

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

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

Defendants

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

November 26, 2019

Listing of Appendices

- Appendix A - Appointment Order Dated September 30, 2019
- Appendix B - Listing of Receivership Parties
- Appendix C - Third Report of the Receiver (Redacted)
- Appendix D - BMO Receivership Order Dated October 16, 2019
- Appendix E - Assets Subject to the Sale Process
- Appendix F - Bidding Procedures
- Appendix G - Teaser Document and Form of Non-Disclosure Agreement
- Appendix H - Newspaper Advertisement

1.0 INTRODUCTION AND PURPOSE OF REPORT

1.1 Introduction

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

1.1.2 At the September 30 hearing, the Court granted the following two additional orders by separate motion:

- an Anton Piller order to allow entry and search of premises of the defendants named in the order; and
- as subsequently amended, a Mareva injunction order restraining Simranjit Dhillon, Mandhir Dhillon, Sarbjit Dhillon and Mandeep Dhillon from dissipating their assets.

1.1.3 The Debtors operated two main business lines prior to the Appointment Order:

- **The Gas Station Business:** certain of the Debtors operated five retail gas stations (together, the “**Gas Stations**” and such business, the “**Gas Stations Business**”) located in southwestern Ontario. The Receiver took possession and control over the Gas Stations pursuant to the Appointment Order and have been running the Gas Stations Business in the ordinary course since. The Receiver notes that the Gas Stations have been operating at a loss over the course of these proceedings, which losses the Receiver expects to continue through to the sale of the Gas Stations Business. The Gas Stations Business is the subject of the proposed Sale Process and the operations in respect of the Gas Stations are described in further detail below; and
- **The Fleet Card Business:** 908 formerly operated a fleet member reward card program (the “**Fleet Card Business**”) used by its customers at gas stations located in Canada and the United States, including at gas stations operated by certain of the Debtors. For the reasons outlined in the third report of the Receiver dated October 18, 2019 (the “**Third Report**”), the Receiver terminated active operations in respect of the Fleet Card Business on October 11, 2019. A redacted copy of the Third Report, without appendices, is attached hereto as **Appendix C**.

1.1.4 The background with respect to the Defendants, as well as a description of the activities and circumstances leading to the appointment of the Receiver over the Receivership Parties, are contained in the motion record (the “**CIBC Motion**”

Record") filed by Canadian Imperial Bank of Commerce ("**CIBC**"), the plaintiff in the within proceeding. The CIBC Motion Record has been sealed pending further order of the Court.

1.1.5 By order dated October 16, 2019, Bank of Montreal ("**BMO**") brought an application to appoint MNP Ltd. as Receiver over all of the assets, undertakings and properties of certain of the Defendants that were originally the subject of the Appointment Order. The application was unopposed and the order was granted on October 16, 2019 (the "**BMO Receivership Order**"). As part of the BMO Receivership Order, the Receiver was discharged as Receiver of certain of the Defendants, and Appendix B reflects the parties that are currently the subject of the Appointment Order. A copy of the BMO Receivership Order is attached hereto as **Appendix D**.

1.2 Purpose of this Report

1.2.1 This report is the Receiver's fifth report to the Court (the "**Fifth Report**") and is filed in respect of a motion for:

- an order approving a sales process (the "**Sale Process**") for the Gas Stations and related assets (the "**Sale Process Order**");
- an order approving a process (the "**Collections Process**") by which collections agencies will bid on the opportunity to purchase the right to collect, or to assist the Receiver in collecting, the uncollected accounts receivable (the "**Collections Process Order**"); and
- an order approving an interim distribution to CIBC (the "**Interim Distribution Order**").

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

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

1.2.4 All references to dollars are in Canadian currency unless otherwise noted.

1.2.5 In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the receivership proceedings are

available on the Receiver's Case Website at
www.extranets.bdo.ca/eagletravelplaza.

2.0 THE SALE PROCESS

2.1 The Debtors' Business and Assets Subject to the Sale Process

2.1.1 Certain of the Debtors operated the Gas Stations, which are located in Tilbury, Chatham, and Sarnia, Ontario (Sarnia having three locations).

2.1.2 The Gas Stations proposed to be subject to the Sale Process are:

- the Esso gas station and On the Run convenience store at the address municipally known as 3613 Queens Line in Tilbury, Ontario (the "**Tilbury Location**"), at which location certain of the Debtors also maintain staff offices. The real property is owned by 1393382 Ontario Limited ("**139**"), a Receivership Party. 908 operates the gas station and convenience store and a tenant operates a restaurant on site.
- the Esso gas station at the address municipally known as 1670 London Line Road in Sarnia, Ontario (the "**1670 London Line Location**"). The real property is owned by 139. 908 operates the gas station on site.
- the Esso gas station at the address municipally known as 2097 London Line Road in Sarnia, Ontario (the "**2097 London Line Location**"). The real property is owned by 139. 908 operates the gas station on site.
- the truck stop convenience store and Esso gas station, including the Pizza Pizza and Subway restaurants, at the address municipally known as 22216 Bloomfield Road in Chatham, Ontario (the "**Bloomfield Location**"), at which location certain of the Debtors also maintain staff offices. The real property is owned by 139. 908 operates the gas station, convenience store, and the Pizza Pizza restaurant on site. As detailed below, the inclusion of the real property in the Sale Process is subject to ongoing discussions with FirstOntario Credit Union ("**FirstOntario**").
- the Shell gas station, convenience bar and Burger King at the address municipally known as 203 Indian Road in Sarnia, Ontario (the "**Indian Road Location**"). The real property is owned by 2145744 Ontario Limited ("**2145744**"), a Receivership Party. 2145754 Ontario Limited ("**2145754**"), also a Receivership Party, operates the gas station on site. As detailed below, the inclusion of the real property in the Sale Process is subject to ongoing discussions with Laurentian Bank of Canada ("**Laurentian**").

