

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

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

MOTION RECORD

Re: Distribution and Discharge

Returnable: January 6, 2020

December 18, 2019

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington St. W., 35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TO: THE SERVICE LIST

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TAB 1

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

**ONTARIO
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s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

NOTICE OF MOTION

THE RECEIVER AND MANAGER, RSM Canada Limited (the “**Receiver**”), will make a motion before a Judge of the Ontario Superior Court of Justice on January 6, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard at 330 University Ave., Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order substantially in the form attached as Appendix "A" to this Notice of Motion:

- (a) approving the proposed Final Interim Distribution (as defined below);
- (b) approving the Fifth Report of the Receiver dated December 18, 2019 (the "**Fifth Report**") and the Receiver's conduct and activities to December 17, 2019;
- (c) approving the fees and disbursements of the Receiver incurred from August 1, 2019 to November 30, 2019 and estimated to completion;
- (d) approving the fees and disbursements of Paliare Roland Rosenberg Rothstein LLP ("**Paliare**") incurred from August 1, 2019 to December 15, 2019 and estimated to completion;
- (e) authorizing the Receiver to distribute to Bank of Montreal ("**BMO**") the remaining balance of the Receiver's Holdback (as defined below) and any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Respondents' aggregate indebtedness to BMO; and
- (f) discharging the Receiver upon the Receiver filing a certificate with the Court confirming that the Final Interim Distribution has been made (the "**Receiver's Discharge Certificate**"), and authorizing the Receiver to

complete certain administrative matters following the discharge of the Receiver.

2. Such further relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. Background

3. On August 29, 2018, the Receiver was appointed receiver and manager of all of the assets, undertakings and properties of each of the Respondent companies (the “**Companies**” or the “**Debtors**”);

4. BMO is the primary secured creditor of each of the Companies. The security held by BMO consists of mortgages over the Properties (as defined below), as well as security agreements over the other assets of the Companies. Certain Debtors have guaranteed certain other Debtors’ indebtedness to BMO, as described in more detail below;

5. Each of the Debtor companies owned a piece of real estate which is or was its primary realizable asset. Specifically:

- (a) 1496765 Ontario Ltd. (“**1496765 (Etobicoke)**”) held legal and beneficial title to a 0.4 acre real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the “**Etobicoke Property**”);

- (b) 1651033 Ontario Ltd. held legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington, Ontario (the “**Burlington Property**”);

- (c) 1527020 Ontario Inc. held legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario (the “**Port Colborne Property**”);
 - (d) 2495087 Ontario Inc. held legal and beneficial title to the real property municipally known as 591 and 595 Goderich Street, Port Elgin, Ontario (the “**Port Elgin Property**”); and
 - (e) 2496800 Ontario Inc. (“**2496800 (Goderich)**”) held legal and beneficial title to a 0.5 acre real property municipally known as 274 Bayfield Road, Goderich, Ontario (the “**Goderich Property**” and, together with the Etobicoke Property, the Burlington Property, the Port Colborne Property, and the Port Elgin Property, the “**Properties**”);
6. Each Property has been sold and the sales have been approved by this Court and have closed;

B. Final Distributions

7. According to information provided to the Receiver by BMO, as of December 17, 2019, the total indebtedness of the Debtors to BMO is \$2,777,276. The amount owed by each of the Debtors to BMO is set out as follows:

Company	Amount Outstanding (\$)
1496765 (Etobicoke)	62,550
1651033 (Burlington)	523,552
1527020 (Port Colborne)	971,152
2495087 (Port Elgin)	330,886
2496800 (Goderich)	889,136
Total	2,777,276

8. The Receiver is seeking an Order authorizing the Receiver to distribute to BMO the remaining funds in each of the Receiver's trust accounts pertaining to 1651033 (Burlington), 1527020 (Port Colborne), 2495087 (Port Elgin) and 2496800 (Goderich), to be applied against those companies' respective indebtedness to BMO, and to pay to BMO a portion of the remaining funds in the Receiver's trust account pertaining to 1496765 (Etobicoke);

9. There is a balance of \$1,100,408 in the bank account relating to 1496765 Etobicoke (the "**Etobicoke Funds**"). The 1496765 Etobicoke's indebtedness to BMO was fully repaid from the proceeds of sale of the Etobicoke Property, with the exception of a net amount of \$62,550 of expenses incurred subsequent to the repayment;

10. BMO has at this time requested that the Receiver distribute the Etobicoke Funds to BMO pursuant to the guarantees that 1496765 (Etobicoke) provided to BMO on account of the indebtedness to BMO of each of 1651033 (Burlington), 1527020 (Port Colborne), and 2496800 (Goderich);

