacity and without personal or corporate liability**

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 1651033's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 5223 Dundas Street, Burlington, ON

LEGAL DESCRIPTION: PT LT 3, CON 1 NEL NDS, PTS 1 & 2, 20R18227 SAVE &
EXCEPT PT 1 20R19559; SUBJECT TO AN EASEMENT IN
GROSS OVER PART 1 PLAN 20R18227 AS IN HR756568;
CITY OF BURLINGTON

PIN: 07201-0178 (LT)

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

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. HR1172775 registered on April 2, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$3,180,000.00.
2. Instrument No. HR1172776 registered on April 2, 2014, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.
3. Instrument No. HR1196588 registered on July 15, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$1,000,000.00.
4. Instrument No. HR1568135 registered on August 31, 2018 is a Construction Lien in favour of SDM Construction Inc.
5. Instrument No. HR1589610 registered on November 30, 2018 is a Certificate by SDM Construction Inc. against 1651033 Ontario Ltd.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:

- i. Instrument No. HR746940 registered 2009/04/24 is a NOTICE with THE CORPORATION OF THE CITY OF BURLINGTON.
- ii. Instrument No. HR756566 registered 2009/06/03 is a NOTICE with THE REGIONAL MUNICIPALITY OF HALTON.
- iii. Instrument No. HR756568 registered 2009/06/03 is a TRANSFER EASEMENT in favour of THE REGIONAL MUNICIPALITY OF HALTON.
- iv. Instrument No. HR117413 registered 2014/04/28 is a NOTICE with the CORPORATION OF THE CITY OF BURLINGTON.

BANK OF MONTREAL

-and-

Court File No. CV-18-00602537-00CL

2495087 ONTARIO INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West

35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TAB G

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and
SUNSHINE PROPANE INC.

Respondents

SECOND REPORT OF THE RECEIVER

March 29, 2019

157

Table of Contents

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	5
III.	COMPLETION OF THE SALE OF THE ETOBICOKE PROPERTY.....	8
IV.	COMPLETION OF THE SALE OF THE BURLINGTON PROPERTY.....	9
V.	STATUS OF THE SALE OF THE PORT COLBORNE PROPERTY.....	9
VI.	PORT COLBORNE SAFES.....	10
VII.	BOOKS AND RECORDS AND COMPUTERS.....	10
VIII.	MARKETING AND SALES ACTIVITIES.....	12
IX.	SALE OF THE PORT ELGIN PROPERTY.....	13
X.	THE PORT ELGIN APS.....	14
XI.	APPROVAL OF SALE.....	15
XII.	POSSIBLE LEASE RE PORT ELGIN PROPERTY.....	16
XIII.	SECURED OR PRIORITY CLAIMS.....	17
XIV.	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS.....	18
XV.	INTERIM DISTRIBUTIONS.....	18
XVI.	PROFESSIONAL FEES.....	20
XVII.	CONCLUSION AND REQUEST OF THE COURT.....	21

Appendices

Appointment Order	A
First Report (without appendices).....	B
February 21 Endorsement.....	C
Approval and Vesting Order (Etobicoke)	D
Approval and Vesting Order (Burlington).....	E
Approval and Vesting Order (Port Colborne).....	F
Distribution Order	G
March 4 Endorsement	H
March 21 Order	I
Receiver's Certificate (re Etobicoke Property)	J
Receiver's Certificate (re Burlington Property)	K
Confidential Appendix - Amendment of Agreement of Purchase and Sale.....	L
Summary of Documents	M
Confidential Appendix – Re Sale of Port Elgin Property	N
Amin Lease.....	O
Port Elgin Security Opinion.....	P
2495087 BMO Statement... ..	Q
Interim Statement of Receipts and Disbursements.....	R
Affidavit of Daniel Weisz.....	S
Affidavit of Michelle Jackson	T

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 29, 2018 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd. ("**1496765 (Etobicoke)**"), 1651033 Ontario Ltd. ("**1651033 (Burlington)**"), 1527020 Ontario Inc. ("**1527020 (Port Colborne)**"), 2495087 Ontario Inc. ("**2495087 (Port Elgin)**"), 2496800 Ontario Inc. ("**2496800 (Goderich)**"), and Sunshine Propane Inc. ("**Sunshine**") (collectively the "**Debtors**" or the "**Companies**") acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (the "**Property**"). A copy of the Appointment Order is attached to this report as Appendix "**A**".
2. On February 13, 2019, the Receiver brought a motion, returnable on February 21, 2019, for the purpose of, *inter alia*:
 - (a) seeking approval of the sale of the Etobicoke Property (defined below), the Burlington Property (defined below) and the Port Colborne Property (defined below); and
 - (b) seeking the Court's authorization of certain payments including an interim distribution.

A copy of the Receiver's first report to the Court dated February 13, 2019 (the "**First Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "**B**".

-
3. On February 21, 2019, the Debtors attended at the motion hearing to oppose the Receiver's sale of the Etobicoke Property, the Burlington Property and the Port Colborne Property and to seek an adjournment of the motion in order to allow them to prepare a response. A copy of the Endorsement of Justice McEwen adjourning the motion to March 4, 2019 (the "**February 21 Endorsement**") is attached hereto as Appendix "C".
 4. On March 4, 2019, the Receiver's motion was heard and Justice Chiappetta:
 - (a) granted Approval and Vesting Orders in respect of each of the Etobicoke Property, the Burlington Property and the Port Colborne Property, copies of which are attached hereto as Appendices "D", "E" and "F", respectively; and
 - (b) granted a Distribution Order authorizing the Receiver to make certain payments as contemplated in the First Report, to make an interim distribution to Bank of Montreal on account of its outstanding indebtedness and authorizing various ancillary relief. A copy of the Distribution Order is attached hereto as Appendix "G".
 5. A copy of Justice Chiappetta's Endorsement made on March 4, 2019 (the "**March 4 Endorsement**") is attached to this report as Appendix "H".
 6. On March 21, 2019, Justice Hailey issued an order amending the Approval and Vesting Order of March 4, 2019 in respect of the Burlington Property (the "**March 21 Order**") to add Instrument No. HR1589610 to Schedule C listing the claims to be deleted and expunged from title to that property. A copy of the March 21 Order is attached hereto as Appendix "I".

-
7. The Appointment Order, the First Report, the Approval and Vesting Orders and the Distribution Order referred to in this report, together with related Court documents, has been posted on the Receiver's website which can be found at rsmcanada.com/2495087-ontario-et-al.

Purpose of Second Report

8. The purpose of this second report of the Receiver (the "**Second Report**") is to:
- (i) report to the Court on the activities of the Receiver since the date of the First Report to March 28, 2019;
 - (ii) report to the Court on the closing of the sale of the Etobicoke Property;
 - (iii) report to the Court on the closing of the sale of the Burlington Property;
 - (iv) report to the Court on the status of the closing of the sale of the Port Colborne Property;
 - (v) report to the Court on the status of the marketing of the Goderich Property;
 - (vi) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period August 29, 2018 to March 25, 2019; and
 - (vii) seek Orders:
 - a. authorizing and directing the Receiver to enter into and carry out the terms of the Port Elgin APS (defined below) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Port Elgin Property in the Port Elgin Purchaser (each as defined below), or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the

-
- transaction under the Port Elgin APS and the delivery of a Receiver's certificate to the Port Elgin Purchaser;
- b. sealing Confidential Appendix "L" to the Second Report until the closing of the sale of the Port Elgin Property;
 - c. sealing Confidential Appendix "N" to the Second Report until the closing of the sale of the Port Elgin Property;
 - d. authorizing the Receiver to destroy the Non-debtor Documents and Personal Documents (each as defined below);
 - e. authorizing the Receiver to make the 2495087 Interim Distribution (defined below);
 - f. approving the Second Report and the Receiver's conduct and activities to March 28, 2019;
 - g. approving the fees and disbursements of the Receiver incurred to February 28, 2019; and
 - h. approving the fees and disbursements of Paliare Roland incurred to February 28, 2019.

Terms of Reference

- 9. In preparing the Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter,

the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, 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 pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

10. Defined terms in the Second Report have, unless indicated otherwise herein, the same meanings as set out in the First Report.
11. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.
12. As set out below, the Receiver is not in possession of any recent financial information of the Debtors. Accordingly, the Receiver is administering the receiverships of the Debtors on the assumption that the only assets of the Debtors are the real properties (the "**Properties**"), cash on hand and miscellaneous chattels.

II. BACKGROUND

The Parties

Bank of Montreal

13. This section provides a condensed summary of the parties primarily involved in this proceeding. Additional information in respect of the parties, as well as to the background information relating to the Receiver's appointment, can be found in Paragraphs 9 to 32 of the First Report.

-
14. Bank of Montreal ("**BMO**") is the Applicant in these proceedings and is the primary secured creditor of each of the Companies. As of July 27, 2018, the Debtors were indebted to BMO in the aggregate amount of \$9,992,297.94.
15. The security held by BMO consists of mortgages over the Properties, as well as security agreements over the other assets of the Companies. Certain Debtors have guaranteed certain other Debtors' indebtedness to BMO.

1496765 (Etobicoke)

16. 1496765 (Etobicoke) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 0.4 acre real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the "**Etobicoke Property**"). As at the date of the Appointment Order, 1496765 (Etobicoke) operated an automatic car wash and auto detailing business at the Etobicoke Property.
17. In addition to the car wash, located at the Etobicoke Property was a propane refill centre.

1651033 (Burlington)

18. 1651033 (Burlington) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), on which is located a car wash. As at the date of the Appointment Order, the renovations to the Burlington Property had not been completed and the car wash was not in operation.

1527020 (Port Colborne)

19. 1527020 (Port Colborne) is an Ontario Corporation that holds legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") from which, as at the date of the Appointment Order, 1527020 (Port Colborne) operated a self-service and automatic car wash.

2495087 (Port Elgin)

20. 2495087 (Port Elgin) is an Ontario Corporation that holds legal and beneficial title to the real property municipally known as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**"). The Port Elgin Property is situated on approximately 0.6 acres of land. As at the date of the Appointment Order, located on the Port Elgin Property were:

- (a) a self-serve gas bar operating under the Ultramar brand;
- (b) a two-storey commercial building (approximately 4,000 sq. ft.) consisting of
 - (i) an ExpressMart convenience store, (ii) a retail store on the ground floor and (iii) a residential apartment on the second floor; and
- (c) a separate one-storey building (approximately 3,000 sq. ft.) occupied by a Tim Horton's restaurant.

21. 2495087 (Port Elgin) operated the gas station and convenience store and leased the other premises to tenants.

2496800 (Goderich)

22. 2496800 (Goderich) is an Ontario Corporation that holds legal and beneficial title to a 0.5 acre real property municipally known as 274 Bayfield Road, Goderich,

Ontario (the "**Goderich Property**"). As at the date of the Appointment Order, located on the Goderich Property were:

- (a) a self-serve gas bar operating under the Ultramar brand;
- (b) a one-storey commercial building containing an ExpressMart convenience store (approximately 860 sq. ft.); and
- (c) an automatic car wash (approximately 1,200 sq. ft.).

23. 2496800 (Goderich) operated the gas station, the convenience store and the car wash.

Sunshine

24. Sunshine is an Ontario Corporation incorporated on January 28, 2010.
25. The head office and mailing address for Sunshine is registered as 5462 Dundas St. West, which is the same address as that of 1496765 (Etobicoke), being the Etobicoke Property. Upon its appointment, the Receiver thought that Sunshine's operations consisted of the propane refill business. However, based on the Receiver's enquiry, the Ontario Fuels Safety License for the propane business is issued to Sam Propane Inc., and not to Sunshine.
26. The Respondents are independent from each other, but appear connected or otherwise related and/or owned by members of the same extended family.

III. COMPLETION OF THE SALE OF THE ETOBICOKE PROPERTY

27. In the First Report, the Receiver provided the Court with details of the proposed sale transaction with 2677323 Ontario Inc. for the Etobicoke Property. Following the issuance of the Approval and Vesting Order, the Receiver proceeded to close the sale transaction.

-
28. A copy of the Receiver's Certificate filed with the Court on March 18, 2019 is attached to this report as Appendix "J".

IV. COMPLETION OF THE SALE OF THE BURLINGTON PROPERTY

29. In the First Report, the Receiver provided the Court with details of the proposed sale transaction with Harsha Nimrani in trust corporation to be incorporated and subsequently assigned to 2680944 Ontario Inc. for the Burlington Property. Following the issuance of the Approval and Vesting Order, the Receiver proceeded to close the sale transaction.
30. A copy of the Receiver's Certificate filed with the Court on March 22, 2019 is attached to this report as Appendix "K".

V. STATUS OF THE SALE OF THE PORT COLBORNE PROPERTY

31. In the First Report, the Receiver provided the Court with details of the proposed sale transaction with 2573702 Ontario Inc. (the "**Port Colborne Purchaser**") for the Port Colborne Property (the "**Port Colborne APS**"). Following the issuance of the Approval and Vesting Order, the closing date was scheduled for March 18, 2019.
32. On March 11, 2019, the Port Colborne Purchaser requested an extension until April 15, 2019. The Receiver advised that it would be agreeable to an extension of the closing date to April 15, 2019 on certain terms and conditions. In response, the Port Colborne Purchaser requested the closing date be extended to May 1, 2019. After negotiation between the parties, the closing date was extended to May 1, 2019 and the Port Colborne Purchaser paid a second deposit to the

Receiver. A copy of the Amendment of Agreement of Purchase and Sale dated March 19, 2019 amending the terms of the Port Colborne APS is attached to this report as Confidential Appendix "L".

VI. PORT COLBORNE SAFES

33. The Receiver arranged for a safecracker to attend at the Port Colborne Property to open the safes. The safes were found to contain keys and documents including corporate documents pertaining to the predecessor companies to 1527020 (Port Colborne), but no cash or other valuables. The Receiver will provide the keys from the safes to the purchaser of the Port Colborne Property upon the closing of the sale of that property.

VII. BOOKS AND RECORDS AND COMPUTERS

34. Paragraph 13 of the Distribution Order provides the Receiver with the authority to sell or otherwise dispose of any remaining items at any of the Properties, including personal property that may belong to individuals related to the Debtors, that are not removed from those Properties, under the Receiver's supervision, within three business days of the date of the Approval and Vesting Order issued in respect of that Property.
35. No parties contacted the Receiver to make arrangements to remove any remaining items or personal property at the Properties.
36. Prior to the sale of the Etobicoke Property, the Receiver attended at the Etobicoke Property and removed books and records found at the Etobicoke Property. The Receiver did not remove any other items from the Etobicoke

Property and the Burlington Property, other than computers, prior to the closing of the respective sale transactions.

