

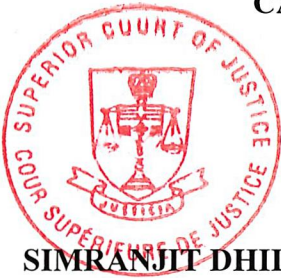
**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff



- and -

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

Defendants

**ORDER
(Re Sale Process)**

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

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

SERVICE

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

SALES PROCESS

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

GENERAL

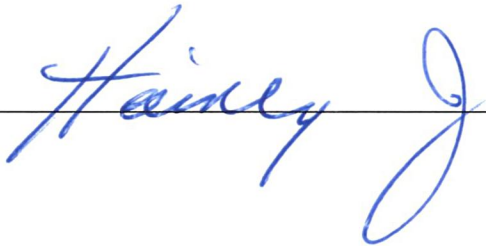
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

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

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

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

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



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SCHEDULE "A"
BIDDING PROCEDURES

See attached.

BIDDING PROCEDURES

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

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

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

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

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

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

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

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

1. Assets for Sale

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

2. Bidding Deadlines

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

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

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

3. Access to Due Diligence Materials

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

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

4. Determination of Qualified Bids

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

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

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

5. **Due Diligence from Bidders**

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

6. **No Agent or Broker Fees**

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

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

7. **Determination of Qualified Bidder**

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

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

8. **Bidding Procedures**

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

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

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

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

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

10. Acceptance of Successful Bid

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

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

11. “As Is, Where Is”

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

12. Free of Any and All Encumbrances

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

13. Sale Hearing

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

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

14. Return or Application of Good Faith Deposit

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

15. Modifications and Reservations

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

SCHEDULE A
Bidding Procedures Timeline

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

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

SIMRANJIT DHILLON ET AL.

Plaintiff

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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