11. Counsel to the Receiver has provided an opinion to the Receiver that 1496765's guarantees of the indebtedness to BMO of 1651033 (Burlington), 1527020 (Port Colborne), 2495087 (Port Elgin) and 2496800 (Goderich), are secured by valid charges against the Etobicoke Funds and, as a result, these guarantees have priority over the claims of all other creditors of 1496765 (Etobicoke) up to the amount of such valid charges;

12. Accordingly, and based on BMO's request, Receiver is seeking an Order for the following payment of the remaining funds in each of the Receiver's trust accounts to BMO, unless BMO otherwise directs (the "**Final Interim Distribution**"):

- (a) \$62,550 plus accrued interest from the Receiver's trust account in respect of 1496765 (Etobicoke);
- (b) \$55,032 plus accrued interest from the Receiver's trust account in respect of 1651033 (Burlington);
- (c) \$55,921 plus accrued interest from the Receiver's trust account in respect of 1527020 (Port Colborne);
- (d) \$55,877 plus accrued interest from the Receiver's trust account in respect of 2495087 (Port Elgin);

- (e) \$54,025 plus accrued interest from the Receiver's trust account in respect of 2496800 (Goderich); and
- (f) from the remaining Etobicoke Funds, out of which the Receiver seeks to retain approximately \$50,000 on account of expenses and professional fees to be incurred (the "**Receiver's Holdback**"):
 - (i) an amount equal to the direct indebtedness of 1651033 (Burlington) to BMO; and
 - (ii) in respect of the balance of the remaining Etobicoke Funds, 50% to be applied against the indebtedness of 1527020 (Port Colborne) to BMO and 50% to be applied against the indebtedness of 2496800 (Goderich) to BMO.

13. The Receiver is also seeking an order that upon completion of the Remaining Duties (as defined below) and the discharge of the Receiver, the Receiver is authorized to pay to BMO (i) the remaining balance of the Receiver's Holdback; and (ii) any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Debtors' indebtedness to BMO.

C. Discharge of the Receiver

14. The Receiver's remaining duties (the "**Remaining Duties**") include the following:
- (a) making the Final Interim Distribution;
 - (b) following up with CRA in respect of HST refunds owed to the Receiver;
and
 - (c) preparing the Interim and Final Statements of Receiver pursuant to s.246(2) and s. 246(3) of the Bankruptcy and Insolvency Act;
15. The Receiver's administration is substantially complete;
16. In order to avoid the costs of making a further motion to the Court to obtain the Receiver's discharge, the Receiver is seeking an order discharging RSM from the powers, duties and obligations attendant to its appointment as Receiver upon the filing of the Receiver's Discharge Certificate, with the proviso that RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, but not limited to, the Remaining Duties;

D. Statutory and other grounds

17. Rules 1.04, 2.03, 3.02(1), 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
18. Such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Fifth Report of the Receiver dated December 18, 2019 and the appendices attached thereto; and
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 18, 2019

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington St. W., 35th Floor

Toronto, ON M5V 3H1

Tel: 416.646.4300

Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)

Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

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BANK OF MONTREAL

-and-

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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

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

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

Lawyers for the Receiver

TAB A

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	THE 6th DAY OF
)	
JUSTICE)	JANUARY, 2020

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
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APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

THIS MOTION, made by RSM Canada Limited (“**RSM**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the “**Debtors**”), for an order authorizing the Receiver to, among other things, make a Final Interim Distribution (as defined and described below) and for the Receiver’s discharge, was heard this day at Toronto, Ontario.

ON READING the Fifth Report to the Court of the Receiver dated December 18, 2019 (the “**Fifth Report**”) and on hearing the submissions of counsel for the Receiver and the Applicant, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn ♦, 2019, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Fifth Report and the conduct and activities of the Receiver to December 17, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period August 1, 2019 to November 30, 2019, together with those fees estimated to completion, as set out in the Fifth Report, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver’s counsel for the period August 1, 2019 to December 15, 2019, together with those fees estimated to completion, as set out in the Fifth Report be and are hereby approved.
5. **THIS COURT ORDERS** that the Receiver’s statement of receipts and disbursements for the period August 29, 2018 to December 15, 2019, as set out in the Fifth Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the Receiver is authorized to pay the following amounts to BMO, unless BMO otherwise directs (the “**Final Interim Distribution**”):
 - (a) \$62,550 plus accrued interest from the Receiver’s trust account in respect of 1496765 Ontario Ltd.;
 - (b) \$55,032 plus accrued interest from the Receiver’s trust account in respect of 1651033 Ontario Ltd.;

- (c) \$55,921 plus accrued interest from the Receiver's trust account in respect of 1527020 Ontario Inc.;
- (d) \$55,877 plus accrued interest from the Receiver's trust account in respect of 2495087 Ontario Inc.;
- (e) \$54,025 plus accrued interest from the Receiver's trust account in respect of 2496800 Ontario Inc.; and
- (f) from the remaining Etobicoke Funds, less the Receiver's Holdback (both as defined in the Fifth Report):
 - (i) an amount equal to the direct indebtedness of 1651033 (Burlington) to BMO; and
 - (ii) in respect of the balance of the remaining Etobicoke Funds, 50% to be applied against the indebtedness of 1527020 (Port Colborne) to BMO, and 50% to be applied against the indebtedness of 2496800 (Goderich) to BMO.