The sale will include both the operating businesses at the Gas Stations, as well as the underlying real property. A chart further detailing the assets subject to the Sale Process and the Debtor entity that owns each asset is attached hereto as **Appendix "E"**.

2.2 Other Secured Creditors of the Gas Stations

2.2.1 A number of secured creditors of the Receivership Parties which operate the Gas Stations have registered real and/or personal property security interests under the applicable registries. The chart attached hereto as **Appendix "E"** details the secured creditors which have security over the Gas Stations' operations and the real property upon which they operate.

2.2.2 On a preliminary review of the documents that the Receiver has received in respect of this proceeding, as well as real and personal property searches conducted against the Receivership Parties, the Receiver notes that:

- FirstOntario has registered a personal property security interest over 139 and 908 which interest appears to rank ahead of CIBC, except with respect to inventory and receivables for which CIBC has priority by agreement between the parties dated July 16, 2014;
- FirstOntario has registered a mortgage on title to the real property associated with the Bloomfield Location. CIBC has no registered charge or encumbrance on title to the real property associated with the Bloomfield Location; and
- Laurentian has registered a mortgage on title to the real property associated with the Indian Road Location, which is owned by 2145744. CIBC has no registered charge or encumbrance on title to the real property associated with the Indian Road Location. CIBC and Laurentian have both registered personal property security interests over 2145744, but the Receiver is not in possession of any documentation that speaks to the priority as between those creditors.

2.2.3 The Receiver has not considered competing priorities among CIBC, FirstOntario, and Laurentian, or any other secured creditor to the Receivership Parties, and does not propose to do so prior to the conclusion of the Sale Process. The Receiver has advised FirstOntario and Laurentian of the Receiver's intention to undertake the Sale Process, and has kept FirstOntario and Laurentian apprised of the Sale Process and within motion. Each of FirstOntario and Laurentian are considering upon which terms they are amenable to the real property associated with the Bloomfield Location and the Indian Road Location, respectively, and the parties, along with CIBC, continue to discuss solutions.

2.3 Right of First Refusal, Shell Canada Products and Pioneer Energy LP

2.3.1 Shell Canada Products ("**Shell**") and 2145754 are parties to a retail supply agreement dated October 26, 2016 (the "**Shell Agreement**") pursuant to which 2145754 operates under the "Shell" brand. Among other things, the Shell Agreement purports to grant Shell a right of first refusal in the event that a third party makes an offer to purchase the Indian Road Location. The Receiver will provide Shell with notice of the Sale Process and include a copy of the Shell Agreement in the data room.

2.3.2 Pioneer Energy LP ("**Pioneer**") and 908 are parties to three retail supply agreements dated October 1, 2013 relating to the Tilbury Location, the 1670 London Line Location, and the Bloomfield Location (the "**908 Pioneer Agreements**"). Pioneer and 1849722 Ontario Limited ("**184**") are parties to a retail supply agreement dated October 1, 2013 relating to the 2097 London Line Location¹ (collectively with the 908 Pioneer Agreements, the "**Pioneer Agreements**"). The Pioneer Agreements provide that each of 908 and 184 operates gas stations under the "Esso" brand. Among other things, the Pioneer Agreements purport to grant Pioneer rights of first refusal in the event that a third party makes

¹ We note that the fact of the agreement between Pioneer and 184 is inconsistent with the Receiver's understanding that the 2097 London Line Location is operated by 908.

an offer to purchase any of the 1670 London Line Location, Bloomfield Location, Tilbury Location or the 2097 London Line Location. The Receiver will provide Pioneer with notice of the Sale Process and include a copy of each of the Pioneer Agreements in the data room.

- 2.3.3 The Receiver will determine whether the rights of first refusal are enforceable in the receivership proceedings depending on the outcome of the Sale Process.

2.4 The Sale Process²

- 2.4.1 In order to provide parties with an opportunity to bid on the Gas Stations, the Receiver proposes to market the Gas Stations for a period of approximately 45 days. A copy of the procedures (the “**Bidding Procedures**”) proposed to govern the Sale Process is attached hereto as **Appendix “F”**. The Receiver’s corporate finance group will be involved in the sale process. The key aspects of the Sale Process are as follows:

- The Receiver will establish an electronic data room (the “**Data Room**”) to provide prospective buyers with full access to all relevant information relating to the Gas Stations;
- The Receiver has maintained and is developing lists of (i) parties that have inquired regarding a sale of the Gas Stations, and (ii) prospective buyers;
- The Receiver will send a teaser document and a form of non-disclosure agreement (the “**NDA**”) to parties BDO has identified as potentially having an interest in the Gas Stations, a copy of which is attached hereto as **Appendix “G”**;
- The Receiver will also publish a notice in each of the Globe and Mail, the London Free Press, and the Windsor Star advertising the opportunity, a copy of which is attached hereto as **Appendix “H”**;
- The Receiver will list the Property on the multiple listing service (MLS) website;
- Prospective buyers will be required to sign the NDA prior to getting Data Room access;
- Interested parties must submit binding offers (each, a “**Bid**”) to the Receiver by 5 p.m. Toronto time on January 24, 2020 (the “**Bid Deadline**”);
- Bids are to be (i) made in the form of a template asset purchase agreement (the “**APA**”) which the Receiver will place in the Data Room and (ii) accompanied by a deposit in an amount equal to 10% of the purchase price. To be considered by the Receiver, all Bids must be on an “as is, where is” basis and subject to Court approval;
- Interested parties may submit a Bid for all or a portion of the Property, as set out in the Bidding Procedures;

² Capitalized terms used in this section but not otherwise defined have the meaning attributed to them in the Bidding Procedures.