37. The documents and books and records the Receiver removed from the Etobicoke Property include books and records pertaining to the Debtors, records pertaining to individuals (the "**Personal Documents**") or books and records pertaining to other entities (the "**Non-debtor Documents**"). The books and records include cash register receipts and vendor invoices, bank statements, and other accounting and financial records of the Debtors. The Receiver did not find any accounting ledgers that would allow it to prepare the Debtors' outstanding corporate tax, HST or payroll returns.
38. The Personal Documents include personal information relating to individuals including the principals of the Debtors.
39. The Non-debtor Documents include accounting and financial information pertaining to other entities who appear to share a mailing or business address with one of the Debtors. At this time, the Receiver does not have knowledge about whether or how these companies are related to one or more of the Debtors.
40. On January 30, 2019, Paliare Roland wrote to counsel for the Debtors to request that the Debtors identify for the Receiver, the relationship, if any, of thirteen specified entities. No response was received.
41. A summary of the documents is attached at Appendix "**M**". The Receiver intends to provide a copy of this list to Canada Revenue Agency ("**CRA**") and to inquire of CRA whether it wishes to review any of the records, as certain of the records may assist CRA to assess the liabilities, if any, that the individual Debtor

companies have to CRA. The Receiver will provide access to and copies of any of the records that may be requested by CRA that are in the Receiver's possession as at the date of the request.

42. As certain of the documentation in the possession of the Receiver are not records of the Debtor companies, the Receiver seeks an Order authorizing and directing the Receiver to destroy any Non-debtor Documents and Personal Documents as the Receiver may consider appropriate.
43. The Receiver removed from the Etobicoke Property and the Port Colborne Property any computers that did not appear to be integrated with the car wash operations. The Receiver is obtaining quotes for the cost to access any data saved on the hard drives of the computers and for destruction of the hard drives and disposal of the computers. If the data is not accessible, and as authorized in the Distribution Order, the Receiver will arrange for the hard drives to be destroyed.

VIII. MARKETING AND SALES ACTIVITIES

44. The Receiver and Avison Young have executed an amendment to the Listing Agreement which was due to expire on March 18, 2019. The Listing Agreement is extended to September 18, 2019 in respect of the Port Elgin and Goderich properties.
45. Avison Young is continuing its marketing of the Goderich Property.
46. Details of the Receiver's marketing process that resulted in the receipt of offers for the Properties, including the Port Elgin Property, are set out in Paragraphs

107 to 112 of the First Report. A summary of the offers received for the Port Elgin Property are set out in Tabs 1 and 2 of Confidential Appendix "N" of this report.

IX. SALE OF THE PORT ELGIN PROPERTY

47. On January 30, 2019, the Receiver entered into an agreement of purchase and sale with Amalethan Xavier, in trust for a company to be incorporated (the "**Port Elgin Purchaser**") for the Port Elgin Property (the "**Port Elgin APS**").
48. As reported in the First Report, the Port Elgin APS was subject to a 30-day conditional period, which was due to expire on March 2, 2019.
49. On February 26, 2019, the Port Elgin Purchaser requested a two week extension of the conditional period. The Receiver agreed to extend the conditional period to March 15, 2019. On March 15, 2019, the Port Elgin Purchaser waived its condition and provided the portion of the deposit due upon the waiver of the condition.
50. As noted in the First Report, TDL Group Ltd. ("**TDL**") is the lessee for the Tim Horton's restaurant located on the Port Elgin Property. The lease for the tenancy provides TDL with a right of first refusal (the "**Tim Horton's ROFR**") with respect to a bona fide offer to purchase all or part of the Port Elgin Property received by the landlord during the tenancy period. Before accepting any such offer, the landlord is required to give TDL the sole and exclusive right for a period of ten (10) banking days after the receipt of such notice, to elect to purchase the property upon the same terms and conditions as are contained in the offer.
51. On March 19, 2019, the Receiver gave notice to TDL of the Port Elgin offer. The deadline for TDL to exercise the Tim Horton's ROFR was April 2, 2019.

-
52. On March 25, 2019, TDL advised the Receiver that it would not be exercising the Tim Horton's ROFR.
53. As the Port Elgin Purchaser has advised the Receiver that it will not be operating a gas station under the Ultramar brand, if the Approval and Vesting Order is issued by the Court, the Receiver will contact Parkland to make arrangements for Parkland to remove its property from the Port Elgin Property.

X. THE PORT ELGIN APS

54. Salient terms of the Port Elgin APS and matters relating thereto include (all capitalized terms in this section not defined in the Port Elgin APS are as otherwise defined in the Second Report):
- i) the purchased assets include the Port Elgin Property;
 - ii) a deposit of 10% of the Purchase Price has been received from the purchaser;
 - iii) the offer is firm as the Purchaser waived conditions;
 - iv) the Port Elgin APS is conditional on court approval and the issuance of an order vesting title to the purchased assets in the Purchaser free and clear of claims and encumbrances, other than those specifically itemized in the Agreement;
 - v) the Purchaser is buying the Port Elgin Property on an "as is, where is" basis; and
 - vi) closing of the sale provided for in the Port Elgin APS is scheduled to occur on the tenth Business Day following the date on which the Approval and

Vesting Order is granted, or such other date as agreed between the Purchaser and the Receiver.

55. A copy of the Port Elgin APS is attached to this report at Tab 3 to Confidential Appendix "N".

XI. APPROVAL OF SALE

56. The Receiver believes that the marketing process undertaken by the Receiver was appropriate for the type of property in question, and provided sufficient market exposure to the Port Elgin Property for the following reasons:

- (i) notice of the sale of the Port Elgin Property was sent to more than 1,200 parties;
- (ii) the Port Elgin Property was listed for sale on MLS;
- (iii) the Port Elgin Property was listed on Avison Young's website and Loopnet; and
- (iv) the Port Elgin Property was exposed to the market for a period of approximately six weeks.

57. The Receiver therefore recommends the approval of the Port Elgin APS by this Honourable Court.

58. The Receiver believes that details of the offers submitted for the Port Elgin Property including matters relating thereto should be kept confidential until the closing of the transaction. The Receiver is of the view that public disclosure thereof would have a negative impact on the future marketing of the Port Elgin Property should the transaction with the purchaser not be approved or completed.

-
59. The Receiver therefore respectfully requests that Confidential Appendix "N" be sealed until after the closing of the sale of the Port Elgin Property.

XII. POSSIBLE LEASE RE PORT ELGIN PROPERTY

60. Included in the documents the Receiver came upon at the Etobicoke Property was a premises lease dated July 27, 2018 between 2495087 (Port Elgin) and Naveed Amin, operating as "Shawarma King" (the "**Amin Lease**"). A copy of the Amin Lease is attached to this report as Appendix "O".
61. According to the Amin Lease, the term of the lease is for five years commencing on August 1, 2018, with a five year renewal option.
62. At the time the Receiver took possession of the Port Elgin Property, the Receiver did not see any evidence of operations being conducted that would be consistent with the Amin Lease and, until the Receiver located the lease when it removed documents from the Etobicoke Property, the Receiver had no knowledge that the Amin Lease existed.
63. The Receiver has not received any of the rent payments due to be paid pursuant to paragraph 3 of the Amin Lease nor has it had any communications from Naveed Amin. It is the Receiver's position that since no rent has been paid to the Receiver, the Amin Lease is in default.
64. While the Amin Lease does not appear to contain a termination or default provision, the Receiver is not able to serve any default notice, or notice of termination, upon Naveed Amin since the only address for Naveed Amin contained in the Amin Lease is the address of the Port Elgin Property.

65. Paliare Roland has advised the Receiver that the Amin Lease is not registered on title to the Port Elgin Property.

XIII. SECURED OR PRIORITY CLAIMS

66. The First Report included:
- i) a copy of the search of the Parcel Register for Property Identifier reports from the Ontario Land Registry Office dated June 20, 2018 for the Port Elgin Property; and
 - ii) a copy of the search conducted under the Personal Property Security Registration System dated September 6, 2018 for 2495087 (Port Elgin).
67. Based on the above searches, and as set out in the First Report, the only claim registered against 2495087 (Port Elgin) is a registration in the amount of \$2,360,000 in favour of BMO, which claim has not been audited or verified by the Receiver.
68. The Receiver has received a legal opinion from Paliare Roland that, subject to the assumptions and qualifications contained in Paliare Roland's opinion letter, the mortgage granted in favour of BMO on the Port Elgin Property is a valid first charge on the Port Elgin Property (the "**Port Elgin Security Opinion**"). A copy of the Port Elgin Security Opinion is attached to this report at Appendix "P".
69. As set out on a statement provided by BMO to the Receiver (the "**2495087 BMO Statement**"), as of March 28, 2019, the amount owed by 2495087 (Port Elgin) to BMO is \$2,385,866, before consideration of the advances made by BMO for which Receiver Certificates were issued. A copy of the 2495087 BMO Statement is attached to this report at Appendix "Q".

XIV. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

70. Attached to this report as Appendix "R" is the Receiver's Interim Statement of Receipts and Disbursements for the period August 29, 2018 to March 25, 2019 (the "R&D"). The R&D sets out the Receiver's receipts and disbursements for each of the Debtors, as well as on a combined basis.
71. On a summary combined basis, total receipts were \$7,268,435 and total disbursements were \$1,476,719, resulting in a net cash balance of \$5,791,716, as follows:

Company Name	Cash Receipts	Cash Disbursements	Excess of Receipts over Disbursements
1496765 (Etobicoke)	\$ 3,801,596	\$ 797,784	\$ 3,003,812
1651033 (Burlington)	\$ 2,587,000	\$ 280,279	\$ 2,306,722
1527020 (Port Colborne)	\$ 263,714	\$ 124,469	\$ 139,244
2495087 (Port Elgin)	\$ 311,905	\$ 140,662	\$ 171,243
2496800 (Goderich)	\$ 297,928	\$ 130,752	\$ 167,176
Sunshine	\$ 6,293	\$ 2,773	\$ 3,520
Total	\$ 7,268,435	\$ 1,476,719	\$ 5,791,716

XV. INTERIM DISTRIBUTIONS

72. In accordance with the Distribution Order, the Receiver has made the following payments as of the date of the Second Report:
- (a) to the Receiver, an amount equal to the unpaid accounts of the Receiver on account of operating expenses and the Receiver's professional fees and disbursements;

177

(b) to Paliare Roland, an amount equal to the unpaid accounts of Paliare Roland;

(c) to BMO, following the sale of the Etobicoke Property, the advances totaling \$99,000 under Receiver Certificates # 2, 6 and 9 plus accrued interest; and

(d) to BMO, following the sale of the Burlington Property, the advances totaling \$87,000 under Receiver Certificates # 1, 8 and 11 plus accrued interest.

73. The Receiver is in the process of finalizing certain matters with BMO prior to making any distributions to BMO in respect of BMO's loans to 1496765 (Etobicoke) and 1651033 (Burlington).
74. The Receiver has requested from CRA a formal request for payment of its deemed trust claims prior to making any payments to CRA.
75. Upon the closing of the sale of the Port Elgin Property, and receipt by the Receiver of the net sales proceeds therefrom, funds will be available for the Receiver to make an interim distribution in respect of BMO's loans to 2495087 (Port Elgin).
76. As set out above, the Receiver has received the Port Elgin Security Opinion indicating that the mortgage granted by 2495087 (Port Elgin) to BMO in respect of the Port Elgin Property is a valid first charge on the Port Elgin Property.
77. On the closing of the sale of the Port Elgin Property, the Receiver proposes to make the following payments from the net proceeds of sale, after payments of the property taxes and commissions payable to Avison Young in respect of the Port Elgin Property (the "**2495087 Interim Distribution**"):

-
- (a) to BMO, the advances totaling \$99,000 under Receiver Certificates # 4 and 12 plus accrued interest; and
- (b) to BMO, an amount not exceeding the outstanding indebtedness of 2495087 (Port Elgin) to BMO secured by BMO's first mortgage over the Port Elgin Property.

XVI. PROFESSIONAL FEES

78. The Receiver's accounts total \$49,051.50 in fees plus HST of \$6,376.72 for a total amount of \$55,428.22 for the period February 1, 2019 to February 28, 2019 (the "**Receiver's Account**"). A copy of the Receiver's Account, together with a summary of the account, the total billable hours charged per the account, and the average hourly rate charged per the account, is set out in the Affidavit of Daniel Weisz sworn March 29, 2019 attached to this report as Appendix "**S**".
79. The account of the Receiver's counsel, Paliare Roland totals \$35,885.15 in fees and disbursements and \$4,641.80 in HST for a total of \$40,526.95 (the "**Paliare Roland Account**") for the period February 1, 2019 to February 28, 2019. A copy of the Paliare Roland Account, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Account, is set out in the Affidavit of Michelle Jackson sworn March 29, 2019 attached to this report as Appendix "**T**".
80. The Receiver is seeking approval of the Receiver's Account and the Paliare Roland Account.

179

XVII. CONCLUSION AND REQUEST OF THE COURT

81. The Receiver respectfully requests that the Court grant Orders which provide for the following:

- (a) authorizing and directing the Receiver to enter into and carry out the terms of the Port Elgin APS together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Port Elgin Property in the Port Elgin Purchaser, or as it may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Port Elgin APS and the delivery of a Receiver's certificate to the Port Elgin Purchaser;
- (b) sealing Confidential Appendix "L" to the Second Report until the closing of the sale of the Port Colborne Property;
- (c) sealing Confidential Appendix "N" to the Second Report until the closing of the sale of the Port Elgin Property;
- (d) authorizing the Receiver to destroy the Non-debtor Documents and the Personal Documents;
- (e) authorizing the Receiver to make the 2495087 Interim Distribution;
- (f) approving the Second Report and the Receiver's conduct and activities to March 28, 2019;
- (g) approving the R&D;
- (h) approving the fees and disbursements of the Receiver incurred to February 28, 2019; and

-
- (i) approving the fees and disbursements of Paliare Roland incurred to
February 28, 2019.

All of which is respectfully submitted to this Court as of this 29th day of March, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager of
1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc.,
2495087 Ontario Inc., 2496800 Ontario Inc., and Sunshine Propane Inc.
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

TAB H

Court File No. CV-18-00602537-00CL

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

THE HONOURABLE

JUSTICE *Chiappetta*)
)
)FRIDAY THE 12TH DAY

OF APRIL, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
2651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "Receiver") of all of the assets, undertakings and properties of 2495087 Ontario Inc. ("**2495087**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated the 30th day of January 2019, as amended on March 1, 2019 (the "**Sale Agreement**") between the Receiver and Amaethan Xavier, in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2678361 Ontario Inc. (the "**Purchaser**") and appended to the Report of the Receiver dated April 1, 2019 (the "**Report**"), and vesting in the Purchaser 2495087'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, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 2495087 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Receiver's and all of 2495087's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto 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 August 29, 2018; (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 C 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 D) 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 Bruce (#3) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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 C 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.