7. **THIS COURT ORDERS** that upon completion of the Remaining Duties (as defined and described in the Fifth Report), the Receiver is authorized to pay to BMO (i) the remaining balance, if any, of the Receiver's Holdback; and (ii) any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Debtors' indebtedness to BMO.

RECEIVER'S DISCHARGE

8. **THIS COURT ORDERS** that and upon the Receiver filing with this Court a certificate substantially in the form appended hereto as Schedule "A" certifying that it made the Final Interim Distribution, the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge as Receiver herein, RSM shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all

authorizations, approvals, protections and stays of proceedings in favour of RSM in its capacity as receiver and manager.

9. **THIS COURT FURTHER ORDERS AND DECLARES** that RSM is hereby released and discharged from any liability that RSM now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of RSM while acting in its capacity as Receiver including for certainty, in carrying out the Remaining Duties, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, RSM 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 receivership, save and except for any gross negligence or willful misconduct on the Receiver's part.

10. **THIS COURT FURTHER ORDERS AND DECLARES** that notwithstanding its discharge herein, RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, for certainty, carrying out the Remaining Duties, and RSM shall be forever released and discharged from any and all liability related to such incidental duties, save and except for any gross negligence or willful misconduct on the Receiver's part.

Schedule "A"

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

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 s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
 Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

RECEIVER'S DISCHARGE CERTIFICATE

A. By Order of the Ontario Superior Court of Justice (Commercial List) dated August 29, 2018 (the "Receivership Order"), RSM Canada Limited was appointed receiver and manager (the "Receiver") of the assets and undertakings of the Respondents.

B. Pursuant to an Order of the Court dated January 9, 2020 (the "Discharge Order"), the Court provided for the discharge of the Receiver upon certification that it has made the Final Interim Distribution, as defined in and approved by the Discharge Order.

THE RECEIVER CERTIFIES it has made the Final Interim Distribution.

**RSM CANADA LIMITED, in its capacity as
 Receiver of the Respondents and not in
 its personal capacity**

Per: _____

Name:

Title:

BANK OF MONTREAL

-and-

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

Applicant

Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>PROCEEDING COMMENCED AT TORONTO</p>
<p>ORDER</p>
<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West 35th Floor Toronto, ON M5V 3H1 Tel: 416.646.4300 Fax: 416.646.4301</p> <p>Jeffrey Larry (LSO# 44608D) Tel: 416.646.4330 jeff.larry@paliaroland.com</p> <p>Elizabeth Rathbone (LSO# 70331U) Tel: 416.646.7488 elizabeth.rathbone@paliaroland.com</p> <p>Lawyers for the Receiver</p>

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

FIFTH REPORT OF THE RECEIVER

December 18, 2019

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I. INTRODUCTION

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

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

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

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

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

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

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

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

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

13. On July 29, 2019, Justice Conway made an order the ("**July 29 Order**"), *inter alia*, authorizing the Receiver to release the holdback of \$254,948.40 and to distribute those funds to BMO. A copy of the July 29 Order and Endorsement of Justice Conway made July 29, 2019, are attached hereto as Appendix "N".

14. On September 16, 2019, the Receiver brought a motion, returnable on September 25, 2019, for the purpose of, *inter alia*, seeking the Court's:

- (a) approval of the sale of the Goderich Property (defined below);
- (b) authorization for the Receiver to destroy additional records; and
- (c) authorization of certain payments including an interim distribution.

A copy of the Receiver's fourth report to the Court dated September 13, 2019 (the "**Fourth Report**") in support of the Receiver's motion is attached hereto, without appendices, as Appendix "O".

15. On September 25, 2019, Justice Hainey granted:

- (a) an Approval and Vesting Order in respect of the sale of the Goderich Property (the "**Goderich Approval & Vesting Order**"), a copy of which is attached as Appendix "P" to this report; and
- (b) an Order (the "**September 25 Order**") authorizing the Receiver to make certain payments as contemplated in the Fourth Report, to make an interim distribution to BMO on account of its outstanding indebtedness with respect

to 2496800 (Goderich) and authorizing other ancillary relief. A copy of the September 25 Order is attached hereto as Appendix “Q”.

16. The Orders made by the Court and the reports of the Receiver referred to in this report, together with related Court documents, have been posted on the Receiver’s website which can be found at rsmcanada.com/2495087-ontario-et-al.