- The acceptability of any of the Bids is to be determined by the Receiver, in consultation with any party the Receiver, in its discretion, deems relevant, on terms the Receiver deems appropriate;
- If no Bids have been received by the Bid Deadline, the Receiver will consider whether to continue and/or modify the Sale Process and advise the Court accordingly;
- The Receiver shall not be required to accept the highest Bid, or any Bid, and may permit parties to cure otherwise deficient Bids;
- The Receiver may, in its sole discretion, allow an interested party to cure a Bid that would not otherwise qualify under the Bidding Procedures;
- The Receiver may, in its sole discretion, elect to either (i) accept a Bid, in which case the Receiver shall proceed to finalize the APA with the successful offering party; or (ii) send written notice to the parties that submitted Bids that the Receiver, in its discretion, deems to be the highest and/or best Bids, and negotiate with those parties to identify and accept the highest and/or best Bid; and
- Upon either the acceptance of a Bid and finalizing the APA, the Receiver will return to Court for approval of the transaction and the closing thereof as soon as possible thereafter.

2.4.2 The Receiver shall have the right to make amendments to the Sale Process, including extending the timelines proposed in the Bidding Procedures, without further Court order.

2.4.3 The timeline proposed by the Receiver is as follows:

Date	Description of Bidding Procedures
Thursday, December 5, 2019	Receiver begins marketing Gas Stations
Week of December 9	Interested parties sign NDA and access data room
Friday, January 24, 2020	Bid deadline
Monday, January 27, 2020	Shortlisted Bidders negotiate with the Receiver
Tuesday, January 28, 2020	Successful Bidder identified
Thursday, January 30, 2020	APA and transaction documents finalized
Week of February 10, 2020	Court attendance regarding sale
By Friday, February 21, 2020	Close of sale transaction

3.0 THE A/R COLLECTIONS PROCESS

3.1 The Fleet Card Business

- 3.1.1** Pre-Appointment Order, the largest segment of the Debtors' business was the Fleet Card Business, which business was managed by 908. By way of overview, 908 would provide customers (truck transportation companies with varying fleet sizes) with what are essentially credit cards issued to the customers' truck drivers to allow them to purchase fuel and other items on credit. As of the date of the Appointment Order, 908 had approximately 1,300 active known customers, and up to 1,800 customers in total (each with one or more trucks in their fleet). On October 11, 2019, active operations of the Fleet Card Business terminated.
- 3.1.2** Further background to the Fleet Card Business is set out in greater detail at Section 3.1 of the Third Report and is not repeated herein.

3.2 The In-House Diesel Fuel Accounts

- 3.2.1** In addition to accounts receivable arising in association with the Fleet Card Business, the Debtors maintained a credit program for approximately 22 customers which were managed at the local gas station and not through the sales staff (the "In-House Diesel Fuel Accounts").
- 3.2.2** The In-House Diesel Fuel Accounts have different payment terms (mostly accepting payment by cheque, with payment terms of up to 30 days) and rebate structures (cash rebates and preferred pricing) than the Fleet Card Business. Invoicing information for the In-House Diesel Fuel Accounts is maintained in a separate computer system at each of the Tilbury Location, the Bloomfield Location, and the 1670 London Line Location.
- 3.2.3** The Receiver has continued the In-House Diesel Fuel Accounts credit program during the receivership proceedings.

3.3 Collections from Fleet Card Business and In-House Diesel Fuel Account Customers

- 3.3.1** As noted above, the Fleet Card Business and the In-House Diesel Fuel Accounts functioned such that customers would receive fuel and other items on credit. The applicable Debtor would then invoice such customers for the fuel, as well as other items purchased and cash advances with respect to the Fleet Card Business. The main payment method for the Fleet Card Business was for 908 to debit a customer's bank account for the amount owed to 908's bank account, although customers also paid by other mechanisms. The main payment method for the In-House Diesel Fuel Accounts was payment by cheque, although customers also paid by other mechanisms.
- 3.3.2** The Receiver has the task of attempting to collect from Fleet Card Business and In-House Diesel Fuel Accounts customers for amounts owing to the Receivership Parties, particularly during the period of September 23, 2019 to October 11, 2019, and more generally collecting monies owing to the Receivership Parties. The

challenges experienced by the Receiver are extensively detailed in sections 2.3, 3.1.1 and 3.4 of the Third Report.