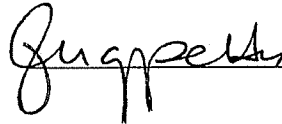
6. **THIS COURT ORDERS** that, notwithstanding:

- (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 2495087 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 2495087;

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 2495087 and shall not be void or voidable by creditors of 2495087, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

7. **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.



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

APR 15 2019

PER / PAR:



Schedule A – Form of Receiver's Certificate

Court File No. CV-18-00602537-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

RECEIVER'S CERTIFICATE**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc. ("**2495087**"), including all proceeds thereof (collectively, the "**Property**").
- B. Pursuant to an Order of the Court dated April 12, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 30, 2019, as Amended March 1, 2019 (the "**Sale Agreement**") between the Receiver and Amaethan Xavier, in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2678361 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and 2495087'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 16 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 or the Vesting Order.

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 Date of Closing pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**RSM Canada Limited, solely in its capacity as
Court-appointed Receiver and Manager of 2495087
Ontario Inc. and not in its personal or corporate
capacity and without personal or corporate liability**

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 2495087's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 591-595 Goderich Street, Port Elgin, ON

LEGAL DESCRIPTION: LT 3, 1 BLK 9 PL 11; PT LT 2 BLK 9 PL 11 PT 1 & 3, 3R5963; PORT ELGIN

and

PT LT 2 BLK 9 PL 11 PT 2, 3R5963; PORT ELGIN

PINs: 33246-0421 (LT) and 33246-0422 (LT)

189

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

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. BR117857 registered on April 13, 2017, being a Charge in favour of Bank of Montreal in the principal amount of \$2,360,000.00.
2. Instrument No. BR117858 registered on April 13, 2017, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.
3. Instrument No. BR103386 registered on December 21, 2015, being a Notice of Lease in favour of CST Canada Co.
4. Instrument No. BR125522, registered on November 2, 2017, being an Application for Name Change Instrument re Instrument No. BR103386 from CST Canada Co. to Couche-Tard Inc.
5. Instrument No. BR125712 registered on November 8, 2017 being a Notice of Assignment of Lessee's Interest re Instrument No. BR103386 from Couche-Tard Inc. to Parkland Fuel Corporation.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:

- i. Instrument No. R297853 registered on September 10, 1993, being an Agreement with the Town of Port Elgin.
- ii. Instrument No. R299540 registered on November 22, 1993, being a Notice of Lease in favour of The TDL Group Ltd.
- iii. Instrument No. R303986 registered on June 2, 1994, being a Notice.
- iv. Instrument No. BR89646 registered on September 18, 2014, being an Application (General) with The TDL Group Co., The TDL Group Corp. and The TDL Group, being a Lease Extension & Amending Agreement relating to instrument No. R299540
- v. Instrument No. BR98005 registered on July 14, 2015 being a Notice with the Corporation of the Town of Saugeen Shores.
- vi. Instrument No. R75489 registered on March 19, 1970 being a bylaw.

192

BANK OF MONTREAL

Applicant



-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West

35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

193

TAB I

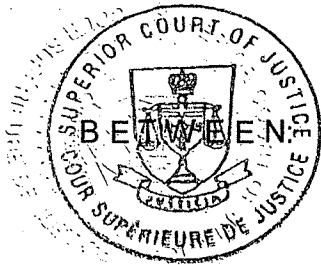
Court File No: CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE CHIAPPETTA

)
)
)

FRIDAY, THE 12TH DAY OF
APRIL, 2019



BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-
B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the "**Debtors**"), for an order authorizing the Receiver to, among other things, sell the real property municipally known 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**") and

to distribute certain of the proceeds therefrom, as described further in the Second Report of the Receiver dated March 29, 2019 (the "**Second Report**"), was heard this day at Toronto, Ontario.

ON READING the Second Report and the Confidential Appendices attached thereto, and on hearing the submissions of counsel for the Receiver and the Applicants, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn March 29, 2019, filed:

1. **THIS COURT ORDERS** that the time for service 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.
2. **THIS COURT ORDERS AND DECLARES** that the Second Report and the conduct and activities of the Receiver to March 28, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel for the period ended February 28, 2019 as set out in the Second Report be and are hereby approved.
4. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements as of March 25, 2019 as set out in the Second Report, be and is hereby approved.
5. **THIS COURT ORDERS** that the following Confidential Appendices be sealed as follows:
 - (a) Confidential Appendix "L" to the Second Report until the closing of the sale of the Port Colborne Property (as defined in the Second Report); and,
 - (b) Confidential Appendix "N" to the Second Report until the closing of the sale of the Port Elgin Property;

6. **THIS COURT ORDERS** that the Receiver is authorized to pay from the proceeds of sale of the Port Elgin Property the following (subject to such hold backs as the Receiver determines, in its sole discretion, are appropriate):

(c) to BMO, the advances totaling \$99,000 under Receiver Certificates nos. 4 and 12 plus accrued interest; and

(d) to BMO, an amount not exceeding the outstanding indebtedness of 2495087 Ontario Inc. to BMO secured by BMO's first mortgage over the Port Elgin Property.

7. **THIS COURT ORDERS** that the Receiver may hold back, in respect of each of the Debtors, amounts to cover unpaid operating expenses, potential deemed trust claims and future professional fees.

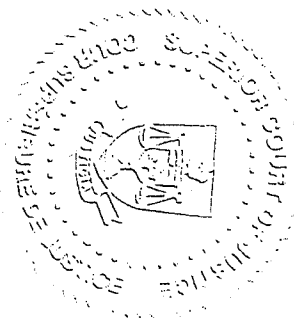
8. **THIS COURT ORDERS** that the Receiver is authorized to terminate the lease in respect of the Port Elgin Property between 2495087 Ontario Inc. and Naveed Amin, operating as "Shawarma King", dated July 27, 2018.

9. **THIS COURT ORDERS** that the Receiver is authorized to destroy the books and records pertaining to entities which are not debtors in these proceedings found at the real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the "**Etobicoke Property**") and to destroy records pertaining to individuals, including personal information relating to individuals who are principals of the Debtors, found at the Etobicoke Property.

10. **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.

Guappetta



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

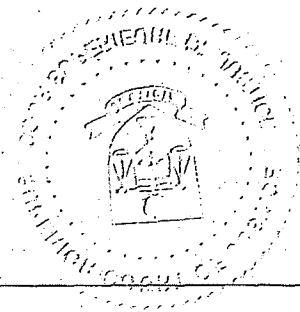
APR 15 2019

PER / PAR: *Q*

188

BANK OF MONTREAL

Applicant



-and-

Court File No. CV-18-00602537-00CL

2495087 ONTARIO INC. et al.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

DISTRIBUTION ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West

35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

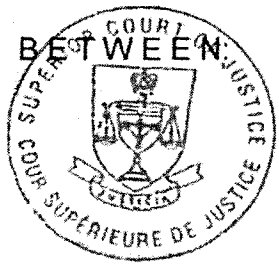
TAB J

200

Court File No: CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) MONDAY, THE 4TH DAY OF
) MARCH, 2019
JUSTICE CHIAPPETTA)



BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC LTD., 1496765 ONTARIO INC LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-
B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

AMENDED DISTRIBUTION ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the "**Debtors**"), for an order authorizing the Receiver to, among other things, sell the real properties municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the

"**Etobicoke Property**"), 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), and 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") (each a "**Property**" and collectively, the "**Properties**") and to distribute certain of the proceeds therefrom, as described further in the First Report of the Receiver dated February 13, 2019 (the "**First Report**"), was heard this day at Toronto, Ontario.

ON READING the First Report and the Confidential Appendices attached thereto, and on hearing the submissions of respective counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn February 13, 2019, filed:

1. **THIS COURT ORDERS** that the time for service 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.
2. **THIS COURT ORDERS AND DECLARES** that the First Report and the conduct and activities of the Receiver to February 11, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel for the period ended January 31, 2019 as set out in the First Report be and are hereby approved.
4. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements as of January 31, 2019 as set out in the First Report, be and are hereby approved.
5. **THIS COURT ORDERS** that the following Confidential Appendices be sealed as follows:
 - (a) Confidential Appendix "HH" to the First Report until the closing of the sale of the Etobicoke Property;

- (b) Confidential Appendix "II" to the First Report until the closing of the sale of the Burlington Property; and
- (c) Confidential Appendix "JJ" to the First Report until the closing of the sale of the Port Colborne Property;

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay from the proceeds of sale of the Properties or any of them, the following:

- (a) unpaid accounts relating to operating expenses;
- (b) to the Receiver, an amount equal to the unpaid accounts of the Receiver relating to the Receiver's fees; and
- (c) to Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), an amount equal to the unpaid accounts of Paliare Roland.

7. **THIS COURT ORDERS** that following the payments contemplated in paragraph 6, the Receiver is authorized and directed to pay from the proceeds of sale of the Etobicoke Property the following:

- (a) to CRA, \$2,601.00 owed on account of 1496765 Ontario Ltd.'s source deductions deemed trust liability;
- (b) to BMO:
 - (i) the advances totaling \$99,000 under Receiver Certificates # 2, 6 and 9 plus accrued interest; and
 - (ii) an amount not exceeding the outstanding indebtedness of 1496765 Ontario Ltd. to BMO;

8. **THIS COURT ORDERS** that following the payments contemplated in paragraph 6, the Receiver is authorized and directed to pay from the proceeds of sale of the Burlington Property the following:

(a) to BMO:

- (i) the advances totaling \$87,000 under Receiver Certificates # 1, 8 and 11 plus accrued interest; and
- (ii) an amount not exceeding the outstanding indebtedness of 1651033 Ontario Ltd. to BMO, provided that the Receiver shall hold back from this distribution the amount of \$254,948.40 pending the determination of SDM Construction Inc.'s claim for priority.

9. **THIS COURT ORDERS** that following the payments contemplated in paragraph 6, the Receiver is authorized and directed to pay from the proceeds of sale of the Port Colborne Property the following:

(a) to BMO:

- (i) the advances totaling \$99,000 under Receiver Certificates # 3, 7 and 10 plus accrued interest; and
- (ii) an amount not exceeding the outstanding indebtedness of 1527020 Ontario Inc. to BMO.

10. **THIS COURT ORDERS** that the Receiver may hold back, in respect of each of the Debtors, amounts to cover unpaid operating expenses, potential deemed trust claims and future professional fees.

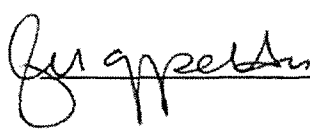
11. **THIS COURT ORDERS** the Receiver may attempt to access any data saved on the hard drives of the computers found at the Etobicoke Property, the Port Colborne Property, and the real property known municipally as 274 Bayfield Road, Goderich, Ontario (the "**Goderich Property**") or if that cannot be done, to destroy the hard drives of such computers.

12. **THIS COURT ORDERS** the Receiver may deposit the Cash (as such term is defined in the First Report) into the receivership trust account for the benefit of 1496765 Ontario Ltd.'s creditors.

13. **THIS COURT ORDERS** the Receiver may sell or otherwise dispose of any remaining items at any of the Properties, the Goderich Property or the real property known municipally as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**") and with the Properties and the Goderich Property, the "**Real Properties**") including personal property that may belong to individuals related to the Debtors, that are not removed from those Real Properties, under the Receiver's supervision, within three business days of the date of the Approval and Vesting Order issued in respect of that Property.


265

14. **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.

_____

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

APR 15 2019

PER / PAR: 

206

BANK OF MONTREAL

-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

DISTRIBUTION ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TAB K

Court File No. CV-18-00602537-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,

1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and

SUNSHINE PROPANE INC.

Respondents

SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE RECEIVER

APRIL 24, 2019

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 29, 2018 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc. ("**1527020**"), 2495087 Ontario Inc., 2496800 Ontario Inc., and Sunshine Propane Inc. (collectively the "**Debtors**") acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (the "**Property**"). A copy of the **Appointment Order** is attached to this report as Appendix "**A**".
2. The First Report of the Receiver dated February 13, 2019 ("**First Report**") was filed in connection with a motion by the Receiver seeking approval of the sale of certain Property of the Debtors, including property located at 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**"), owned by 1527020. The purpose of the First Report was to, *inter alia*,:
 - (a) report to the Court on the results of the marketing and sales process and the activities of the Receiver leading to receipt of offers for Property owned by the Debtors including, *inter alia*, the Port Colborne Property; and
 - (b) seek an Order authorizing and directing the Receiver to enter into and carry out the terms of the Agreement of Purchase and Sale (the "**Port Colborne APS**") dated as of January 19, 2019 between the Receiver and 2573702 Ontario Inc. (the "**Port Colborne Purchaser**"), together with any further amendments thereto deemed necessary by the Receiver in its sole

opinion, and vesting title to the Port Colborne Property in the Port Colborne Purchaser, or as the Port Colborne Purchaser may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the Port Colborne APS and the delivery of a Receiver's certificate to the Port Colborne Purchaser.

3. On March 4, 2019, the Honourable Justice Chiappetta J. granted an Order (the "**Order**") approving the Port Colborne APS, authorizing the Receiver to complete the transaction therein detailed and vesting title to the Port Colborne Property in the Port Colborne Purchaser upon closing and delivery of a Receiver's Certificate. **Attached as Appendix "B" to this Supplemental Report to the First Report of the Receiver ("First Supplemental Report") is a copy of the Order.**
4. The purpose of this First Supplemental Report is to:
 - (a) inform the Court that the Port Colborne Purchaser has requested that, for the purpose of the transaction, title to the Port Colborne Property be conveyed to 2684697 Ontario Inc. (the "**Substituted Port Colborne Purchaser**"), and not the Port Colborne Purchaser, on closing;
 - (b) seek certain amendments to the March 4, 2019 Order which are necessary in order to give effect to this intention; and
 - (c) provide the Court with the Receiver's recommendation that the amendments sought to the Order be approved.

-
5. This First Supplemental Report should be read in conjunction with the First Report. Attached to this First Supplemental Report as **Appendix "C" is a copy of the First Report, without Exhibits.**

II. REQUESTED AMENDMENTS AND RECOMMENDATIONS

6. Counsel for the Port Colborne Purchaser and Substituted Port Colborne Purchaser, the Law Offices of Jack Frymer Professional Corporation, has advised the Receiver, in support of the requested amendments, that:

- the Port Colborne Purchaser and Substituted Port Colborne Purchaser have the same beneficial ownership;
- no consideration has been, or will be, paid or transferred as between the Port Colborne Purchaser and the Substituted Port Colborne Purchaser in relation to the transaction contemplated by the Port Colborne APS;
- the Port Colborne Purchaser always intended that title to the Port Colborne Property would be taken in the name of a single purpose entity incorporated for the purposes of the transaction and did not appreciate that such designation would, if not made prior to the issuance of the Order, require an amendment to the Order. Had the Port Colborne Purchaser realized that it was necessary that the Order approving the transaction reflect such intention, this circumstance would have been addressed prior to the Order being issued; and
- it has no knowledge of any party who would be adversely affected by the amendments sought to the Order.