Purpose of Fifth Report

17. The purpose of this fifth report of the Receiver (the “**Fifth Report**”) is to:
- (a) report to the Court on the activities of the Receiver since the date of the Fourth Report to December 17, 2019;
 - (b) report to the Court on the closing of the sale of the Goderich Property;
 - (c) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period August 29, 2018 to December 15, 2019; and
 - (d) provide the Court with background and details to the Receiver’s motion seeking Orders:
 - i) approving the proposed Final Interim Distribution (as defined below);
 - ii) approving the Fifth Report and the Receiver’s conduct and activities to December 17, 2019;
 - iii) approving the fees and disbursements of the Receiver incurred from August 1, 2019 to November 30, 2019 and estimated to completion;
 - iv) approving the fees and disbursements of Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”) incurred from August 1, 2019 to December 15, 2019 and estimated to completion;

- v) authorizing the Receiver to distribute to BMO the remaining balance of the Receiver's Holdback (defined later herein) and any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Debtors' aggregate indebtedness to BMO; and
- vi) discharging the Receiver upon the Receiver filing a certificate with the Court confirming that the Final Interim Distribution has been made (the "**Receiver's Discharge Certificate**"), and authorizing the Receiver to complete certain administrative matters following the discharge of the Receiver.

Terms of Reference

18. In preparing the Fifth Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Fifth Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA

Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

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

II. BACKGROUND

The Parties

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

Bank of Montreal

23. BMO is the Applicant in these proceedings and is the primary secured creditor of each of the Companies. As of July 27, 2018, the Debtors were indebted to BMO in the aggregate amount of \$9,992,297.94.

24. The security held by BMO consists of mortgages over the Properties, as well as security agreements over the other assets of the Companies. Certain Debtors have guaranteed certain other Debtors' indebtedness to BMO, as described in more detail below.

1496765 (Etobicoke)

25. 1496765 (Etobicoke) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 0.4 acre real property municipally known as 5462 Dundas Street West, Etobicoke, Ontario (the "**Etobicoke Property**"). As at the date of the Appointment Order, 1496765 (Etobicoke) operated an automatic car wash and auto detailing business at the Etobicoke Property. A propane refill centre was also located at the Etobicoke Property.
26. The Etobicoke Property, with the exception of the propane refill centre, has been sold by the Receiver.

1651033 (Burlington)

27. 1651033 (Burlington) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.2 acre real property municipally known as 5223 Dundas Street, Burlington, Ontario (the "**Burlington Property**"), on which was located a car wash. As at the date of the Appointment Order, the renovations to the Burlington Property had not been completed and the car wash was not in operation.
28. The Burlington Property has been sold by the Receiver.

1527020 (Port Colborne)

29. 1527020 (Port Colborne) is an Ontario Corporation that as of the date of the Receiver's appointment, held legal and beneficial title to a 1.9 acre real property municipally known as 633 Main Street West, Port Colborne, Ontario (the "**Port Colborne Property**") from which, as at the date of the Appointment Order, 1527020 (Port Colborne) operated a self-service and automatic car wash.
30. The Port Colborne Property has been sold by the Receiver.

2495087 (Port Elgin)

31. 2495087 (Port Elgin) is an Ontario Corporation that as of the date of the Receiver's appointment, held title to the real property municipally known as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**"). As at the date of the Appointment Order, located on the Port Elgin Property were a self-serve gas bar, a commercial building consisting of a convenience store, retail store and residential apartment, and a Tim Horton's restaurant.
32. The Port Elgin Property has been sold by the Receiver.

2496800 (Goderich)

33. 2496800 (Goderich) is an Ontario Corporation that holds legal and beneficial title to a 0.5 acre real property municipally known as 274 Bayfield Road, Goderich, Ontario (the "**Goderich Property**"). As at the date of the Appointment Order, located on the Goderich Property were a self-serve gas bar, an ExpressMart convenience store and an automatic car wash. 2496800 (Goderich) operated the gas station, the convenience store and the car wash.
34. As set out below, the Goderich Property has been sold by the Receiver.

Sunshine

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

Relationship between Respondent Parties

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

III. COMPLETION OF THE SALE OF THE GODERICH PROPERTY

38. In the Fourth Report, the Receiver provided the Court with details of the proposed sale transaction with Anil Ahluwalia In Trust (Company to be Incorporated) for the Goderich Property. Pursuant to an executed Amendment of Agreement of Purchase and Sale, the name of the Goderich Purchaser was changed to Anil Ahluwalia In Trust and 2715620 Ontario Inc.
39. Following the issuance of the Approval and Vesting Order, the Receiver proceeded to close the sale transaction.
40. A copy of the Receiver's Certificate filed with the Court on October 10, 2019 is attached to this report as Appendix "R".