- 3.3.3** As a result of the challenges discussed in the Third Report, along with other, more ordinary course delinquent payments, a large portion of the accounts receivable remain uncollected (such uncollected amounts, the “**Uncollected Accounts Receivable**”). Of that uncollected portion, a significant portion is due to customers rejecting transactions, primarily by one of the following:
- the customer directs their bank to “chargeback” the transaction such that the transaction is reversed;
 - the customer closes their account; or
 - the customer’s account has insufficient funds to cover the amount of the transaction.
- 3.3.4** The Receiver has been diligently working to collect outstanding accounts receivable, but at this point does not expect that the Uncollected Accounts Receivable can be collected without significant additional effort on the Receiver’s part, if at all. The time and expense of collecting on the Uncollected Accounts Receivable is significant, including the cost of continuing to retain the Debtors’ employees during this period.
- 3.3.5** In order to collect the monies owing to the Debtors pursuant to the terms of the Appointment Order, the Receiver has determined that the most efficient method for collecting certain of the Uncollected Accounts Receivable is to solicit bids from companies that specialize in recovering unpaid debts. The Receiver has identified three debt collections agencies (the “**Collections Agencies**”) that would be appropriate to invite to participate in a bid process for the Uncollected Accounts Receivable.
- 3.3.6** The Receiver intends to reach out to each of the Collections Agencies advising them of the opportunity to bid for either (i) the en bloc purchase of the book of Uncollected Accounts Receivable for a fixed sum, or (ii) the provision of administration and collection services at a rate and on terms proposed by the Collection Agencies.
- 3.3.7** If any other debt collection agency is identified by the Receiver as being an appropriate potential bidder for the Uncollected Accounts Receivable, or any other debt collection agency indicates that it would like to participate in the Collections Process, the Receiver will invite that party to bid for the Uncollected Accounts Receivable mandate.
- 3.3.8** The Receiver intends to solicit proposals (the “**Collections Proposals**”) from the Collections Agencies and will set a deadline for the submission of proposals.
- 3.3.9** The Receiver, in consultation with any party it determines to be appropriate, will review the Collections Proposals submitted and determine, in its discretion, which Collections Proposal, if any, is the most favourable proposal. The Receiver shall not be required to accept any of the Collections Proposals.

3.3.10 If no acceptable proposal has been received by the deadline, the Receiver will consider whether to continue and/or modify the Collections Process and advise the Court accordingly.

4.0 THE INTERIM DISTRIBUTION

4.1 The Proposed Interim Distribution

- 4.1.1 The Appointment Order permits the Receiver to borrow such monies as it considers necessary or desirable, and that such money would be secured by a court-ordered charge (the “**Receiver’s Borrowings Charge**”) in priority to all other security interests, trusts, liens, charges and encumbrances, other than the charge granted in favour of the Receiver and its counsel for fees and disbursements. Originally, the maximum amount the Receiver could borrow was set at \$2 million, but this maximum has since been increased twice and is now \$10 million.
- 4.1.2 To date, the Receiver has borrowed \$9,000,000.00 from CIBC, the entirety of which is subject to the Receiver’s Borrowings Charge.
- 4.1.3 The Receiver believes that a distribution to CIBC in the amount of \$2,000,000.00 (the “**Interim Distribution**”), which payment will be applied to the amounts owing under the Receiver’s Borrowings Charge, is appropriate at this stage.
- 4.1.4 The Receiver seeks the Court’s approval of the Interim Distribution.

5.0 SERVICE OF THE WITHIN MOTION

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

- Shell Canada Products
- Pioneer
- Simranjit Dhillon, Mandhir Dhillon, Sarbjit Dhillon and Mandeep Dhillon
- FirstOntario
- Laurentian
- BMO


6.0 CONCLUSION

For the reasons set out above, the Receiver respectfully requests that the Court approve the Receiver's request for:

- The Sale Process Order;
- The Collections Process Order; and
- The Interim Distribution Order.

All of which is respectfully submitted this 26th day of November, 2019.

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



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

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APPENDIX A
APPOINTMENT ORDER DATED SEPTEMBER 30, 2019

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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MONDAY, THE 30TH

JUSTICE HAINEY

)

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DAY OF SEPTEMBER, 2019

BETWEEN:



CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

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

Defendants

AMENDED ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

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

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

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

OBLIGATIONS OF THE DEBTORS AND OTHERS

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

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

without prior written instructions from the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

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

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

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

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

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

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



C. Irwin
Registrar

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

OCT 04 2019

PER / PAR: 

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per:

Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and- SIMRANJIT DHILLON et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Plaintiff

APPENDIX B
LISTING OF THE RECEIVERSHIP PARTIES

See attached.

	Company	Address	Referred to:	Operations	Owned Real Proert	Security
1	908593 Ontario Limited	1)3613 Queens Line, Tilbury, ON 2)22216 Bloomfield Road, Chatham, ON 3)1670 London Line, Sarnia, ON 4)2097 London Line, Sarnia, ON 5)69 Bramalea Road, Brampton, ON	Tilbury Esso Bloomfield Truck Centre 402 Travel Centre XTR Sales Office	Gas station (Esso brand); Semi-tractor truck gas station; Convenience store Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant Gas station (Esso brand); Convenience store Sales and customer service representatives for fleet fuel card		CIBC
2	1393382 Ontario Limited	1)3613 Queens Line, Tilbury, ON 2)22216 Bloomfield Road, Chatham, ON 3)1670 London Line, Sarnia, ON 4)2097 London Line, Sarnia, ON 5)69 Bramalea Road, Brampton, ON	Holdco - 908	Holding company for 908593 Ontario Limited	Yes Yes Yes Yes Leased	CIBC FirstOntario CIBC CIBC
3	2145744 Ontario Limited	203 Indian Road South, Sarnia, ON	Holdco - Shell Sarnia	Holding company for 2145754 Ontario Limited	Yes	Laurentian
4	2145754 Ontario Limited	203 Indian Road South, Sarnia, ON	Shell Sarnia	Gas station (Shell brand); Convenience store		CIBC
5	2123618 Ontario Limited	191 Keil Drive South		Formerly owned the gas station located at 191 Keil Drive South		None
6	1849722 Ontario Ltd					None
7	2469244 Ontario Limited	22216 Bloomfield Road, Chatham, ON	Pizza Pizza	Pizza Pizza Franchise		None
8	2364507 Ontario Limited	1041 Wellington Rd., London, ON	Menchie's	Receiver ceased operations		Yogurtworld
9	2612550 Ontario Limited		261	Broker sales of diesel to semi-tractor truck fuel stations		None