7. The Receiver is not aware of any reason to doubt the correctness of any of the statements conveyed by counsel to the Port Colborne Purchaser/Substituted Port Colborne Purchaser.
8. The transaction with the Substituted Port Colborne Purchaser will, in all other respects but for the identity of the party taking title, be completed on the same terms as those previously approved by this Honorable Court pursuant to the Order.
9. The Receiver knows of no reason why the amendments to the Order should not be granted and recommends that the Court grant the amendments sought and issue **the draft Amended Approval and Vesting Order attached to this First Supplemental Report as Appendix "D"**.

All of which is respectfully submitted to this Court as of this 24th day of April, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager of
1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc.,
2495087 Ontario Inc., 2496800 Ontario Inc., and Sunshine Propane Inc.
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President
41362.0004/12534490_.1

TAB L

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 25 TH DAY
)	
JUSTICE HAINEY)	OF APRIL, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

AMENDED APPROVAL AND VESTING ORDER
(Re 633 Main Street West, Port Colborne, Ontario)

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1527020 Ontario Inc. ("**1527020**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 2573702 Ontario Inc. dated January 19, 2019 and accepted on February 1, 2019 and appended to the Report of the Receiver dated February 13, 2019 (the "**Report**"), and vesting in 2684697 Ontario Inc. (the "**Purchaser**") 1527020'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, Toronto, Ontario.

ON READING the Report and on hearing the submissions of respective counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn February 13, 2019, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1527020 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Receiver's and all of 1527020's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto 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 August 29, 2018; (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 C 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 D) 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 Niagara South Welland (#59) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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 C 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.

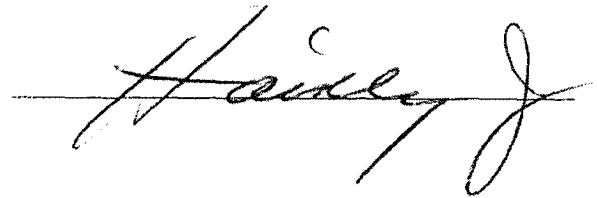
5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, 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 1527020 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 1527020;

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 1527020 and shall not be void or voidable by creditors of 1527020, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

7. **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.



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

APR 25 2019

PER / PAR: *RW*

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-00602537-00CL

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1527020 Ontario Inc. ("**1527020**"), including all proceeds thereof (collectively, the "**Property**").

B. Pursuant to an Order of the Court dated March 4, 2019, as amended by an Order of the Court dated April 25, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale dated as of January 19, 2019 (the "**Sale Agreement**") between the Receiver and 2573702 Ontario Inc. and provided for the vesting in 2684697 Ontario Inc. (the "**Purchaser**") of the Receiver’s and 1527020’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 16 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 or the Vesting Order.

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 Date of Closing pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**RSM Canada Limited, solely in its capacity as
Court-appointed Receiver and Manager of 1527020
Ontario Inc. and not in its personal or corporate
capacity and without personal or corporate liability**

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 1527020's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 633 Main Street West, Port Colborne, ON

LEGAL DESCRIPTION: PT LT 32 CON 2 HUMBERSTONE AS IN RO555223; PORT COLBORNE

PIN: 64139 - 0013 (LT)

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

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. SN486746 registered on October 18, 2016, being a Charge in favour of Bank of Montreal in the principal amount of \$1,550,000.00.
2. Instrument No. SN486747 registered on October 18, 2016, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:
 - i. Instrument No. AA73912 registered on June 11, 1962 being a Bylaw
 - ii. Instrument No. SN32426 registered on May 6, 2004 is a Notice of Site Plan Agreement between Young Bros. Garage Limited and The Corporation of The City of Port Colborne

BANK OF MONTREAL
Applicant

-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AMENDED APPROVAL AND VESTING ORDER
(Re 633 Main Street West, Port Colborne, Ontario)**

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSUC# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

225

9:30
COUNSEL SLIP

COURT FILE NO CV-18-00602537-00CL

DATE APR 25 2019

NO ON LIST 1

BANK OF MONTREAL

2495087 ONTARIO INC.

v.

et al.

TITLE OF
PROCEEDING

COUNSEL FOR:
PLAINTIFF(S)
DEFENDANT(S)
RESPONDENT(S)

S. Thom

for Receiver, RSM Canada Limited

PHONE & FAX NOS.

416-777-5197

46-867-0305

stham@torhimmens.com

COUNSEL FOR:
DEFENDANT(S)
RESPONDENT(S)

PHONE & FAX NOS

April 25, 2019

I am satisfied that this
motion should be granted
on the terms of the
attached amended
approval and vesting
order.

Heinley J.

TAB M

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and
SUNSHINE PROPANE INC.**

Respondents

THIRD REPORT OF THE RECEIVER

July 23, 2019

Table of Contents

I.	INTRODUCTION	1
II.	BACKGROUND	7
III.	COMPLETION OF THE SALE OF THE PORT COLBORNE PROPERTY	10
IV.	COMPLETION OF THE SALE OF THE PORT ELGIN PROPERTY	11
V.	STATUS OF THE SALE OF THE GODERICH PROPERTY	12
VI.	BOOKS AND RECORDS AND COMPUTERS	12
VII.	CONSTRUCTION LIEN CLAIM OF SDM CONSTRUCTION INC.	14
VIII.	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS	18
IX.	INTERIM DISTRIBUTIONS	19
X.	PROFESSIONAL FEES	21
XI.	CONCLUSION AND REQUEST OF THE COURT	22

Appendices

Appointment Order	A
First Report (without appendices)	B
February 21 Endorsement	C
March 4 Distribution Order	D
March 4 Endorsement	E
March 21 Order	F
Second Report (without appendices)	G
Port Elgin Approval and Vesting Order	H
Second Report Order	I
Amended March 4 Distribution Order	J
Supplemental Report to the First Report (without appendices)	K
Port Colborne Amended Approval and Vesting Order and the Endorsement of Justice Hainey	L
Receiver's Certificate (re Port Colborne Property)	M
Receiver's Certificate (re Port Elgin Property)	N
April 15 Letter	O
Loan agreement	P
Mortgage	Q
Instrument HR1568135 (Lien) and HR1589610	R
BMO's June 20, 2019 correspondence to SDM	S
SDM's counsel's July 22, 2019 correspondence	T
Interim Statement of Receipts and Disbursements	U
Affidavit of Daniel Weisz	V
Affidavit of Stephanie Eiley	W
Affidavit of Sarita Sanasie	X

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 29, 2018 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd. ("**1496765 (Etobicoke)**"), 1651033 Ontario Ltd. ("**1651033 (Burlington)**"), 1527020 Ontario Inc. ("**1527020 (Port Colborne)**"), 2495087 Ontario Inc. ("**2495087 (Port Elgin)**"), 2496800 Ontario Inc. ("**2496800 (Goderich)**"), and Sunshine Propane Inc. ("**Sunshine**") (collectively the "**Debtors**" or the "**Companies**") acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (the "**Property**"). A copy of the Appointment Order is attached to this report as Appendix "**A**".
2. On February 13, 2019, the Receiver brought a motion, returnable on February 21, 2019, for the purpose of, *inter alia*:
 - (a) seeking approval of the sale of the Etobicoke Property (defined below), the Burlington Property (defined below) and the Port Colborne Property (defined below); and
 - (b) seeking the Court's authorization of certain payments including an interim distribution.

A copy of the Receiver's first report to the Court dated February 13, 2019 (the "**First Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "**B**".

-
3. On February 21, 2019, the Debtors attended at the motion hearing to oppose the Receiver's sale of the Etobicoke Property, the Burlington Property and the Port Colborne Property and to seek an adjournment of the motion in order to allow them to prepare a response. A copy of the Endorsement of Justice McEwen adjourning the motion to March 4, 2019 (the "**February 21 Endorsement**") is attached hereto as Appendix "**C**".
 4. On March 4, 2019, the Receiver's motion was heard and Justice Chiappetta:
 - (a) granted Approval and Vesting Orders in respect of each of the Etobicoke Property, the Burlington Property and the Port Colborne Property; and
 - (b) granted a Distribution Order (the "**March 4 Distribution Order**") authorizing the Receiver to make certain payments as contemplated in the First Report, to make an interim distribution to Bank of Montreal ("**BMO**") on account of its outstanding indebtedness and authorizing various ancillary relief. A copy of the March 4 Distribution Order is attached hereto as Appendix "**D**".
 5. A copy of Justice Chiappetta's Endorsement made on March 4, 2019 (the "**March 4 Endorsement**") is attached to this report as Appendix "**E**".
 6. On March 21, 2019, Justice Hailey issued an order amending the Approval and Vesting Order of March 4, 2019 in respect of the Burlington Property (the "**March 21 Order**") to add Instrument No. HR1589610 to Schedule C listing the claims to be deleted and expunged from title to that property. A copy of the March 21 Order is attached hereto as Appendix "**F**".
 7. On April 1, 2019, the Receiver brought a motion, returnable on April 12, 2019, for the purpose of, *inter alia*, seeking:

- (a) approval of the sale of the Port Elgin Property (defined below), including the approval to terminate a lease in respect of the Port Elgin Property between 2495087 Ontario Inc. and Naveed Amin, operating as "Shawarma King", dated July 27, 2018 (the "**Shawarma King Lease**");
- (b) the Court's authorization to destroy certain documents; and
- (c) the Court's authorization of certain payments including an interim distribution.

A copy of the Receiver's second report to the Court dated March 29, 2019 (the "**Second Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "G".

8. On April 12, 2019, the Receiver's motion was heard and Justice Chiappetta:
 - (a) granted an Approval and Vesting Order ("**Port Elgin Approval and Vesting Order**") in respect of the Port Elgin Property, a copy of which is attached hereto as Appendix "H"; and
 - (b) granted an Order (the "**Second Report Order**") authorizing (i) the Receiver to make certain payments as contemplated in the Second Report, (ii) the Receiver to destroy certain records, (iii) the Receiver to terminate the Shawarma King Lease; (iv) the Receiver to make an interim distribution to BMO on account of its outstanding indebtedness and (v) various ancillary relief. A copy of the Second Report Order is attached hereto as Appendix "I".
9. On April 12, 2019, Justice Chiappetta issued an Amended Distribution Order ("the "**Amended March 4 Distribution Order**") to clarify in Paragraph 8 of the

March 4 Distribution Order the amount the Receiver was authorized to pay to BMO from the sale of the Burlington Property. A copy of the Amended March 4 Distribution Order is attached hereto as Appendix "J".

10. On April 24, 2019, the Receiver brought a motion, returnable on April 25, 2019, for the purpose of, seeking certain amendments to the March 4, 2019 Order in order to accommodate the Port Colborne Purchaser's request that, for the purpose of completing the sale of the Port Colborne Property, title to the Port Colborne Property be conveyed to 2684697 Ontario Inc. (the "**Substituted Port Colborne Purchaser**"), and not the Port Colborne Purchaser, on closing. A copy of the Receiver's Supplemental Report to the First Report of the Receiver to the Court dated April 24, 2019 (the "**Supplemental Report to the First Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "K".
11. On April 25, 2019, Justice Hainey issued an Order amending the Approval and Vesting Order dated March 4, 2019 in respect of the sale of the Port Colborne Property (the "**Port Colborne Amended Approval and Vesting Order**") to provide for the conveyance of the Port Colborne Property to the Substituted Port Colborne Purchaser. A copy of the Port Colborne Amended Approval and Vesting Order and the Endorsement of Justice Hainey made April 25, 2019, are attached hereto as Appendix "L".
12. The Orders made by the Court and the reports of the Receiver referred to in this report, together with related Court documents, have been posted on the

Receiver's website which can be found at rsmcanada.com/2495087-ontario-et-al.

Purpose of Third Report

13. The purpose of this third report of the Receiver (the "**Third Report**") is to:

- (i) report to the Court on the activities of the Receiver since the date of the Second Report to July 23, 2019;
- (ii) report to the Court on the closing of the sale of the Port Colborne Property;
- (iii) report to the Court on closing of the sale of the Port Elgin Property;
- (iv) report to the Court on the status of the marketing of the Goderich Property;
- (v) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period August 29, 2018 to July 12, 2019; and
- (vi) seek Orders:
 - a. authorizing the Receiver to release the holdback of \$254,948.40 from the proceeds of sale of the Burlington Property and to distribute these funds to BMO;
 - b. approving the Supplemental Report to the First Report;
 - c. approving the Third Report and the Receiver's conduct and activities to July 23, 2019;
 - d. approving the fees and disbursements of the Receiver incurred to May 31, 2019;
 - e. approving the fees and disbursements of Torkin Manes LLP incurred in respect of the closings of the sales of the Etobicoke Property, the

Burlington Property, the Port Colborne Property and the Port Elgin Property; and

- f. approving the fees and disbursements of Paliare Roland LLP incurred to April 30, 2019.

Terms of Reference

- 14. In preparing the Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in the Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, 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 pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
- 15. Defined terms in the Third Report have, unless indicated otherwise herein, the same meanings as set out in the First Report, the Supplemental Report to the First Report and the Second Report.
- 16. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.
- 17. As set out in the First Report, the Receiver is not in possession of any recent financial information of the Debtors. Accordingly, the Receiver is administering

the receiverships of the Debtors on the assumption that the only assets of the Debtors are the Etobicoke Property, the Burlington Property, the Port Colborne Property, the Port Elgin Property and the Goderich Property (collectively, the "**Properties**"), cash on hand and miscellaneous chattels.

II. BACKGROUND

The Parties

Bank of Montreal

18. This section provides a condensed summary of the parties primarily involved in this proceeding. Additional information in respect of the parties, as well as to the background information relating to the Receiver's appointment, can be found in Paragraphs 9 to 32 of the First Report.
19. BMO is the Applicant in these proceedings and is the primary secured creditor of each of the Companies. As of July 27, 2018, the Debtors were indebted to BMO in the aggregate amount of \$9,992,297.94.
20. The security held by BMO consists of mortgages over the Properties, as well as security agreements over the other assets of the Companies. Certain Debtors have guaranteed certain other Debtors' indebtedness to BMO.

1496765 (Etobicoke)

21. 1496765 (Etobicoke) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 0.4 acre real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the "**Etobicoke Property**"). As at the date of the Appointment Order, 1496765

(Etobicoke) operated an automatic car wash and auto detailing business at the Etobicoke Property.

22. In addition to the car wash, located at the Etobicoke Property was a propane refill centre.
23. The Etobicoke Property, with the exception of the propane refill centre, has been sold by the Receiver.