IV. CANADA REVENUE AGENCY

Deemed Trust Claim

41. On September 11, 2019, Canada Revenue Agency (“**CRA**”) issued a letter in which it asserted a claim of \$23,291.36 against 1496765 (Etobicoke) on account of payroll remittances. Of this total, \$244.30 was claimed as a deemed trust, with the balance representing an unsecured claim. The CRA assessment covered the period of April 18, 2017 to August 27, 2019. As 1496765 (Etobicoke) had ceased operations on August 29, 2018, the date the Receiver was appointed, it appeared that CRA’s assessment was not correct. On September 18, 2019, the Receiver wrote to CRA to notify it that all the Debtors had ceased operations before or on August 29, 2018.
42. As of the date of this report, the Receiver has not received a revised assessment from CRA. In view of the quantum of CRA’s deemed trust claim, the Receiver intends on paying the deemed trust claim of \$244.30 in the event a satisfactory revised assessment is not received from CRA by January 31, 2020. The balance of CRA’s claim, which is an unsecured claim, will not be paid by the Receiver as the Receiver will not have the funds with which to pay the balance of the claim following payment of amounts to BMO.

HST Liability

43. CRA has filed notional assessments in respect of the pre-receivership HST liability of 1496765 (Etobicoke) and 2496800 (Goderich) in the amounts of \$51,080.13 and \$26,588.17, respectively. CRA has informed the Receiver that CRA is not asserting that these claims represent deemed trust claims since the

amounts claimed are based on notional assessments, and that these claims represent unsecured claims.

44. As noted in the First Report, the Receiver does not have possession and or access to accounting and financial records of the Debtors and thus is unable to attempt to provide information to CRA or to calculate any potential source deductions and HST liabilities of the Companies.
45. Based on the above, the Receiver is not intending on taking any further steps to attempt to determine whether CRA may have any additional deemed trust claims against the Debtors, or any of them. The Receiver is serving the Department of Justice with this Application Record in the event that CRA wishes to respond to the Receiver's position.

HST Refunds due to the Receiver

46. As of November 30, 2019, the Receiver estimates that it is owed HST refunds of approximately \$154,105. To date, CRA has released HST refunds for only one of the debtor companies, 1527020 (Port Colborne).
47. The Receiver is continuing to follow up with CRA in respect of the release of HST refunds owed to the Receiver in respect of the other debtor companies.

V. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

48. Attached to this report as Appendix "S" is the Receiver's Interim Statement of Receipts and Disbursements for the period August 29, 2018 to December 15, 2019 (the "R&D"). The R&D sets out the Receiver's receipts and disbursements for each of the Debtors, as well as on a combined basis.

49. On a summary combined basis, total receipts were \$11,441,207 and total disbursements were \$2,371,272 resulting in a net cash balance of \$9,069,934 as of December 15, 2019 prior to distributions to BMO, as follows:

Company Name	Cash Receipts	Cash Disbursements	Excess of Receipts over Disbursements	Payments to Secured Creditor	Net Funds on Hand
1496765 (Etobicoke)	\$ 3,819,611	\$ (515,481)	\$ 3,304,130	\$ (2,202,185)	\$ 1,101,946
1651033 (Burlington)	\$ 2,591,198	\$ (481,217)	\$ 2,109,981	\$ (2,054,948)	\$ 55,032
1527020 (Port Colborne)	\$ 992,921	\$ (397,000)	\$ 595,921	\$ (540,000)	\$ 55,921
2495087 (Port Elgin)	\$ 2,626,146	\$ (520,269)	\$ 2,105,877	\$ (2,050,000)	\$ 55,877
2496800 (Goderich)	\$ 1,404,456	\$ (450,431)	\$ 954,025	\$ (900,000)	\$ 54,025
Sunshine	\$ 6,875	\$ (6,875)	\$ -	\$ -	\$ -
Total	\$ 11,441,207	\$ (2,371,272)	\$ 9,069,934	\$ (7,747,133)	\$ 1,322,801

VI. FINAL DISTRIBUTIONS

50. In accordance with the September 25 Order, the Receiver has made the following payments as of the date of the Fifth Report:
- to the Receiver, an amount equal to the unpaid accounts of the Receiver to July 31, 2019;
 - to Paliare Roland, an amount equal to the unpaid accounts of Paliare Roland to July 31, 2019;
 - to 1496765 (Etobicoke) from 2496800 (Goderich), the advances totaling \$195,000.00 received from 1496765 to fund disbursements incurred during the receivership;
 - to BMO, following the sale of the Goderich Property, \$104,947.03 representing the advances totaling \$99,000.00 under Receiver Certificates # 5 and 13 plus accrued interest of \$5,947.03; and

(e) to BMO, the amount of \$900,000.00 on account of the outstanding indebtedness of 2496800 (Goderich) to BMO secured by BMO's first mortgage over the Goderich Property.