APPENDIX C
THIRD REPORT OF THE RECEIVER (REDACTED)

See attached.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

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

Defendants

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

OCTOBER 18, 2019

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- Appendix B - Listing of the Receivership Parties
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- Appendix F - Order of the Court dated October 7, 2019
- Appendix G - The Receiver's Second Report dated October 11, 2019, without appendices
- Appendix H - Order of the Court dated October 11, 2019
- Appendix I - Chart of Related Companies
- Appendix J - BMO Receivership Order dated October 16, 2019
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- Appendix L - Subway Notice dated October 4, 2019

1.0 INTRODUCTION AND PURPOSE OF REPORT

1.1 Introduction

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

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

1.2 Purpose of this Report

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

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

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

2.0 RECEIVER'S ACTIVITIES

2.1 Taking Possession

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

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

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

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

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

2.4 Accounting Controls and Books and Records

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

2.5 Maintaining Operations

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

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

2.6 Other Activities of the Receiver

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

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

2.7 Assets not in the Receiver's possession

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

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

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

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

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

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

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

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

3.0 DIESEL FUEL BUSINESS UNIT

3.1 Background

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

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

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

3.2 Books and Records and Management Controls

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

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

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

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

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

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

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

3.3 Anton Piller Order Records

[REDACTED]

[REDACTED]

[REDACTED]



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

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

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

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

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

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

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

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

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

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

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

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

3.6 In-House Diesel Fuel Accounts

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

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

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

3.7 Diesel Fuel Customer Rebates and Special Pricing

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

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

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

4.0 RETAIL GAS STATIONS

4.1 Books and Records and Point of Sale Systems

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

4.2 Fuel and Retail Store Operations

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

4.3 Fast Food and Space Rental Operations

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

5.0 PILOT DUE DILIGENCE

5.1 Stabilization Agreement

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

5.2 Potential Offer

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

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

6.0 STATUS OF OPERATIONS

6.1 Fleet Card Business Segment

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

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

6.2 Retail Gas Station Operations

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

6.3 Fast Food Operations

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

7.0 SEALING ORDER REQUEST

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

All of which is respectfully submitted this 18th day of October, 2019.

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



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

37538255.10

APPENDIX D
BMO RECEIVERSHIP ORDER DATED OCTOBER 16, 2019

See attached.

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) WEDNESDAY THE 16th
)
JUSTICE HAINEY) DAY OF OCTOBER, 2019



BANK OF MONTREAL

Applicant

- and -

1254044 ONTARIO LIMITED, 2431264 ONTARIO INC.,
2189788 ONTARIO INC. and 1552838 ONTARIO INC.

Respondents

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

ORDER
(appointing Receiver)

THIS APPLICATION brought 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 MNP Ltd. as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 1254044 Ontario Limited ("**125**"), 2431264 Ontario Inc. ("**243**"), 2189788 Ontario Inc. ("**218**"), 1552838 Ontario Inc. ("**155**") and 2542372 Ontario Inc. ("**254**") (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 (such appointment hereinafter being referred to as the "**Receivership**"). For certainty, the Debtors as referred to in this Order specifically do not refer to any other entities other than 125, 243, 218, 155 and 254, and do not refer to any entities under an order of receivership in the CIBC Action defined below.


ON READING the affidavit of Jason Henderson sworn October 10, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Bank of Montreal and counsel for certain of the Debtors,

SERVICE

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

DISCHARGE OF RECEIVER IN THE CIBC ACTION

2. THIS COURT ORDERS that BDO Canada Limited, appointed by order of the Honourable Mr. Justice Hainey dated September 30, 2019 in court file no. CV-19-00628293-00CL (the "**CIBC Action**") as receiver of the assets, undertakings and properties of, among other parties, 125, 218 and 155, is hereby discharged as receiver of 125, 218 and 155 effective as of 1:00 p.m. (Toronto time) on the date of this Order.

 ~~3. THIS COURT ORDERS AND DECLARES that BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.~~

4. THIS COURT ORDERS that BDO Canada Limited shall be reimbursed for amounts set out in a payment agreement among BDO Canada Limited, CIBC and BMO, in accordance with that agreement, and that said amounts shall be deemed to have been borrowed under this Receivership and have the benefit of the Receiver's Borrowings Charge.

5. THIS COURT ORDERS that, other than as provided in this paragraph, nothing in this Order shall affect the charge granted in favour of BDO Canada Limited (the "**CIBC Receiver**") in the CIBC Action (the "**CIBC Receiver's Charge**"), including the assets pursuant to which such charge was granted, and that the CIBC Receiver's Charge and the receiver's borrowing charge granted in the CIBC Action shall rank *pari passu* with the Receiver's Charge and the

Receiver's Borrowing Charge (as those terms are defined herein) granted in this Order as they pertain to the Property subject to this Receivership only. For the purpose of this paragraph, the charges in favour of BDO Canada Limited shall apply for the time period from September 30, 2019 to and including the date of this Order.