1651033 (Burlington)

24. 1651033 (Burlington) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), on which is located a car wash. As at the date of the Appointment Order, the renovations to the Burlington Property had not been completed and the car wash was not in operation.
25. The Burlington Property has been sold by the Receiver.

1527020 (Port Colborne)

26. 1527020 (Port Colborne) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") from which, as at the date of the Appointment Order, 1527020 (Port Colborne) operated a self-service and automatic car wash.
27. The Port Colborne Property has been sold by the Receiver.

2495087 (Port Elgin)

28. 2495087 (Port Elgin) is an Ontario Corporation that as of the date of the Receiver's appointment, held title to the real property municipally known as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**"). The Port Elgin Property is situated on approximately 0.6 acres of land. As at the date of the Appointment Order, located on the Port Elgin Property were:
- (a) a self-serve gas bar operating under the Ultramar brand;
 - (b) a two-storey commercial building (approximately 4,000 sq. ft.) consisting of
 - (i) an ExpressMart convenience store, (ii) a retail store on the ground floor and (iii) a residential apartment on the second floor; and
 - (c) a separate one-storey building (approximately 3,000 sq. ft.) occupied by a Tim Horton's restaurant.
29. 2495087 (Port Elgin) operated the gas station and convenience store and leased the other premises to tenants.
30. The Port Elgin Property has been sold by the Receiver.

2496800 (Goderich)

31. 2496800 (Goderich) is an Ontario Corporation that holds legal and beneficial title to a 0.5 acre real property municipally known as 274 Bayfield Road, Goderich, Ontario (the "**Goderich Property**"). As at the date of the Appointment Order, located on the Goderich Property were:
- (a) a self-serve gas bar operating under the Ultramar brand;
 - (b) a one-storey commercial building containing an ExpressMart convenience store (approximately 860 sq. ft.); and
 - (c) an automatic car wash (approximately 1,200 sq. ft.).

-
32. 2496800 (Goderich) operated the gas station, the convenience store and the car wash.
 33. The Goderich Property has not been sold and the Receiver continues to market the Goderich Property.

Sunshine

34. Sunshine is an Ontario Corporation incorporated on January 28, 2010.
35. The head office and mailing address for Sunshine is registered as 5462 Dundas St. West, which is the same address as that of 1496765 (Etobicoke), being the Etobicoke Property. Upon its appointment, the Receiver thought that Sunshine's operations consisted of the propane refill business. However, based on the Receiver's enquiry, the Ontario Fuels Safety License for the propane business is issued to Sam Propane Inc., and not to Sunshine.
36. The Respondents are independent from each other, but appear connected or otherwise related and/or owned by members of the same extended family.

III. COMPLETION OF THE SALE OF THE PORT COLBORNE PROPERTY

37. In the First Report, the Receiver provided the Court with details of the proposed sale transaction with 2573702 Ontario Inc. for the Port Colborne Property.
38. In the Supplemental Report to the First Report, the Receiver set out for the Court the Port Colborne's Purchaser's request that the conveyance of the Port Colborne Property be made to the Substituted Port Colborne Purchaser.
39. Following the issuance of the Port Colborne Amended Approval and Vesting Order, the Receiver proceeded to close the sale transaction.

40. A copy of the Receiver's Certificate filed with the Court on May 2, 2019 is attached to this report as Appendix "M".

IV. COMPLETION OF THE SALE OF THE PORT ELGIN PROPERTY

41. In the Second Report, the Receiver provided the Court with details of the proposed sale transaction with Amalethan Xavier in trust for a company to be incorporated and subsequently assigned to 2678361 Ontario Inc. ("**2678361**") for the Port Elgin Property. Following the issuance of the Port Elgin Approval and Vesting Order, the Receiver proceeded to close the sale transaction.
42. A copy of the Receiver's Certificate filed with the Court on April 30, 2019 is attached to this report as Appendix "N".
43. Following the closing of the transaction, 2678361 informed the Receiver that certain overflow valves for the gas station had been removed between the time that the Port Elgin Purchaser viewed the Port Elgin Property and the closing date of the sale. The Receiver contacted Parkland Fuel Corporation ("**Parkland**") which attended at the site to return the overflow valves. When Parkland arrived at the Port Elgin Property, which was two days after 2678361 informed the Receiver of the issue, Parkland saw that the overflow valves were being replaced by a firm hired by 2678361. 2678361 subsequently submitted a request that the Receiver reimburse 2678361 the amount of \$4,628.48 representing 2678361's cost to replace the overflow valves. The Receiver has advised 2678361 that since Parkland attended to return the overflow valves at the same time as the purchaser's service provider, the Receiver did not see why a reimbursement to

the purchaser was required. No further communication has been received by the Receiver in respect of this matter.

V. STATUS OF THE SALE OF THE GODERICH PROPERTY

44. The Goderich Property was listed for sale at a listing price of \$2.9 million. As set out in the First Report, as part of the Receiver's marketing process, interested parties were advised that offers for the Properties would be reviewed on or after January 18, 2019. At that time Avison recommended to the Receiver that Avison continue its marketing activities for the Goderich Property.
45. The Receiver has engaged in ongoing discussions with Avison with respect to the marketing of the Goderich Property. Based on those discussions, the listing price of the Goderich Property was reduced to \$2.4 million and \$1.9 million on or about April 25, 2019 and June 19, 2019, respectively.
46. The Receiver will provide the Court with details of offers received for the Goderich Property when the Receiver seeks the Court's approval to complete a sale of the Goderich Property.

VI. BOOKS AND RECORDS AND COMPUTERS

47. In the Second Report, the Receiver set out that no parties contacted the Receiver to make arrangements to remove any remaining items or personal property at the Properties. As a result, prior to the sale of the Etobicoke Property, the Receiver attended at the Etobicoke Property and removed books and records found at the Etobicoke Property including books and records pertaining to the

Debtors, records pertaining to individuals (the "**Personal Documents**") or books and records pertaining to other entities (the "**Non-debtor Documents**").

48. A summary of the documents was attached at Appendix "M" to the Second Report. The Receiver set out its intention to provide a copy of that list to Canada Revenue Agency ("**CRA**") and to inquire of CRA whether it wished to review any of the records, as certain of the records may assist CRA to assess the liabilities, if any, that the individual Debtor companies may have to CRA.
49. By letter dated April 15, 2019 (the "**April 15 Letter**"), the Receiver provided CRA with the list of documents and indicated that if CRA wished to review any of the documents, CRA should contact the Receiver by April 30, 2019. A copy of the April 15 Letter is attached to this report as Appendix "O". The Receiver did not receive from CRA a response to its letter.
50. The Second Report Order authorized the Receiver to destroy any Non-debtor Documents and Personal Documents as the Receiver may consider appropriate. The Personal Documents and the Non-debtor Documents have now been destroyed by the Receiver.
51. As discussed in the Second Report, the Receiver removed from the Etobicoke Property and the Port Colborne Property any computers that did not appear to be integrated with the car wash operations. As authorized in the Second Report Order, the Receiver has arranged for the hard drives to be destroyed.

VII. CONSTRUCTION LIEN CLAIM OF SDM CONSTRUCTION INC.

52. Shortly after the Receiver's appointment, SDM Construction Inc. ("**SDM**") registered a lien on title to the Burlington Property in the amount of \$2,549,484 (the "**Lien**") in connection with construction work allegedly performed by SDM prior to the appointment of the Receiver. The Receiver understands that SDM was engaged by 1651033 (Burlington) to demolish the existing car wash facilities located on the Burlington Property and construct a new fully-automated car wash facility in its place.
53. SDM appears to have subsequently issued a Statement of Claim in connection with the Lien (the "**Lien Action**") and, on November 30, 2018, SDM registered on title to the Burlington Property a corresponding Certificate of Action. It does not appear that leave of the Court was sought prior to the issuance of the Lien Action and the Receiver has not been provided with a copy of the pleading.
54. The construction work to be performed by SDM was not finished prior to the Receiver's appointment and the Receiver did not engage SDM (or any other party) to complete the work that had been started. The Burlington Property remained, substantially, in the same unfinished state from the date of the Receiver's appointment to the time of sale.
55. At the return of the Receiver's motion for approval of the sale of the Burlington Property, counsel for SDM was in attendance. SDM did not oppose the approval of the Burlington APS or the issuance of the Approval and Vesting Order relating the Burlington Property, but requested that certain revisions be made to the terms

of a proposed distribution order being sought by the Receiver together with approval of the sale.

56. In particular, SDM requested that proceeds of sale be held back from distribution to BMO, 1651033 (Burlington)'s senior secured creditor, pending the determination of SDM's claim of priority over BMO's interest in the Burlington Property. As a result of the position taken by SDM, the March 4 Distribution Order included the requirement that the Receiver hold back from distribution "a hold back equal to the maximum amount of a potential construction lien claim on the Burlington Property by SDM Construction Inc."
57. At a subsequent attendance before the Court on April 12, 2019, the Receiver sought, and was granted, an amendment to the March 4 Distribution Order to specify the exact amount of the holdback. Specifically, the above holdback reference was replaced with "the Receiver shall hold back from distribution, the amount of \$254,948.40 pending the determination of SDM Construction Inc.'s claim for priority". The Receiver notes that the \$254,948.40 (the "**Funds Held Back**") represents 10% of the value of the Lien claim.

1651033 (Burlington's) Indebtedness and Mortgage in favour of BMO

58. The Receiver has received from BMO information with respect to the indebtedness of 1651033 (Burlington) to BMO and particulars as to the timing of advance(s) made, including that:
- (a) 1651033 (Burlington) executed a Fixed Rate Term Loan Agreement (the "**Loan**") dated March 24, 2014 for a loan in the principal amount of

\$3,180,000. Attached as Appendix "P" is a copy of the Loan agreement.

1651033 (Burlington) did not have any other loan facilities with BMO;

- (b) consistent with the below copied screenshot of BMO's electronic transaction history, all funds advanced to 1651033 (Burlington) pursuant to the Loan, being the total amount of \$3,180,000 (the "**Advance**"), were advanced by BMO to 1651033 (Burlington) on April 3, 2014:

```

TRANSIT 3858 RPT.125    DETAIL TRANSACTION REPORT    PAGE 5,965 15/APR/2014

6997-541      START *NAME:FRILB16510    -000 TSA      B/FWD:      0.00
               IN CAD* LFA: 3APR2014 OPENED: 3APR2014  C/FWD: 3,180,000.00-
* 3,180,000.00- TF 3858 OP 869 00004 3APR14 ET15:08
-3858-1044-784

```

- (c) no subsequent advances were made to 1651033 (Burlington) by BMO at any time after the initial Advance;
- (d) in addition to other security held by BMO, the Loan is secured by a first-ranking demand mortgage in favour of BMO in the amount of \$3,180,000 (the "**Mortgage**"). The Mortgage was registered on title to the Burlington Property on April 2, 2014, the day prior to the Advance, as instrument no. HR1172775. Attached as Appendix "Q" is a copy of the Mortgage;
- (e) a second mortgage was registered on title to the Burlington Property in favour of BMO on July 15, 2014 as instrument number HR1196588 (the "**Second Mortgage**"). No funds were advanced by BMO to 1651033 (Burlington) in relation to the Second Mortgage, which was granted to BMO as security for 1651033 (Burlington)'s guarantee of the corporate indebtedness of 1496765 (Etobicoke);

(f) as of July 2, 2018, coinciding with the approximate date of demand for repayment issued by BMO, 1651033 (Burlington) was indebted to BMO in the total amount of \$2,524,405.73, plus interest accruing thereon. Apart from the proceeds realized from the sale of the Burlington Property, there have been no realizations from assets of 1651033 (Burlington) which would decrease the level of indebtedness to BMO and, accordingly, proceeds realized from the sale of the Burlington Property are insufficient to repay in full the amount owing by 1651033 (Burlington) to BMO and secured by the Mortgage.

The SDM Lien

59. The SDM lien was registered on title to the Burlington Property on August 31, 2018 as Instrument HR1568135. Attached as Appendix "R" collectively are copies of Instrument HR1568135 (Lien) and HR1589610 (Certificate of Action, together with copy of Certificate).
60. Instrument HR1568135 indicates as follows:

Name and Address of Owner Sanjay Dubey: 111 Regina Road, Unit 2, Woodbridge, Ontario L4L 8N5 Name and address of person to whom lien claimant supplied services or materials Carwash Company 1651033 Ontario Inc. Time within which services or materials were supplied from 2017/08/01 to 2018/08/29 Short description of services or materials that have been supplied Contract to build Carwash and Oil change facility including Site service, site grading, Property Maintenance new build addition, roofing, masonry, asphalt, curbs, new door, garage doors, construction fencing and other services related to contract. Contract price or subcontract price 2,549,484.00 Amount claimed as owing in respect of services or materials that have been supplied 2,549,484.00

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien.

61. BMO has informed the Receiver:

- (a) of BMO's position that BMO's Loan to 1651033 (Burlington) was fully advanced and secured by the Mortgage more than three years prior to the commencement of work on the Burlington Property by SDM;
- (b) that BMO's position with respect to the relative priorities as between BMO's Mortgage and the SDM Lien was set out by BMO's counsel in correspondence delivered to SDM by BMO on June 20, 2019. Therein, BMO identified a number of other issues of concern with respect to the validity and enforceability of the Lien Claim and sought guidance from SDM as to whether SDM did in fact intend to assert a priority over BMO's Mortgage. Attached as Appendix "S" is a copy of BMO's June 20, 2019 correspondence to SDM.

62. On July 22, 2019, counsel to SDM advised counsel to the Receiver that SDM does not oppose BMO's priority to the Funds Held Back or the distribution of the Funds Held Back to BMO. Attached as Appendix "T" is a copy of SDM's counsel's July 22, 2019 correspondence to the Receiver and its counsel.

VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

63. Attached to this report as Appendix "U" is the Receiver's Interim Statement of Receipts and Disbursements for the period August 29, 2018 to July 12, 2019 (the "R&D"). The R&D sets out the Receiver's receipts and disbursements for each of the Debtors, as well as on a combined basis.