51. According to information provided to the Receiver by BMO, as of December 17, 2019, the total indebtedness of the Debtors to BMO is \$2,777,276. The amount owed by each of the Debtors to BMO is set out as follows:

Company	Amount Outstanding (\$)
1496765 (Etobicoke)	62,550
1651033 (Burlington)	523,552
1527020 (Port Colborne)	971,152
2495087 (Port Elgin)	330,886
2496800 (Goderich)	889,136
Total	2,777,276

52. The Receiver is seeking an Order authorizing the Receiver to distribute to BMO the remaining funds in each of the Receiver's trust accounts pertaining to 1651033 (Burlington), 1527020 (Port Colborne), 2495087 (Port Elgin) and 2496800 (Goderich), to be applied against those companies' respective indebtedness to BMO, and to pay to BMO a portion of the remaining funds in the Receiver's trust account pertaining to 1496765 (Etobicoke).
53. As set out on the R&D, there is a balance of \$1,101,946 in the bank account relating to 1496765 Etobicoke (the "**Etobicoke Funds**").

-
54. BMO has at this time requested that the Receiver distribute the remaining Etobicoke Funds to BMO pursuant to the guarantees that 1496765 (Etobicoke) provided to BMO on account of the indebtedness to BMO of each of 1651033 (Burlington), 1527020 (Port Colborne) and 2496800 (Goderich).
55. Paliare Roland has provided an opinion to the Receiver (the “**Etobicoke Funds Opinion**”) that 1496765’s guarantees of the indebtedness to BMO of 1651033 (Burlington), 1527020 (Port Colborne), 2495087 (Port Elgin) and 2496800 (Goderich), are secured by valid charges against the Etobicoke Funds and, as a result, these guarantees have priority over the claims of all other creditors of 1496765 (Etobicoke) up to the amount of such valid charges. A copy of the Etobicoke Funds Opinion is attached to this report as Appendix “T”.
56. Accordingly, and based on BMO’s request, the Receiver is seeking an Order for the following payment of the remaining funds in each of the Receiver’s trust accounts to BMO, unless BMO otherwise directs, (the “**Final Interim Distribution**”):
- (a) \$62,550 plus accrued interest from the Receiver’s trust account in respect of 1496765 (Etobicoke);
 - (b) \$55,032 plus accrued interest from the Receiver’s trust account in respect of 1651033 (Burlington);
 - (c) \$55,921 plus accrued interest from the Receiver’s trust account in respect of 1527020 (Port Colborne);
 - (d) \$55,877 plus accrued interest from the Receiver’s trust account in respect of 2495087 (Port Elgin);

- (e) \$54,025 plus accrued interest from the Receiver's trust account in respect of 2496800 (Goderich); and
- (f) from the remaining Etobicoke Funds, out of which the Receiver seeks to retain approximately \$50,000 on account of expenses and professional fees to be incurred (the "**Receiver's Holdback**"):
 - (i) an amount equal to the direct indebtedness of 1651033 (Burlington) to BMO; and
 - (ii) in respect of the balance of the remaining Etobicoke Funds, 50% to be applied against the indebtedness of 1527020 (Port Colborne) to BMO, and 50% to be applied against the indebtedness of 2496800 (Goderich) to BMO.

57. The Receiver is also seeking an Order that upon completion of the Remaining Duties and the discharge of the Receiver, the Receiver is authorized to pay to BMO (i) the remaining balance of the Receiver's Holdback; and (ii) any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Debtors' indebtedness to BMO.

VII. DISCHARGE OF THE RECEIVER

58. As of the date of this Fifth Report, the Receiver's remaining duties (the "**Remaining Duties**") include the following:
- (a) making the Final Interim Distribution;
 - (b) following up with CRA in respect of HST refunds owed to the Receiver; and
 - (c) preparing the Interim and Final Statements of Receiver pursuant to s.246(2) and s. 246(3) of the *Bankruptcy and Insolvency Act*.

59. As the Receiver's administration is substantially complete, and in order to avoid the costs of making a further motion to the Court to obtain the Receiver's discharge, the Receiver is presently seeking an order discharging RSM from the powers, duties and obligations attendant to its appointment as Receiver (the "**Discharge Order**") upon the filing of the Receiver's Discharge Certificate, with the proviso that RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, but not limited to, the Remaining Duties.