APPOINTMENT

6. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the *CJA*, MNP Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors, 125, 243, 218, 155 and 254 acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (the "**Property**").

7. THIS COURT ORDERS that the appointment of the Receiver hereunder is effective notwithstanding an order of the Honourable Mr. Justice Hainey made in the CIBC Action dated October 7, 2019 amending an order dated September 30, 2019 granting to Canadian Imperial Bank of Commerce a Mareva injunction (collectively the "**Mareva Order**") and nothing in the Mareva Order shall impair the powers of the Receiver as granted herein, save and except that all bank accounts and bank account balances of the Debtors, 125, 243, 218, 155 and 254, existing at the time of the making of this Order shall remain subject to the Mareva Order.

RECEIVER'S POWERS

8. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the 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, provided that the proceeds of the sale of any real-property or non-inventory personal property (tangible or intangible) or accounts of any of the Debtors' existing at the time of the making of this Order shall be retained by the Receiver and remain subject to the Mareva Order;
- (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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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 or, in the opinion of the Receiver, court approval is otherwise necessary or desirable regardless of the value of the transaction;

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.

- (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, including without limitation of any Court order, and 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 the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (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

9. 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.

10. 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 7 or in paragraph 8 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.

11. THIS COURT ORDERS that books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related primarily to the business or affairs of the persons and entities, other than the Debtors, subject to the Mareva Injunction Order dated September 30, 2019, as amended on October 7, 2019, as set out in Schedule "B", and any computer programs, computer tapes, computer disks, or other data storage media containing any such information that comes into the possession of the Receiver (the "**Non-Debtor Records**"), shall be delivered to BDO Canada Limited, and not kept in the possession of the Receiver;

12. 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.

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

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

OBLIGATIONS OF THE DEBTORS AND OTHERS

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

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Property, wherever situate;
- (b) instructing, requesting, counseling, commanding, or encouraging any other person to do the acts identified in subparagraph 15(a) above; and
- (c) facilitating, assisting in, aiding, abetting or participating in any of the activities set out in subparagraph 15(a) above,

without prior written approval and instructions from the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

16. 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

17. THIS COURT ORDERS that with the exception of the CIBC Action, 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

18. THIS COURT ORDERS that with the exception of the CIBC Action, 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

19. 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

20. 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

21. 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

22. 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

23. 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

24. 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

25. 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

26. 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.

27. 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.

28. 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

29. 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 \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

30. 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.

31. 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.

32. 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

33. 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.

34. 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

35. 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.

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

37. 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.

38. 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.

39. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant'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.

40. 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 blue ink, appearing to read 'Hainey', is written over a horizontal line.

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

OCT 16 2019

PER / PAR:  .

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd. the receiver (the "**Receiver**") of the assets, undertakings and properties 1254044 Ontario Limited, 2431264 Ontario Inc. 2189788 Ontario Inc., 1552838 Ontario Inc. and 2542372 Ontario Inc. (collectively the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 16th day of October, 2019 (the "**Order**") made in an action having Court file number CV-19-00629058-00CL, 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__.

MNP Ltd., solely in its capacity as Receiver of
the Property, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

**PERSONS AND ENTITIES SUBJECT TO THE MAREVA ORDER OF SEPTEMBER 30,
2019 AS AMENDED ON OCTOBER 7, 2019**

- Sarbjit Singh Dhillon
- Mandhir S. Dhillon
- Simranjit Dhillon
- Mandeep Dhillon
- 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza,
- 1393382 ONTARIO LIMITED,
- 2145744 ONTARIO LIMITED,
- 2145754 ONTARIO LIMITED,
- 1552838 ONTARIO INC.,
- 2189788 ONTARIO INC.,
- 2123618 ONTARIO LIMITED,
- 1849722 ONTARIO LTD.,
- 2469244 ONTARIO LIMITED,
- 2364507 ONTARIO LIMITED,
- 1254044 ONTARIO LIMITED
- 2612550 ONTARIO LIMITED
- 2541899 Ontario Ltd.;
- 2571279 Ontario Inc.;
- 2541900 Ontario Ltd.;
- 2587984 Ontario Inc.;
- 2561534 Ontario Ltd.;
- 2431264 Ontario Inc.;
- 2542372 Ontario Inc.; and
- 2034039 Ontario Inc.

BANK OF MONTREAL

Applicant

and

Respondents

1254044 ONTARIO LIMITED ET AL.

Court File No. CV-19-00629058-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at TORONTO

ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Christopher J. Staples

LSUC Registration No. 31302R

Tel: (416) 218-1147

Fax: (416) 218-1847

Lawyers for the Applicant

APPENDIX E
ASSETS SUBJECT TO THE SALE PROCESS

See attached.