64. On a summary combined basis, total receipts were \$10,304,245 and total disbursements were \$2,249,593, resulting in a net cash balance of \$8,054,652 prior to distributions to BMO, as follows:

Company Name	Cash Receipts	Cash Disbursements	Excess of Receipts over Disbursements	Payments to Secured Creditor	Net Funds on Hand
1496765 (Etobicoke)	\$ 3,804,830	\$ 698,207	\$ 3,106,623	\$ (2,202,185)	\$ 904,438
1651033 (Burlington)	\$ 2,589,712	\$ 471,422	\$ 2,118,290	\$ (1,800,000)	\$ 318,290
1527020 (Port Colborne)	\$ 979,959	\$ 364,891	\$ 615,068	\$ (540,000)	\$ 75,068
2495087 (Port Elgin)	\$ 2,625,067	\$ 513,264	\$ 2,111,803	\$ (2,050,000)	\$ 61,803
2496800 (Goderich)	\$ 298,383	\$ 195,674	\$ 102,709	\$ -	\$ 102,709
Sunshine	\$ 6,293	\$ 6,135	\$ 158	\$ -	\$ 158
Total	\$ 10,304,245	\$ 2,249,593	\$ 8,054,652	\$ (6,592,185)	\$ 1,462,467

IX. INTERIM DISTRIBUTIONS

65. In accordance with the March 4 Distribution Order and the Second Report Order, since the date of the Second Report, the Receiver has made the following payments:
- i) to BMO, from the proceeds from the sale of the Etobicoke Property, \$2,202,184.89 representing repayment of 1496765 (Etobicoke)'s indebtedness to BMO;
 - ii) to BMO, from the proceeds from the sale of the Burlington Property, \$1,800,000 representing partial repayment of 1651033 (Burlington)'s indebtedness to BMO;
 - iii) to BMO, from the proceeds from the sale Port Elgin Property, the advances totaling \$99,000 under Receiver Certificates # 4 and 12 plus accrued interest;

-
- iv) to BMO, from the proceeds from the sale of the Port Elgin Property, \$2,050,000 representing partial repayment of 2495087 (Port Elgin)'s indebtedness to BMO;
 - v) to BMO, from the proceeds from the sale of the Port Colborne Property, the advances totaling \$99,000 under Receiver Certificates # 3, 7 and 10 plus accrued interest; and
 - vi) to BMO, from the proceeds from the sale of the Port Colborne Property, \$540,000 representing partial repayment of 1527020 (Port Colborne)'s indebtedness to BMO.
66. The Receiver requested from CRA a formal request for payment of its deemed trust claims prior to making any payments to CRA.
67. In response to its request, the Receiver received letters claiming the following amounts as being outstanding:
- i) source deductions of \$2,691.46 for 1496765 (Etobicoke)— no deemed trust
 - ii) HST for 1496765 (Etobicoke) of \$45,583.08 – no deemed trust
 - iii) HST for 2496800 (Goderich) of \$26,588.17 – no deemed trust
 - iv) HST for Sunshine of \$3,390.99 – deemed trust of \$1,428.25
 - v) Sunshine unsecured claim for corporate taxes of \$150,190.51.
68. With reference to the amounts for which deemed trust claims were not made by CRA, CRA verbally advised the Receiver that CRA could not claim a deemed trust in respect of the source deductions relating to 1496765 (Etobicoke) since CRA had not prepared a proper breakdown of the amounts owing for source deductions, and could not claim a deemed trust for the HST

relating to 1496765 (Etobicoke) and 2496800 (Goderich) since the amounts claimed are based on CRA's notional assessments and not actual returns filed by the Companies.

X. PROFESSIONAL FEES

69. The Receiver's accounts total \$76,653.00 in fees plus HST of \$9,964.93 for a total amount of \$86,617.93 for the period March 1, 2019 (including one entry for February 28, 2019) to May 31, 2019 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Daniel Weisz sworn July 23, 2019 attached to this report as Appendix "**V**".
70. The Receiver engaged Torkin Manes LLP ("**Torkin**"), counsel to the Applicants, to provide the legal services required to effect the closings of the sales of the Etobicoke Property, the Burlington Property, the Port Colborne Property and the Port Elgin Property. Torkin's accounts total \$55,158.69 in fees and disbursements and \$7,024.10 in HST for a total of \$62,182.79 (the "**Torkin Accounts**") for the period February 11, 2019 to June 12, 2019. A copy of the Torkin Accounts, together with a summary of the personnel, hours and hourly rates described in the Torkin Accounts, is set out in the Affidavit of Stephanie Eiley sworn July 19, 2019 attached to this report as Appendix "**W**".
71. The accounts of the Receiver's counsel, Paliare Roland total \$24,279.45 in fees and disbursements and \$3,109.93 in HST for a total of \$27,389.38 (the "**Paliare Roland Accounts**") for the period March 1, 2019 to April 30, 2019. A copy of the

Paliare Roland Accounts, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Accounts, is set out in the Affidavit of Sarita Sanasie sworn July 23, 2019 attached to this report as Appendix "X".

72. The Receiver is seeking approval of the Receiver's Accounts, the Torkin Accounts and the Paliare Roland Accounts.

XI. CONCLUSION AND REQUEST OF THE COURT

73. The Receiver respectfully requests that the Court grant Orders which provide for the following:

- a. authorizing the Receiver to release the Funds Held Back of \$254,948.40 and to distribute those funds to BMO;
- b. approving the Supplemental Report to the First Report;
- c. approving the Third Report and the Receiver's conduct and activities to July 23, 2019; and
- d. approving the Receiver's Accounts, the Torkin Accounts and the Paliare Roland Accounts.

All of which is respectfully submitted to this Court as of this 23rd day of July, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager of
1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc.,
2495087 Ontario Inc., 2496800 Ontario Inc., and Sunshine Propane Inc.
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

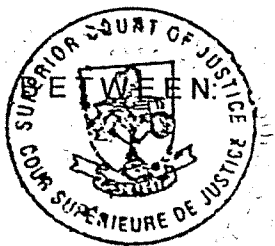
251

TAB N

Court File No: CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAME) MONDAY, THE 29TH DAY OF
JUSTICE CONWAY) JULY, 2019



BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-
B-3, s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the "**Debtors**") for, among other things, an order approving the Receiver's fees and those of its counsel and authorizing the Receiver to, among other things, release the holdback of \$254,948.40 held from the proceeds of sale of the real property municipally known as

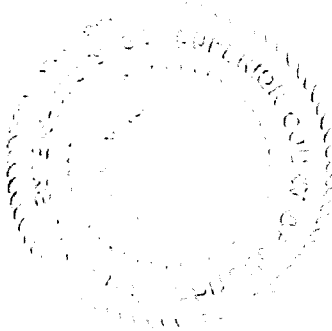
5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), and to distribute these holdback funds to the Bank of Montreal ("**BMO**"), as described further in the Third Report of the Receiver dated July 23, 2019 (the "**Third Report**"), was heard this day at Toronto, Ontario.

ON READING the Third Report and the Appendices attached thereto, and on hearing the submissions of respective counsel for the Receiver and the Applicant, and no one else appearing, although properly served as appears from the affidavit of Sarita Sanasie, sworn July 23, 2019, filed:

1. **THIS COURT ORDERS** that the time for service 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.
2. **THIS COURT ORDERS AND DECLARES** that the Third Report and the conduct and activities of the Receiver to July 23, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS AND DECLARES** that the Supplemental Report to the First Report dated April 24, 2019 and the conduct and activities of the Receiver set out therein be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period ended May 31, 2019 as set out in the Third Report be and are hereby approved.
5. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements as of July 12, 2019 as set out in the Third Report, be and are hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Paliare Roland Rosenberg Rothstein LLP, for the period ended April 30, 2019, as set out in the Third Report, be and are hereby approved.
7. **THIS COURT ORDERS** that the fees and disbursements of Torkin Manes LLP incurred in respect of the closings of the sales of the Etobicoke Property, the Burlington

Property, the Port Colborne Property and the Port Elgin Property, as set out in the Third Report, be and are hereby approved.

8. **THIS COURT ORDERS** that the Receiver is authorized to release the holdback of \$254,948.40 held from the proceeds of sale of the Burlington Property and to distribute these funds to BMO.



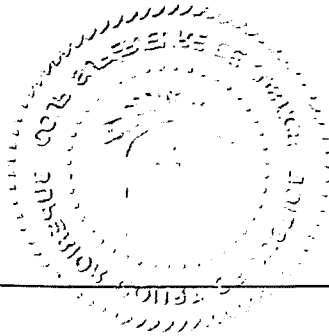
Courtesy J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
JUL 31 2019

PER / PAR: u

BANK OF MONTREAL

Applicant



-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West

35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver



256

COUNSEL SLIPCOURT FILE NO CV-18-602537-00CL DATE: July 29/2019BANK OF MONTREAL
vs.No. ON LIST 4TITLE OF
PROCEEDING2495087 ONTARIO INC.

COUNSEL FOR:

Phone & Fax No

Plaintiff (s)

Applicant (s)

Petitioner (s)

S. Thom (Bank of Montreal)

T: 416-777-5197 F: 416-863-6305

sthom@tor.kinnans.com

Phone & Fax No

COUNSEL FOR:

Defendant (s)

Respondent (s)

Jeffrey Lamyfor RSM Canada,
the Receiver

+ 416 646 4330

f 416 646 4301

e jeff.lamy@paliaerosolend.com

July 29/19

DTG as signed by me, approving R's 3rd report, fees, etc. SDM, the lien claimant, has now confirmed that it is not opposing distribution of the hold back to BMO or ~~the~~ BMO's priority over the lien.

Conway J.

257

TAB O

RSM Canada Limited
Court Appointed Receiver and Manager of
2495087 Ontario Inc. et al
Interim Statement of Receipts and Disbursements
For the period August 29, 2018 to August 31, 2019

	1496765 Ontario Ltd. (Etobicoke)	1651033 Ontario Ltd. (Burlington)	1527020 Ontario Inc. (Port Colb.)	2495087 Ontario Inc. (Port Elgin)	2496800 Ontario Inc. (Goderich)	Sunshine Propane Inc.	Total
Receipts							
Advances from secured lender (1)	\$ 99,000	87,000	99,000	99,000	99,000	-	483,000
Cash on hand & bank	2,596	-	-	172	909	-	3,677
Funding advanced to other companies (2)	-	-	-	-	195,000	3,000	198,000
HST collected / refund	-	-	26,659	3,030	-	-	29,689
Miscellaneous	10,080	3,515	4,691	2,312	3,752	3,296	27,645
Rent	-	-	-	21,225	-	-	21,225
Sale of property	3,700,000	2,500,000	850,000	2,500,000	-	-	9,550,000
Total receipts	\$ 3,811,676	2,590,515	980,350	2,625,739	298,661	6,296	10,313,236
Disbursements							
Appraisals	\$ 3,800	4,200	3,800	3,800	3,800	-	19,400
Commission on sale of property	185,000	125,000	42,500	125,000	-	-	477,500
Deemed trust claims	-	-	-	-	-	3,293	3,293
Funding advanced to other companies (2)	198,000	-	-	-	-	-	198,000
Insurance	7,220	5,381	3,351	4,298	13,172	-	33,422
Legal fees (3)	28,309	29,484	20,437	37,640	20,437	-	136,308
Miscellaneous	945	1,378	2,481	638	514	345	6,300
Phase I ESA updates	2,185	2,385	2,585	1,800	2,100	-	11,055
Property management fees	7,747	8,248	9,523	14,577	14,835	-	54,930
Property taxes	11,364	85,426	23,544	29,569	-	-	149,904
Receiver's fees (4)	78,121	67,654	73,293	80,134	57,841	2,179	359,220
Repairs and maintenance	3,701	1,529	3,350	11,726	2,242	-	22,547
Repayment of advances (1)	101,426	88,954	101,915	102,010	-	-	394,304
Security patrols	13,580	16,060	37,175	37,905	59,270	-	163,990
Snow removal / landscaping	5,680	650	6,355	3,839	6,000	-	22,524
Taking possession	4,926	615	1,685	4,948	4,134	-	16,308
Travel	263	206	691	1,448	503	-	3,111
Utilities - hydro	2,528	429	2,713	8,652	5,290	-	19,612
Utilities - gas	424	-	2,190	484	899	-	3,998
Utilities - water	359	1,714	1,945	1,870	-	-	5,888
Waste removal / disposal	-	-	-	508	501	-	1,009
HST/PST paid	44,409	33,888	27,153	41,843	23,374	319	170,986
Total disbursements	\$ 699,986	473,202	366,685	512,689	214,912	6,135	2,273,609
Excess of Receipts over Disbursements	\$ 3,111,690	2,117,313	613,665	2,113,049	83,749	161	8,039,626
Less: Payments to Secured Creditor (5)	(2,202,185)	(2,054,948)	(540,000)	(2,050,000)	-	-	(6,847,133)
Net funds on hand	\$ 909,505	62,364	73,665	63,049	83,749	161	1,192,493

Notes

- (1) The amount of \$483,000 represents funds advanced by Bank of Montreal under Receiver Certificates # 1 to 13. Receiver Certificates # 2, 6 and 9 were repaid, with accrued interest, upon the sale of the Etobicoke Property. Receiver Certificates # 1, 8 and 11 were repaid, with accrued interest, upon the sale of the Burlington Property. Receiver Certificates # 4 and 12 were repaid, with accrued interest, upon the sale of the Port Elgin Property. Receiver Certificates # 3, 7 and 10 were repaid, with accrued interest, upon the sale of the Port Colborne Property.
- (2) Transfer from the receivership trust account of 1496765 Ontario Ltd. ("1496765") to fund disbursements for the other companies under the receivership. The amount of \$195,000 will be repaid to 1496765 upon the sale of the Goderich property. The transfer to Sunshine Propane Inc. may not be repaid.
- (3) Legal fees billed have been allocated equally among the five properties. This amount includes legal fees to July 31, 2019.
- (4) This amount represents the Receiver's fees incurred to May 31, 2019. The Receiver's fees are billed to each Debtor for work specific to that Debtor. In addition, where the work performed is on account of two or more Debtors, the fees are tracked on a combined basis and then allocated equally to each of the five properties.
- (5) Distributions were made to the Bank of Montreal on account of its security over the respective company's assets.

*This Appendix forms part of the Fourth Report of the Receiver dated September 13, 2019
and should only be read in conjunction therewith.*

TAB P

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and
SUNSHINE PROPANE INC.**

Respondents

AFFIDAVIT OF DANIEL WEISZ
(Sworn September 12, 2019)

I, **DANIEL WEISZ**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a Senior Vice-President of RSM Canada Limited ("**RSM**") and as such I have personal knowledge of the matters to which I hereinafter depose, save and except those matters based upon information and belief, in which case I have stated the source of such facts, all of which I verily believe to be true.

2. Pursuant to an order of the Court dated August 29, 2018, RSM Canada Limited was appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd., 1651033 Ontario Ltd., 1527020 Ontario Inc., 2495087 Ontario Inc., 2496800 Ontario Inc. and Sunshine Propane Inc. acquired for, or used in relation to, the businesses carried on by the Debtors, including all proceeds thereof.

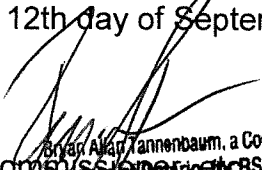
3. Attached hereto and marked as Exhibit "**A**" to this my affidavit are copies of invoices issued by RSM for fees incurred by the Receiver in respect of the receivership proceedings for the period June 1, 2019 to July 31, 2019, including the fees and disbursements of the Receiver in respect of Sunshine Propane Inc. that are for the period March 1, 2019 to July 31, 2019 (the "**Period**"). The total fees charged for the Period are \$19,055.50, plus HST of \$2,477.24 for a total of \$21,532.74. The average hourly rate charged during the Period was \$416.97.