VIII. PROFESSIONAL FEES

60. The Receiver's accounts total \$24,941.00 in fees plus HST of \$3,242.35 for a total amount of \$28,183.35 for the period August 1, 2019 to November 30, 2019 and estimated to completion in an amount not to exceed \$25,000.00 plus HST (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Daniel Weisz sworn December 18, 2019 attached to this report as Appendix "**U**".
61. The accounts of the Receiver's counsel, Paliare, total \$11,317.05 in fees and disbursements and \$1,429.62 in HST for a total of \$12,746.67 for the period August 1, 2019 to December 15, 2019 and estimated to completion in the amount of \$1,500.00 plus HST (the "**Paliare Roland Accounts**"). A copy of the Paliare Roland Accounts, together with a summary of the personnel, hours and hourly

rates described in the Paliare Roland Accounts, is set out in the Affidavit of Sarita Sanasie sworn December 16, 2019 attached to this report as Appendix "V".

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

IX. CONCLUSION AND REQUEST OF THE COURT

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

- (a) authorizing and directing the Receiver to make the Final Interim Distribution;
- (b) approving the Fifth Report and the Receiver's conduct and activities to December 17, 2019;
- (c) approving the R&D;
- (d) approving the Receiver's Accounts and the Paliare Roland Accounts;
- (e) authorizing the Receiver to distribute to BMO the remaining balance of the Receiver's Holdback and any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Debtors' indebtedness to BMO; and
- (f) terminating these proceedings and discharging RSM from the powers, duties and obligations attendant to its appointment as Receiver.

All of which is respectfully submitted to this Court as of this 18th day of December, 2019.

RSM CANADA LIMITED

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



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

TAB A

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

WEDNESDAY, THE 29TH

JUSTICE HAINEY

)

DAY OF AUGUST, 2018

)



BETWEEN:

BANK OF MONTREAL

Applicant

-and-

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

Respondents

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

**ORDER
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (collectively, the "Debtors") acquired for, or used in relation to businesses carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

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



SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of any or all of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
 - (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
 - (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
 - (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of any or all of the Debtors;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any or all of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including

without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

orders that a Case Website shall be established in accordance with the Protocol with the following URL 'rsmcanada.com/2495087-ontario-et-al'.

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

GENERAL

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

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

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

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

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

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

AUG 29 2018

PER / PAR:

A handwritten signature in cursive script, appearing to read "MLH", is written below the "PER / PAR:" label.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited the receiver and manager (the "Receiver") of the assets, undertakings and properties 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 29th day of August, 2018 (the "Order") made in an action having Court file number Court File No. CV-18-00602537-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

BANK OF MONTREAL
Applicant

-and- 2495087 ONTARIO INC. et al.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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

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

Lawyers for the Applicant, Bank of Montreal

RCP-E 4C (May 1, 2016)

TAB B

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

FIRST REPORT OF THE RECEIVER

February 13, 2019

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 29, 2018 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of 1496765 Ontario Ltd. (“**1496765 (Etobicoke)**”), 1651033 Ontario Ltd. (“**1651033 (Burlington)**”), 1527020 Ontario Inc. (“**1527020 (Port Colborne)**”), 2495087 Ontario Inc. (“**2495087 (Port Elgin)**”), 2496800 Ontario Inc. (“**2496800 (Goderich)**”), and Sunshine Propane Inc. (“**Sunshine**”) (collectively the “**Debtors**” or the “**Companies**”) acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached to this report as Appendix “**A**”.
2. The Appointment Order authorizes the Receiver to, among other things:
 - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) manage, operate, and carry on the business of any or all of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
 - (c) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and

-
- (d) sell, convey, lease or assign the Property or any part or parts thereof out of the ordinary course of business;
- a) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
 - b) with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause.
3. Paragraph 21 of the Appointment Order authorizes the Receiver to borrow monies to fund the exercise of the powers and duties conferred upon the Receiver by the Appointment Order from time to time, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as the Court may by further order authorize). The Receiver's borrowings are secured by way of a fixed and specific charge over the Property as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the Receiver's Charge (as defined therein) and the charges as set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*.
4. The Appointment Order referred to in this report, together with related Court documents, has been posted on the Receiver's website which can be found at rsmcanada.com/2495087-ontario-et-al.

Purpose of First Report

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

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

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

Terms of Reference

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

II. BACKGROUND

The Parties

Bank of Montreal

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

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

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

1496765 (Etobicoke)

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

1651033 (Burlington)

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

1527020 (Port Colborne)

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

2495087 (Port Elgin)

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

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

- (a) a self-serve gas bar operating under the Ultramar brand;
 - (b) a two-storey commercial building (approximately 4,000 sq. ft.) consisting of
 - (i) an ExpressMart convenience store, (ii) a retail store on the ground floor and (iii) a residential apartment on the second floor; and
 - (c) a separate one-storey building (approximately 3,000 sq. ft.) occupied by a Tim Horton’s restaurant.
23. 2495087 (Port Elgin) operated the gas station and convenience store and leased the other premises to tenants.