Entity Name	Assets/Property	Registered Secured Creditors
908593 Ontario Limited o/a Eagle Travel Plaza	Fleet Card Business Operating entity, Esso gas station, convenience bar and restaurant located at 3613 Queens Line, Tilbury ("Tilbury Location") Operating entity, Esso gas station and truck stop located at 22216 Bloomfield Road, Chatham ("Bloomfield Location") Operating entity, Esso gas station located at 1670 London Line Road, Sarnia ("1670 LL Location") Operating entity, Esso gas station located at 2097 London Line ("2097 LL Location") Pizza Pizza franchise operator, Bloomfield Location	Canadian Imperial Bank of Commerce Pioneer Energy LP Parkland Industries Ltd. FirstOntario Credit Union Limited GM Financial Canada Leasing Ltd. Honda Canada Finance Inc. Evolocity Financial Group Inc. 1742240 Ontario Inc. 2323583 Ontario Inc. 2131774 Ontario Inc. Mirjana Malic Rathcliffe Capital Corp. Laurentian Bank of Canada Toyota Credit Canada Inc. VW Credit Canada Inc. Meridian Credit Union Limited
1393382 Ontario Limited	Real property owner, Tilbury Location Real property owner, Bloomfield Location Real property owner, 1670 LL Location Real property owner, 2097 LL Location	Canadian Imperial Bank of Commerce Pioneer Energy LP FirstOntario Credit Union Limited Libro Credit Union Vanroboys Enterprises Inc.
2145744 Ontario Limited	Real property owner, Shell gas station located at 203 Indian Road, Sarnia ("Indian Road Location")	Canadian Imperial Bank of Commerce Laurentian Bank of Canada Gurcharan Bajwa
2145754 Ontario Limited	Operating entity, Indian Road Location	Canadian Imperial Bank of Commerce Laurentian Bank of Canada Bodkin, a division of Bennington Financial Corp.

***APPENDIX F
BIDDING PROCEDURES***

See attached.

BIDDING PROCEDURES

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

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

AND WHEREAS all of the assets, undertakings and properties of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Ltd., 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited remain subject to the Appointment Order;

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

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

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

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

1. Assets for Sale

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

2. Bidding Deadlines

All Bids must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by the Notice Parties (as defined below) no later than 5:00 p.m. (Toronto time) on January 24, 2020 (the “Bid Deadline”).

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

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

3. Access to Due Diligence Materials

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

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

4. Determination of Qualified Bids

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

- (a) Identification of Bidder. Identification of the Bidder and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
- (b) Written Submission of Modified APA and Commitment to Close. Qualified Bidders must submit a Bid by the Bid Deadline in the form of an executed mark-up of the Form of APA (each a “Modified APA”) reflecting such Bidder’s proposed changes to the Form of APA (together with a blackline of the Modified APA against the Form of APA), and a written and binding commitment to close on the terms and conditions

set forth therein. The Receiver may discuss the Modified APA of any Bidder after submission (including for clarification of its terms and conditions) with such Bidder.

- (c) Irrevocable. A Bid must be irrevocable until:
 - (i) if such Bid is not selected as either the Successful Bid or the Back-Up Bid (each as defined below), the day following the selection of the Successful Bid;
 - (ii) if such Bid is selected as the Successful Bid, until the closing of the transaction; and
 - (iii) if such Bid is selected as the Back-Up Bid, the date on which the Successful Bid closes.
- (d) Contingencies. A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence.
- (e) Proof of Financial Ability to Perform. A Bid must identify the actual Bidder and owners and ultimate parent company of the Bidder and contain written evidence upon which the Receiver may reasonably conclude that the Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the Bidder's current financial statements, provided, however, that the Receiver with the assistance of its counsel shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably refuse a Bidder's financial qualifications.
- (f) No Fees Payable to Qualified Bidder. A Bid may not request, be conditioned on or otherwise entitle the Bidder to any break up fee, expense reimbursement, or similar type of payment.
- (g) Good Faith Deposit. Each Bid must be accompanied by a cash deposit (the "**Good Faith Deposit**") in an amount equal to at least 10% of the cash purchase price, which shall be paid to Aird & Berlis LLP to be held in trust in accordance with these Bidding Procedures.
- (h) Portion Bidder. A party that does not wish to purchase all or substantially all of the Gas Station Properties (a "**Portion Bidder**") may submit a Bid (a "**Portion Bid**") in respect of a smaller subset of the Gas Station Properties, and the Portion Bidder and the Portion Bid shall constitute a Qualified Bidder and a Qualified Bid, respectively, if such Portion Bid satisfies the requirements in paragraphs (a) to (g) above.

5. Due Diligence from Bidders

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

6. No Agent or Broker Fees

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

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

7. Determination of Qualified Bidder

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

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

8. Bidding Procedures

The Receiver, with the assistance of its counsel, shall: (a) coordinate the efforts of Bidders in conducting their due-diligence investigations; (b) receive Bids and determine whether a Bidder is a Qualified Bidder as permitted by the provisions herein; and (c) negotiate offers made in accordance with these Bidding Procedures to purchase all or a portion of the Gas Station Properties.

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

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

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

10. Acceptance of Successful Bid

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

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

11. “As Is, Where Is”

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

12. Free of Any and All Encumbrances

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

13. Sale Hearing

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

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

14. Return or Application of Good Faith Deposit

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

15. Modifications and Reservations

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

SCHEDULE A
Bidding Procedures Timeline

Date	Description of Bidding Procedures
Thursday, December 5, 2019	Receiver begins marketing the Gas Station Properties
Week of December 9, 2019	Interested parties sign NDA and access Data Room
Friday, January 24, 2020	Bid Deadline
Monday, January 27, 2020	Shortlisted Bidders negotiate with the Receiver
Tuesday, January 28, 2020	Successful Bidder identified (and Back-Up Bidder, if appropriate)
Thursday, January 30, 2020	APA and transaction documents finalized
Week of February 10, 2020	Court attendance regarding sale
By Friday, February 21, 2020	Close of sale transaction

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APPENDIX G
TEASER DOCUMENT AND FORM OF NON-DISCLOSURE AGREEMENT

See attached.