4. The invoices are a fair and accurate description of the services provided and the amounts charged by RSM for the Period.

5. Attached hereto and marked as **Exhibit "B"** is a schedule summarizing the invoices in Exhibit "**A**", the total billable hours charged, the total fees charged and the average hourly rate charged. The Receiver's accounts have been prepared on the basis that time incurred that specifically relates to an individual debtor has been billed to that debtor. Time incurred that relates to more than one debtor has been included in the "Combined" invoice referred to in Exhibit "**B**".

6. I make this affidavit in support of a motion for an Order approving the Receiver's fees and disbursements and for no other or improper purpose.

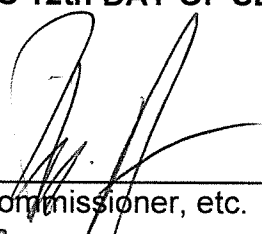
SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario,
this 12th day of September, 2019


Bryan Allan Tannenbaum, a Commissioner, etc.
A Commissioner for RSM Canada LLP
and RSM Canada Limited.
Expires January 5, 2021.



DANIEL WEISZ

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DANIEL WEISZ SWORN BEFORE ME
THIS 12th DAY OF SEPTEMBER, 2019



A Commissioner, etc.

*Bryan Allen Tannenbaum, a Commissioner, etc.,
Province of Ontario, for RSM Canada LLP
and RSM Canada Limited.
Expires January 5, 2021.*



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
 Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager
 of 1496765 Ontario Ltd.
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10003

Invoice 10

No. 5750559

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., **1496765 Ontario Ltd. ("149")** and Sunshine Propane Inc. for the period June 1, 2019 to July 31, 2019.

Date	Professional	Description
06/14/2019	Anne Baptiste	Prepare May bank reconciliation.
06/18/2019	Daniel Weisz	Review email from J. Locke re unpaid legal invoice and respond to same.
06/20/2019	Anne Baptiste	Prepare disbursement cheques; filing of banking documentation.
06/20/2019	Daniel Weisz	Review Torkin Manes invoice re sale of the property.
06/28/2019	Anne Baptiste	Prepare disbursement cheques.
07/24/2019	Brenda Wong	Review and respond to email from City of Toronto re 2015 property tax refund.
07/26/2019	Anne Baptiste	Prepare disbursement cheques.
07/31/2019	Anne Baptiste	Filing of banking documentation.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

August 2, 2019
Invoice 10
Page 2

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	0.3	\$525	\$ 157.50
Brenda Wong, CIRP, LIT	Senior Manager	0.2	\$395	79.00
Anne Baptiste	Estate Administrator	0.8	\$110	88.00
Total hours and professional fees		1.3		\$ 324.50
HST @ 13%				42.19
Total payable				\$ 366.69

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
 Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager
 of 1651033 Ontario Ltd.
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10002

Invoice 10

No. 5750577

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., **1651033 Ontario Ltd.**, 1496765 Ontario Ltd. and Sunshine Propane Inc. for the period June 1, 2019 to July 31, 2019.

Date	Professional	Description
06/07/2019	Anne Baptiste	Post receipts in Ascend.
06/20/2019	Anne Baptiste	Prepare disbursement cheques; filing of banking documentation.
06/20/2019	Daniel Weisz	Discussion with S. Thom of Torkin Manes LLP re Bank of Montreal intended course of action re SDM Construction ("SDM") lien claim; discussion with J. Larry of Paliare Roland Rosenberg Rothstein LLP re same and subsequent discussion with S. Thom; review Torkin Manes invoice re sale of the property.
06/21/2019	Brenda Wong	Call from Collection Agency re debt owed to Gore Mutual.
06/24/2019	Daniel Weisz	Discussion with J. Larry re pending report of the Receiver as it relates to the SDM claim.
06/25/2019	Daniel Weisz	Discussion with S. Thom re Receiver's application to court.
06/28/2019	Anne Baptiste	Prepare disbursement cheques.
07/09/2019	Brenda Wong	Review/respond to email re amount owed to Gore Mutual.
07/09/2019	Daniel Weisz	Discussion with S. Thom re his discussion with V. Ibe and status of lien claim issue; discussion with J. Larry on same.
07/10/2019	Daniel Weisz	Discussion with B. Wong re status of SDM Construction lien claim and email to S. Thom regarding same.
07/11/2019	Daniel Weisz	Discussion with S. Thom re court application and status of lien claim and communication from V. Ibe.
07/18/2019	Daniel Weisz	Review account rendered and email to Torkin Manes re same.
07/22/2019	Daniel Weisz	Review correspondence from counsel to SDM and email to Bank of Montreal re same.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation; prepare disbursement cheque.

August 2, 2019
Invoice 10
Page 2

Date	Professional	Description
07/31/2019	Anne Baptiste	Filing of banking documentation.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

August 2, 2019
Invoice 10
Page 3

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	1.4	\$525	\$ 735.00
Brenda Wong, CIRP, LIT	Senior Manager	0.3	\$395	118.50
Anne Baptiste	Estate Administrator	0.8	\$110	88.00
Total hours and professional fees		2.5		\$ 941.50
HST @ 13%				122.40
Total payable				\$ 1,063.90

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
 Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager
 of 1527020 Ontario Inc.
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10001

Invoice 10

No. 5750569

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., **1527020 Ontario Inc.**, 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. for the period June 1, 2019 to July 31, 2019.

Date	Professional	Description
06/03/2019	Brenda Wong	Receipt and review of security deposit refund from Canadian Niagara Power Inc.
06/07/2019	Anne Baptiste	Post receipts to Ascend.
06/12/2019	Brenda Wong	Respond to City of Port Colborne requesting information on closing of sale; email to City of Port Colborne re sale of property and redirection of property tax bills.
06/12/2019	Usama Emad	Respond to inquiry from City of Port Colborne regarding the property closing date.
06/14/2019	Anne Baptiste	Prepare May bank reconciliation.
06/17/2019	Brenda Wong	Review invoice received from City of Port Colborne.
06/20/2019	Anne Baptiste	Prepare disbursement cheques; filing of banking documentation.
06/25/2019	Brenda Wong	Receipt of HST refund from Canada Revenue Agency and process for deposit.
06/25/2019	Donna Nishimura	Deposit cheque at the bank.
06/28/2019	Anne Baptiste	Prepare disbursement cheques.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation.
07/31/2019	Anne Baptiste	Prepare disbursement cheques; post receipts to Ascend; filing of banking documentation.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

August 2, 2019
Invoice 10
Page 2

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Brenda Wong, CIRP, LIT	Senior Manager	0.6	\$395	\$ 237.00
Usama Emad, CPA	Senior Associate	0.1	\$195	19.50
Anne Baptiste/Donna Nishimura	Estate Administrator	1.2	\$110	132.00
Total hours and professional fees		1.9		\$ 388.50
HST @ 13%				50.51
Total payable				\$ 439.01

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
 Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 2495087 Ontario Inc.
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10006

Invoice 10

No. 5750587

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of **2495087 Ontario Inc.**, 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. for the period June 1, 2019 to July 31, 2019.

Date	Professional	Description
06/04/2019	Brenda Wong	Review documents retrieved from Port Elgin safe and contact the Ontario Lottery and Gaming Corporation ("OLG") to inquire re the disposal/return of unused lottery tickets.
06/07/2019	Anne Baptiste	Processing receipts and deposits.
06/07/2019	Daniel Weisz	Review email from Torkin Manes LLP re email from purchaser's counsel and reply to same.
06/11/2019	Brenda Wong	Respond to email from Torkin Manes re Parkland and removal of the valves from the gas station pumps.
06/12/2019	Brenda Wong	Review and respond to email from Torkin Manes re question from purchaser's counsel; call and fax to Town of Saugeen Shores re sale of property.
06/14/2019	Anne Baptiste	Prepare May bank reconciliation.
06/20/2019	Anne Baptiste	Prepare disbursement cheques; filing of banking documentation.
06/20/2019	Daniel Weisz	Review and sign cheques; review Torkin Manes invoice re sale of the property and email to S. Eiley of Torkin Manes re same.
06/28/2019	Anne Baptiste	Prepare disbursement cheques.
06/28/2019	Brenda Wong	Call with OLG re unused tickets to be returned.
07/09/2019	Brenda Wong	Call to OLG to arrange for pick-up of unused lottery tickets; email to Federated Insurance to inquire re refund of insurance premiums paid.
07/17/2019	Brenda Wong	Follow up with Federated Insurance re refund cheque to be reissued.
07/18/2019	Daniel Weisz	Review Torkin Manes account.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation.
07/30/2019	Brenda Wong	File HST return for period April 1 to June 30, 2019.

August 2, 2019
Invoice 10
Page 2

Date	Professional	Description
07/31/2019	Anne Baptiste	Prepare disbursement cheques; deposit requisitions, receipts and filing of banking documentation.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

August 2, 2019
Invoice 10
Page 3

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	0.5	\$525	\$ 262.50
Brenda Wong, CIRP, LIT	Senior Manager	1.5	\$395	592.50
Anne Baptiste	Estate Administrator	1.2	\$110	132.00
Total hours and professional fees		<u>3.2</u>		\$ 987.00
HST @ 13%				128.31
Total payable				\$ 1,115.31

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
 Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 2496800 Ontario Inc.
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10000

Invoice 10

No. 5750593

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of 2495087 Ontario Inc., **2496800 Ontario Inc.**, 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. for the period June 1, 2019 to July 31, 2019.

Date	Professional	Description
06/03/2019	Brenda Wong	Review and respond to letter from Town of Goderich re tax sale proceedings.
06/04/2019	Brenda Wong	Make arrangements to send laptop retrieved from Goderich gas station to Memofix for destruction; review invoice to pay.
06/05/2019	Daniel Weisz	Discussion with B. Cohen of Torkin Manes LLP re status of the sale of the property.
06/07/2019	Anne Baptiste	Prepare disbursement cheque; post receipts to Ascend.
06/07/2019	Brenda Wong	Review emails re status of sales process.
06/07/2019	Daniel Weisz	Email to Avison Young to enquire re status of sales process; review email from B. Sykes of Avison Young re same and email to Bank of Montreal ("BMO") re same; review and respond to email from J. Locke of BMO.
06/10/2019	Brenda Wong	Emails with BMO and Avison Young re listing price for the property.
06/11/2019	Brenda Wong	Follow up re scheduling call to discuss listing price for the property.
06/14/2019	Anne Baptiste	Prepare May bank reconciliation.
06/14/2019	Brenda Wong	Follow up with Moreau On Site Property Services ("Moreau") re its May account.
06/17/2019	Brenda Wong	Review invoice for payment; email to HUB re extension of insurance coverage.
06/18/2019	Daniel Weisz	Prepare for and attend conference call with C. Hunt, J. Locke, K. Avison and B. Wong to discuss the listing price for the property.
06/19/2019	Daniel Weisz	Discussion with B. Wong re amendment to listing agreement; review and sign amendment to listing agreement and email to K. Avison regarding same.
06/20/2019	Daniel Weisz	Review and sign cheques.
06/20/2019	Anne Baptiste	Prepare disbursement cheques; filing of banking documentation.
06/28/2019	Anne Baptiste	Prepare disbursement cheques.

August 2, 2019
 Invoice 10
 Page 2

Date	Professional	Description
07/08/2019	Daniel Weisz	Preliminary review of offer received for the property; email to K. Avison re same; review response from Avison Young and further exchange of emails; email to BMO re the offer; discussion with J. Locke re same; discussion with K. Avison re same; email to A. English re the offer.
07/08/2019	Brenda Wong	Review invoice for payment; call from prospective purchaser inquiring about property.
07/09/2019	Daniel Weisz	Review, update and sign agreement of purchase and sale and email to Avison Young re same; exchange emails with A. English.
07/10/2019	Daniel Weisz	Discussion with K. Avison re offer sign back and send revised page.
07/11/2019	Anne Baptiste	Prepare disbursement cheques.
07/12/2019	Brenda Wong	Review email from Bluewater Recycling Association ("Bluewater") regarding its garbage bin and follow up re same.
07/16/2019	Daniel Weisz	Exchange emails with K. Avison re status of the offer for the property.
07/16/2019	Brenda Wong	Discussion with Moreau and email to Bluewater re removal of the bin.
07/17/2019	Brenda Wong	Review invoice for payment and prepare cheque requisition.
07/17/2019	Daniel Weisz	Email to J. Locke re status of the sale of the property.
07/19/2019	Anne Baptiste	Prepare disbursement cheques.
07/22/2019	Daniel Weisz	Email to K. Avison re status of purchaser.
07/23/2019	Daniel Weisz	Email to K. Avison re status of potential sign back.
07/23/2019	Usama Emad	Prepare cheque requisition, review supporting documentation.
07/24/2019	Usama Emad	Prepare cheque requisition, review supporting documentation.
07/24/2019	Daniel Weisz	Review offer received including information related thereto; exchange emails with C. Hunt on same; discussion with K. Avison and B. Wong re the offer.
07/25/2019	Daniel Weisz	Prepare for and attend conference call with C. Hunt, K. Avison and B. Sykes re the offer received for the property.
07/26/2019	Daniel Weisz	Discussion with B. Wong re the status of the sale of the property.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation; prepare disbursement cheques.
07/26/2019	Daniel Weisz	Review email from C. Hunt, reply to same and discussion with K. Avison re status of the sign back to the offer.
07/29/2019	Daniel Weisz	Email to K. Avison re sign back of offer received; review email from K. Avison and update and initial agreement as required and email executed copy of agreement to K. Avison.
07/30/2019	Brenda Wong	File HST return for period April 1 to June 30, 2019; review email from Avison Young re information requested by purchaser for due diligence; review invoices for payment.
07/30/2019	Daniel Weisz	Review email from K. Avison re signed back APS and email to S. Eiley of Torkin Manes re same; exchange various emails with K. Avison and S. Eiley re the agreement of purchase and sale.
07/31/2019	Brenda Wong	Review emails re sale of the property and information requested by the purchaser, receipt of deposit cheque from purchaser and process for banking.
07/31/2019	Anne Baptiste	Prepare disbursement cheque; filing of banking documentation.