2496800 (Goderich)

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

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

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

Sunshine

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

Appointment of the Receiver

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

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

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

III. RECEIVER'S ACTIVITIES TO DATE

Possession and Control

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

locations. The Point of Sale systems at those locations, which were controlled by Parkland from its offices in Montreal, were turned off remotely.

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

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

Cash on Hand

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

Banking

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

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

IV. LEASE – BURLINGTON

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

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

V. INSURANCE

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

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

VI. BOOKS AND RECORDS AND FINANCIAL STATEMENTS

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

including to Canada Revenue Agency (“**CRA**”), or (ii) enable CRA to conduct an audit of each of the Companies’ source deductions or HST.

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

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

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

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

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

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

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

VIII. COMPUTERS AND PERSONAL PROPERTY CLAIMED

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

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

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

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

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

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

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

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

IX. SUNSHINE AND SAM PROPANE

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

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

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

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

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

X. PARKLAND/ULTRAMAR LEASES

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

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

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

XI. TIM HORTONS AND TDL RIGHT OF FIRST REFUSAL

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

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

XII. PROPERTY TAXES

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

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

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

XIII. APPRAISALS

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

XIV. ENVIRONMENTAL SITE ASSESSMENTS

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

XV. MARKETING AND SALES ACTIVITIES

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

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

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

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

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

XVI. OFFERS RECEIVED

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

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

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

- i) with 2677323 Ontario Inc. (the “**Etobicoke Purchaser**”) for the Etobicoke Property (the “**Etobicoke APS**”);
- ii) with Harsha Nimrani in trust corporation to be incorporated (the “**Burlington Purchaser**”) for the Burlington Property (the “**Burlington APS**”); and
- iii) with 2573702 Ontario Inc. (the “**Port Colborne Purchaser**”) for the Port Colborne Property (the “**Port Colborne APS**”).

115. The Receiver has entered into an agreement of purchase and sale for the Port Elgin Property (the “**Port Elgin APS**”) that is subject to a 30-day conditional period for the condition referenced in that agreement. The Receiver will at a later date bring an application for Court approval of the Port Elgin APS after the purchaser waives its condition and the Receiver addresses the Tim Hortons ROFR.

116. With reference to the Goderich Property, Avison has recommended to the Receiver that Avison continue its marketing activities for that property.

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

117. Salient terms of the Etobicoke APS, the Burlington APS and the Port Colborne APS (collectively, the “**Three APS**”) and matters relating thereto include (all capitalized terms in this section not defined in the Three APS are as otherwise defined in the First Report):

- i) the purchased assets include the Etobicoke Property, the Burlington Property and Port Colborne Property, as applicable. In the Etobicoke APS,

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

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

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

XVIII. APPROVAL OF SALES

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

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

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

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

122. The Receiver therefore respectfully requests that:

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

XIX. CIBC ACCOUNTS

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

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

(a) 1496765 (Etobicoke)

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

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

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

(b) 2496800 (Goderich)

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

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

XX. OTHER ENTITIES

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

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

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

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

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

XXI. SECURED OR PRIORITY CLAIMS

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

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

* Amounts as registered.

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

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

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

Deemed Trust Claims of Canada Revenue Agency

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

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

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

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

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

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

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

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

Wage Earner Protection Program Act ("WEPPA")

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

XXII. STATUTORY NOTICES AND REPORTS

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

XXIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

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

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

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

XXIV. PROPOSED INTERIM DISTRIBUTION

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

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

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

- (h) to BMO, following the sale of the Port Colborne Property, the advances totaling \$99,000 under Receiver Certificates # 3, 7 and 10 plus accrued interest; and
- (i) to BMO, following the sale of the Port Colborne Property, an amount not exceeding the outstanding indebtedness of 1527020 (Port Colborne) to BMO secured by BMO's first mortgage over the Port Colborne Property.
154. The Receiver proposes to hold back, in respect of each of the Companies, amounts to cover unpaid operating expenses, potential deemed trust claims and future professional fees.

XXV. PROFESSIONAL FEES

155. The Receiver's accounts total \$233,515.50 in fees plus HST of \$30,357.02 for a total amount of \$263,872.52 for the period ending January 31, 2019 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn February 11, 2019 attached to this report as Appendix "**FF**".
156. The accounts of the Receiver's counsel, Paliare Roland total \$34,092.15 in fees and disbursements and \$4,431.98 in HST for a total of \$38,524.13 (the "**Paliare Roland Accounts**") for the period ending January 31, 2019. A copy of the Paliare Roland Accounts, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Accounts, is set out in the Affidavit of Michelle Jackson sworn February 12, 2019 attached to this report as Appendix "**GG**".

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

XXVI. CONCLUSION AND REQUEST OF THE COURT

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

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

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

(d) sealing the following Confidential Appendices:

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

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

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

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

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

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

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

RSM CANADA LIMITED

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



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