ACQUISITION OPPORTUNITY

Esso & Shell Gas Stations & Ancillary Businesses

The Opportunity

BDO Canada Limited, in its capacity as Court Appointed Receiver of various entities (the “Receiver”), as more particularly described in a Receivership Order dated September 30, 2019, and subsequent Orders made by the Court, available at www.extranets.bdo.ca/eagletravelplaza, is inviting offers for the purchase of five (5) gas stations and ancillary businesses including convenience stores and restaurants (collectively the “Gas Stations”). The Gas Stations are being marketed by the Receiver on an operating/going concern basis. While the Receiver is marketing the Gas Stations collectively, offers on individual Gas Stations will be permitted.

Location Details

Location	1670 London Line Sarnia, ON	2097 London Line Sarnia, ON	3613 Queens Line Tilbury, ON	22216 Bloomfield Road Chatham, ON	203 Indian Road South Sarnia, ON
Highway access	#402	#402	#401	#401	#402
Building area (square feet)	2,066	1,965	3,796	To be confirmed	4,684
Site area (acres)	6.32	0.45	1.37	11.4	0.74

For more information:

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

Key Investment Highlights

Premier Location	The Gas Stations are located in Southwestern Ontario within close proximity to the US/Canada border as well as major highways in the area (Highway #401 and Highway #402).
Ownership of Real Estate	The properties from which the Gas Stations operate are owned by entities subject to the Receivership Order and are being marketed by the Receiver along with the respective operating businesses.
Property #1 Highlights 1670 London Line Sarnia, ON	This Esso branded station is improved with a convenience store and three canopy covered double sided gas pumps on the south side of the building and seven canopy covered diesel pumps on the north side of the building.
Property #2 Highlights 2097 London Line Sarnia, ON	This Esso branded station is improved with a convenience store and four canopy covered double sided fuel pumps.
Property #3 Highlights 3613 Queens Line Tilbury, ON	This Esso branded station is improved with a combined restaurant and convenience store and two canopy covered double sided gas pumps on the south side of the building and six canopy covered diesel pumps on the north side of the building.
Property #4 Highlights 22216 Bloomfield Road Chatham, ON	This Esso branded station is improved with two franchised restaurants, a convenience store, four canopy covered double sided gas pumps and seven double sided diesel or diesel exhaust fluid pumps.
Property #5 Highlights 203 Indian Road South Sarnia, ON	This Shell branded station is improved with a franchised restaurant, a convenience store, three canopy covered double sided gas pumps and one double sided diesel pump.
Exceptional Brand Equity	The Gas Stations operate under the “Esso” or “Shell” trade names, as applicable, with the Esso convenience stores branded as either “On the Run” or “Express Stop” and the Shell convenience store branded as “Shell Stop” which carry a recognizable standard of quality known to consumers.

Offer Process

- The assets of the respective Gas Stations, including the real properties, are being offered for sale under a Court approved sale process implemented by the Receiver (the “Sale Process”).
- The Receiver has prepared a Confidential Information Memorandum and established an encrypted online data room where certain confidential materials will be made available to qualifying prospective purchasers, subject to execution of a Non-Disclosure Agreement.
- Details of the Sale Process and template Asset Purchase Agreement are contained in the Receiver’s Confidential Information Memorandum and online data room.
- The deadline for the submission of binding offers with deposit is 5:00 p.m. (EST) on January 24, 2020.

For more information:

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



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

Attention: Chris Mazur

Dear Sir:

Re: Non-Disclosure Agreement

In order to assist the undersigned in assessing the sale of the assets, undertakings and properties (the “**Property**”) of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Ltd., 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited (collectively, the “**Debtors**”) by BDO Canada Limited, in its capacity as the Court-appointed receiver of the Property (in such capacity, the “**Receiver**”), we understand that the Receiver will provide us and/or any of our affiliates, directors, officers, employees, agents, professional advisors or consultants (collectively, our “**Representatives**”) with information concerning the Property and/or the Debtors which will be of a confidential nature.

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

1. “**Confidential Information**” in this agreement shall include all communications, whether written or oral, of any kind whatsoever, between the Receiver and our Representatives concerning the Property, the Debtors or any of its affiliates, or any or all intellectual property, trade secrets, data, reports, interpretations, forecasts, analyses, customer and supplier information, studies, appraisals, agreements or other materials prepared or acquired by us or our Representatives. Confidential Information, however, will not include information which:
 - (a) is already in our possession at the time of receiving same from the Receiver as evidenced by documentation to that effect; or
 - (b) is or may be published or become available within the public domain, provided that disclosure in the public domain was not as a result of a breach of this agreement by us or our Representatives.

2. In consideration of the Receiver providing us or our Representatives with Confidential Information, we agree that we and our Representatives:
 - (a) will keep the Confidential Information in strict confidence;
 - (b) will not use the Confidential Information in any manner whatsoever, in whole or in part, other than in connection with our evaluation for the purpose set out above; and

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

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

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

<NAME OF ENTITY>

By: _____
Name:
Title:

By: _____
Name:
Title:

Witness Name:)
)
)
)
)
)
)
)

<Name of Individual>

APPENDIX H
NEWSPAPER ADVERTISEMENT

See attached.

ACQUISITION OPPORTUNITY

Esso & Shell Gas Stations & Ancillary Businesses



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

KEY INVESTMENT HIGHLIGHTS:

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

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

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

For additional information contact BDO.

CONTACT INFORMATION:

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



CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

-and-

SIMRANJIT DHILLON et al.

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceedings commenced at Toronto

FIFTH REPORT OF THE RECEIVER

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