August 2, 2019
 Invoice 10
 Page 3

Date	Professional	Description
07/31/2019	Daniel Weisz	Review and sign authorization for purchaser to obtain information; email to K. Avison with same and contact information requested.
07/31/2019	Donna Nishimura	Deposit cheque at the bank.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	8.6	\$525	\$ 4,515.00
Brenda Wong, CIRP, LIT	Senior Manager	2.0	\$395	790.00
Usama Emad, CPA	Senior Associate	0.3	\$195	58.50
Anne Baptiste/Donna Nishimura	Estate Administrator	2.1	\$110	231.00
Total hours and professional fees		13.0		\$ 5,594.50
HST @ 13%				727.29
Total payable				\$ 6,321.79

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
 RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager
 of Sunshine Propane Inc.
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10004

Invoice 7

No. 5750545

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and **Sunshine Propane Inc.** for the period March 1, 2019 to July 31, 2019.

Date	Professional	Description
04/04/2019	Anne Baptiste	Prepare disbursement cheque; filing of banking documentation.
04/11/2019	Anne Baptiste	Prepare March bank reconciliation; filing of banking documentation.
04/16/2019	Brenda Wong	Review correspondence from Canada Revenue Agency ("CRA") re corporate tax and HST owed.
04/24/2019	Anne Baptiste	Filing of banking documentation.
04/26/2019	Brenda Wong	Prepare letter to CRA and Ministry of Finance ("MOF") re the Receiver's proposed payment of their deemed trust claims.
05/06/2019	Brenda Wong	Prepare cheque requisitions for payment of CRA and MOF deemed trust claims.
05/07/2019	Brenda Wong	Respond to letter from Commercial Credit Adjusters Ltd. re amount owed to RBC.
05/13/2019	Anne Baptiste	Prepare disbursement cheques; prepare April bank reconciliation; filing of banking documentation.
05/14/2019	Brenda Wong	Prepare transmittal letters to CRA and MOF re payment of deemed trust claims.
05/22/2019	Anne Baptiste	Filing of banking documentation.
06/14/2019	Anne Baptiste	Prepare May bank reconciliation.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

August 2, 2019
Invoice 7
Page 2

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Brenda Wong, CIRP, LIT	Senior Manager	1.1	\$395	\$ 434.50
Anne Baptiste	Estate Administrator	1.3	\$110	143.00
Total hours and professional fees		2.4		\$ 577.50
HST @ 13%				75.08
Total payable				\$ 652.58

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
 Licensed Insolvency Trustee
 11 King St W, Suite 700, Box 27
 Toronto, ON M5H 4C7

T +1 416 480 0160
 F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 2495087 Ontario Inc. et al
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date August 2, 2019

Client File 7842321-10005

Invoice 10

No. 5750599

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. for the period June 1, 2019 to July 31, 2019.

Date	Professional	Description
06/03/2019	Brenda Wong	Review online bank statements and prepare paperwork for processing of payment of accrued interest by Bank of Montreal ("BMO").
06/07/2019	Anne Baptiste	Processing receipts.
06/07/2019	Daniel Weisz	Prepare lender update and send.
06/17/2019	Brenda Wong	Review Torkin Manes LLP invoices and email to S. Eiley of Torkin Manes regarding same.
06/19/2019	Brenda Wong	Review amendment to listing agreement; prepare update to lender; review invoices for payment and prepare cheque requisitions.
06/19/2019	Daniel Weisz	Discussion with B. Wong re lender update; review email from A. Riches of Torkin Manes and reply to same; review and update lender update.
06/25/2019	Daniel Weisz	Review and update summary of activities.
06/26/2019	Brenda Wong	Review summary of activities.
07/08/2019	Daniel Weisz	Discussion with J. Larry of Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland") re notice of motion to court.
07/11/2019	Daniel Weisz	Draft third report to the Court.
07/15/2019	Daniel Weisz	Work on report to court; discussion with B. Wong on same.
07/16/2019	Daniel Weisz	Discussion with B. Wong re report to court; discussion with J. Larry re status of report to court; review updated report.
07/16/2019	Brenda Wong	Review draft third report; prepare schedule for Affidavit of Fees; prepare statement of receipts and disbursements ("R&D").
07/17/2019	Brenda Wong	Review books and records of other entities to be disposed of and arrange for shredding.

August 2, 2019
 Invoice 10
 Page 2

Date	Professional	Description
07/18/2019	Daniel Weisz	Review affidavit of fees of Torkin Manes and email to Torkin Manes re same; discussion with J. Larry re status of report.
07/19/2019	Brenda Wong	Reference third report to source documents, assemble appendices to report, update fee affidavit.
07/23/2019	Brenda Wong	Review email from J. Larry and changes to report, make additional updates to report, finalize appendices; follow up with Paliare Roland re its fee affidavit; email to Torkin Manes to request original fee affidavit.
07/23/2019	Daniel Weisz	Review draft notice of motion and draft order and provide comments to Paliare Roland; review revised fee affidavit of Paliare Roland; review and update affidavit of fees; review R&D; review changes to report and finalize and sign report; attend at Paliare Roland re report and affidavit of fees.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation.
07/29/2019	Daniel Weisz	Prepare for and attend in court re application to court for distribution order and various approvals; email to BMO re results of today's court application.
07/30/2019	Daniel Weisz	Email to J. Larry re status of issued and entered court order; email to BMO re status of Goderich sale and funds re sale of Burlington property available to be paid to BMO; prepare for and meet with C. Hunt.
07/31/2019	Daniel Weisz	Review and sign cheques.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

August 2, 2019
Invoice 10
Page 3

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	14.2	\$ 525	\$ 7,455.00
Brenda Wong, CIRP, LIT	Senior Manager	7.0	\$ 395	2,765.00
Anne Baptiste	Estate Administrator	0.2	\$ 110	22.00
Total hours and professional fees		21.4		\$ 10,242.00
HST @ 13%				1,331.46
Total payable				\$ 11,573.46

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

**THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF DANIEL WEISZ SWORN BEFORE ME
THIS 12th DAY OF SEPTEMBER, 2019**


A Commissioner, etc.

Bryan Allan Tannenbaum, a Commissioner, etc.,
Province of Ontario, for RSM Canada LLP
and RSM Canada Limited.
Expires January 5, 2021.

282

In the Matter of the Receivership of
2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc.,
1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc.
Summary of Receiver's Fees
For the Period June 1, 2019 to July 31, 2019*

Invoice Date	Period	Hours	Fees	HST	Total	Average Hourly Rate
1496765 Ontario Ltd.						
	June 1 to July 31, 2019	1.3	\$ 324.50	\$ 42.19	\$ 366.69	\$ 249.62
		1.3	\$ 324.50	\$ 42.19	\$ 366.69	\$ 249.62
1651033 Ontario Ltd.						
	June 1 to July 31, 2019	2.5	\$ 941.50	\$ 122.40	\$ 1,063.90	\$ 376.60
		2.5	\$ 941.50	\$ 122.40	\$ 1,063.90	\$ 376.60
1527020 Ontario Inc.						
	June 1 to July 31, 2019	1.9	\$ 388.50	\$ 50.51	\$ 439.01	\$ 204.47
		1.9	\$ 388.50	\$ 50.51	\$ 439.01	\$ 204.47
2495087 Ontario Inc.						
	June 1 to July 31, 2019	3.2	\$ 987.00	\$ 128.31	\$ 1,115.31	\$ 308.44
		3.2	\$ 987.00	\$ 128.31	\$ 1,115.31	\$ 308.44
2496800 Ontario Inc.						
	June 1 to July 31, 2019	13.0	\$ 5,594.50	\$ 727.29	\$ 6,321.79	\$ 430.35
		13.0	\$ 5,594.50	\$ 727.29	\$ 6,321.79	\$ 430.35
Sunshine Propane Inc.						
	March 1 to July 31, 2019	2.4	\$ 577.50	\$ 75.08	\$ 652.58	\$ 240.63
		2.4	\$ 577.50	\$ 75.08	\$ 652.58	\$ 240.63
COMBINED						
	June 1 to July 31, 2019	21.4	\$ 10,242.00	\$ 1,331.46	\$ 11,573.46	\$ 478.60
		21.4	\$ 10,242.00	\$ 1,331.46	\$ 11,573.46	\$ 478.60
Total		45.7	\$ 19,055.50	\$ 2,477.24	\$ 21,532.74	\$ 416.97

*includes invoice for the period March 1, 2019 to July 31, 2019 in respect of Sunshine Propane Inc.

TAB Q

Court File No.: CV-18-00602537-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INCLTD., 1496765 ONTARIO INCLTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C.
1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

AFFIDAVIT OF SARITA SANASIE

(Sworn September 12, 2019)

I, Sarita Sanasie, of the City of Toronto, in the Province of Ontario, **MAKE
OATH AND SAY:**

1. I am an assistant at the law firm of Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland"). I have personal knowledge of the matters to which I hereinafter refer.

2. Pursuant to the order of the Honourable Justice Hainey dated August 29, 2018 (the "Appointment Order"), RSM Canada Limited was appointed as the receiver (the "**Receiver**") of all the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033

Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (collectively, the "**Debtors**") acquired for, or used in relation to businesses carried on by the Debtors.

3. Pursuant to the Appointment Order, Paliare Roland has provided services to and incurred disbursements on behalf of the Receiver. The detailed invoices attached hereto and marked as **Exhibit "A"** (the "Dockets") set out Paliare Roland's fees and disbursements from May 1, 2019 to July 31, 2019. The Dockets describe the services provided and the amounts charged by Paliare Roland.

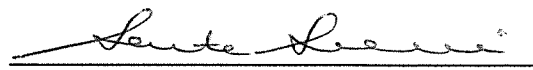
4. The following is a summary of the professionals whose services are reflected in the Dockets, including hourly rates, fees billed, hours billed and the average hourly rate charged by Paliare Roland. The hourly rates charged are the usual hourly rates charged by Paliare Roland for the listed professionals.

Professional	Hourly Rate	Hours Billed	Fees Billed
Jeff Larry, Partner, 2001 Call	\$675/hr	4.70	3,172.50
Elizabeth Rathbone, Associate, 2016 Call	\$450/hr	9.20	4,140.00
Subtotal		13.90	\$7,312.50

5. Inclusive of HST and disbursements, the total amount of the Dockets are **\$8,897.67**.

SWORN BEFORE ME, at the City of
Toronto, in the Province of Ontario this
12th day of September, 2019.


A commissioner, etc.


Sarita Sanasie



35th Floor
155 Wellington St. West
Toronto, Ontario M5V 3H1
Canada

416.646.4300
paliareroland.com

Private and Confidential
Danny Weisz
RSM Canada Limited
11 King Street West, Suite 700
Box 27
Toronto, Ontario M5H 4C7

"A"
This is Exhibit.....referred to in the
affidavit of.....SARAH SANASIE..
sworn before me, this.....July 31, 2019
day of.....September, 2019
Invoice No.: 91158
Our File No.: 6595-95326
A COMMISSIONER, ETC

RE: 2495087 Ontario Inc. et al

FOR PROFESSIONAL SERVICES RENDERED on this matter for the period ending July 31, 2019:

Total Fees	\$ 7,312.50
Non Taxable Disbursements	320.00
Total Disbursements subject to HST	278.35
Total HST	986.82
INVOICE TOTAL	\$ 8,897.67

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Per:

Jeffrey Larry



35th Floor
155 Wellington St. West
Toronto, Ontario M5V 3H1
Canada

416.646.4300
paliareroland.com

286

Private and Confidential
Danny Weisz
RSM Canada Limited
11 King Street West, Suite 700
Box 27
Toronto, Ontario M5H 4C7

July 31, 2019
Invoice No.: 91158
Our File No.: 6595-95326

RE: 2495087 Ontario Inc. et al

FOR PROFESSIONAL SERVICES RENDERED on this matter for the period ending July 31, 2019:

DATE	LYR	DESCRIPTION	RATE	HOURS	AMOUNT
08/05/19	JL	Discussion with E. Rathbone re: various issues; discussion with Torkin Manes;	675.00	0.40	270.00
25/06/19	ER	E-mails and confer with J. Larry re intercreditor dispute; prepare shell motion materials re same;	450.00	1.30	585.00
05/07/19	ER	Prepare shell motion materials re priority dispute; e-mail to J Larry re same;	450.00	1.00	450.00
08/07/19	JL	Call with S. Thom; various email correspondence;	675.00	0.30	202.50
11/07/19	JL	Review listing agreement;	675.00	0.20	135.00
18/07/19	JL	Call with D.Weisz; review email correspondence; email to V. Ibe; discussion with E. Rathbone;	675.00	0.50	337.50
22/07/19	JL	Revise Notice of Motion; Receiver's Report and Order;	675.00	0.80	540.00
22/07/19	ER	Confers with J Larry; calls and e-mails with V. Ibe; e-mails with Torkin Manes; review and revise third report; draft notice of motion, motion	450.00	4.10	1,845.00

DATE	LYR	DESCRIPTION	RATE	HOURS	AMOUNT
		materials; draft order; e-mail to S Sanasie re fee affidavit;			
23/07/19	ER	Compile, review, and revise motion record; coordinate service and filing re same; confers with J Larry re same; confers and e-mails with D Weisz re same;	450.00	2.80	1,260.00
25/07/19	JL	Finalizing materials for motion; call with D. Weisz;	675.00	1.20	810.00
29/07/19	JL	Attend at motion;	675.00	1.30	877.50

TIME SUMMARY

MEMBER	POSITION	HOURS	RATE	VALUE
Jeffrey Larry (JL)	Partner	4.70	675.00	3,172.50
Elizabeth Rathbone (ER)	Associate	9.20	450.00	4,140.00

OUR FEES	\$ 7,312.50
HST at 13%	950.63

Non Taxable Disbursements:

23/07/19	Filing Fee Re: Motion Record Cheque No. 35668 for Ref 95326 issued to Minister of Finance	320.00
----------	---	--------

Taxable Disbursements:

	Laser Copies	192.50
	Photocopies	1.25
	Cerlox and Binding	9.60
30/07/19	Process Server Fees/Disbursements Re: Motion Record Voucher No. 23431 for Invoice No. 2019-1543 issued by (11) Reliance Legal Services	75.00

288

RSM Canada Limited

Invoice No.: 91158
Our File No.: 6595-
95326
Page No.: 3

Limited

Total Taxable Disbursements
HST at 13%

278.35
36.19

INVOICE TOTAL

\$ 8,897.67



35th Floor
155 Wellington St. West
Toronto, Ontario M5V 3H1
Canada

416.646.4300
paliareroland.com

289

Private and Confidential
Danny Weisz
RSM Canada Limited
11 King Street West, Suite 700
Box 27
Toronto, Ontario M5H 4C7

July 31, 2019
Invoice No.: 91158
Our File No.: 6595-95326

RE: 2495087 Ontario Inc. et al

**REMITTANCE COPY
PLEASE REMIT WITH PAYMENT**

Total Fees	\$ 7,312.50
Non Taxable Disbursements	320.00
Total Disbursements subject to HST	278.35
Total HST	986.82
INVOICE TOTAL	<u>\$ 8,897.67</u>

BANK OF MONTREAL

-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

AFFIDAVIT OF SARITA SANASIE

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West

35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver