

TAB C

COUNSEL SLIP

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

Date: FEB 21, 2019

No. On List 4

Title of Proceeding

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

Counsel for:

Plaintiff(s)
Applicant(s)
Petitioner(s)

Jeffrey Lavy & Elizabeth Rathbone
for Receiver

Phone No. 416 646 4330
Fax No. 416 646 4301

Counsel for:

Defendant(s)
Respondent(s)

OLUBUNMI OGUNNIRI

Phone No. 416-997-3010
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Stewart D. Thom T 416-777-5197
F 416-863-0305
sthom@torkinmanes.com

Bank of Montreal

SOM CONSTRUCTION INC.

~~416 8~~
905 851 2626

21 Feb 19

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

McEnt

Addressed in

Confidential docs to remain sealed.

McEnt

TAB D

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE *Cniappetta*)
)
)
)

MONDAY, THE 4TH DAY OF
MARCH, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

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

DISTRIBUTION ORDER

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

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

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

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the First Report and the conduct and activities of the Receiver to February 11, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel for the period ended January 31, 2019 as set out in the First Report be and are hereby approved.
4. **THIS COURT ORDERS** that the Receiver’s statement of receipts and disbursements as of January 31, 2019 as set out in the First Report, be and are hereby approved.
5. **THIS COURT ORDERS** that the following Confidential Appendices be sealed as follows:
 - (a) Confidential Appendix “HH” to the First Report until the closing of the sale of the Etobicoke Property;

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

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

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

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

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

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

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

(a) to BMO:

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

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

(a) to BMO:

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

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


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

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

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

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

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



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

MAR 05 2019

PER / PAR: *RW*

BANK OF MONTREAL
Applicant



-and-

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

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
PROCEEDING COMMENCED AT
TORONTO

DISTRIBUTION ORDER

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Lawyers for the Receiver

TAB E

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

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

Case Management Yes No by Judge: Chiappetta

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

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

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

March 4, 2019
Date

Chiappetta
Judge's Signature

Additional Pages 11

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Confidential Appendices. I do not agree that this is a reason to adjourn a hearing on the merits. Nor do I agree that the Confidential Appendices should be unsealed pending the closing of the sale of the respective properties. I am satisfied that the test in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 CarswellNat 822 (S.C.C.) at para 45 has been met. The Court requires the information and documentation to fulfill its supervising role. If the details of the transactions are made to the general public, however, the Receiver's ability to maximize returns in the event the contemplated transactions do not close may be prejudiced (*Wells Fargo Financial Corporation of Canada v. Algonquin Group Inc*; Court File No. 09-8289-00CL, December 11, 2009). The same is true should the details be made

Page 5 of 12Judges Initials 

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

Page 6 of 12Judges Initials JS

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**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

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

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

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

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

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

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

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

The Debtors take no issue and are unopposed to the sale of the Part Cobowne Property.

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

the sale of the Etobicoke Property.

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

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

TAB F

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

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

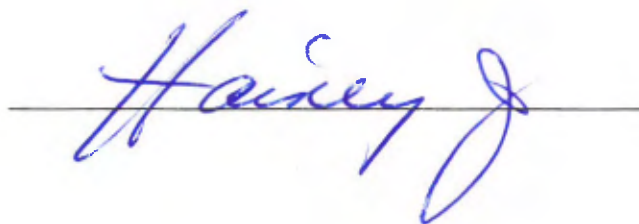
ORDER

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

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

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

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



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

MAR 21 2019

PER / PAR: *RW*

Schedule "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE *Chiappetta*)
)
)
)

MONDAY, THE 4TH DAY
OF MARCH, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

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

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

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") dated January 25, 2019 and accepted on January 30, 2019 and appended to the Report of the Receiver dated February 13, 2019 (the "**Report**"), and vesting in the Purchaser 1651033's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

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

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1651033 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of 1651033's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Haaney dated August 29, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Halton (#20) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby

directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 1651033 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 1651033;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 1651033 and shall not be void or voidable by creditors of 1651033, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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



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

MAR 05 2019

PER / PAR: RW

Schedule A – Form of Receiver’s Certificate

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

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

RECEIVER’S CERTIFICATE**RECITALS**

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

B. Pursuant to an Order of the Court dated February 21, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 25, 2019 (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver’s and 1651033’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

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

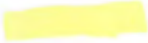
MUNICIPAL ADDRESS: 5223 Dundas Street, Burlington, ON

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

PIN: 07201-0178 (LT)

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

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

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

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

(unaffected by the Vesting Order)

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

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

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

Schedule "B"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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*

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

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") dated January 25, 2019 and accepted on January 30, 2019 and appended to the Report of the Receiver dated February 13, 2019 (the "**Report**"), and vesting in the Purchaser 1651033's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

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

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1651033 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of 1651033's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated August 29, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Halton (#20) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby

directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 1651033 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 1651033;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 1651033 and shall not be void or voidable by creditors of 1651033, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

Schedule A – Form of Receiver’s Certificate

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

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

RECEIVER’S CERTIFICATE

RECITALS

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

B. Pursuant to an Order of the Court dated March 21, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 25, 2019 (the "**Sale Agreement**") between the Receiver and Harsha Nimrani in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2680944 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver’s and 1651033’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

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

MUNICIPAL ADDRESS: 5223 Dundas Street, Burlington, ON

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

PIN: 07201-0178 (LT)

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

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

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

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

(unaffected by the Vesting Order)

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

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

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

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

BANK OF MONTREAL

-and-

2495087 ONTARIO INC. et al.

Applicant**Respondents**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Receiver

TAB G

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

SECOND REPORT OF THE RECEIVER

March 29, 2019

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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, copies of which are attached hereto as Appendices "**D**", "**E**" and "**F**", respectively; and
 - (b) granted a Distribution Order authorizing the Receiver to make certain payments as contemplated in the First Report, to make an interim distribution to Bank of Montreal on account of its outstanding indebtedness and authorizing various ancillary relief. A copy of the Distribution Order is attached hereto as Appendix "**G**".
5. A copy of Justice Chiappetta's Endorsement made on March 4, 2019 (the "**March 4 Endorsement**") is attached to this report as Appendix "**H**".
6. On March 21, 2019, Justice Hailey issued an order amending the Approval and Vesting Order of March 4, 2019 in respect of the Burlington Property (the "**March 21 Order**") to add Instrument No. HR1589610 to Schedule C listing the claims to be deleted and expunged from title to that property. A copy of the March 21 Order is attached hereto as Appendix "**I**".

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

Purpose of Second Report

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

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

Terms of Reference

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

the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

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

II. BACKGROUND

The Parties

Bank of Montreal

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

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

1496765 (Etobicoke)

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

1651033 (Burlington)

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

1527020 (Port Colborne)

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

2495087 (Port Elgin)

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

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

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

2496800 (Goderich)

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

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

- (a) a self-serve gas bar operating under the Ultramar brand;
 - (b) a one-storey commercial building containing an ExpressMart convenience store (approximately 860 sq. ft.); and
 - (c) an automatic car wash (approximately 1,200 sq. ft.).
23. 2496800 (Goderich) operated the gas station, the convenience store and the car wash.

Sunshine

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

III. COMPLETION OF THE SALE OF THE ETOBICOKE PROPERTY

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

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

IV. COMPLETION OF THE SALE OF THE BURLINGTON PROPERTY

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

V. STATUS OF THE SALE OF THE PORT COLBORNE PROPERTY

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

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

VI. PORT COLBORNE SAFES

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

VII. BOOKS AND RECORDS AND COMPUTERS

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

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

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

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

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

VIII. MARKETING AND SALES ACTIVITIES

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

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

IX. SALE OF THE PORT ELGIN PROPERTY

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

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

X. THE PORT ELGIN APS

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

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

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

XI. APPROVAL OF SALE

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

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

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

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

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

XII. POSSIBLE LEASE RE PORT ELGIN PROPERTY

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

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

XIII. SECURED OR PRIORITY CLAIMS

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

XIV. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

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

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

XV. INTERIM DISTRIBUTIONS

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

- (b) to Paliare Roland, an amount equal to the unpaid accounts of Paliare Roland;
- (c) to BMO, following the sale of the Etobicoke Property, the advances totaling \$99,000 under Receiver Certificates # 2, 6 and 9 plus accrued interest; and
- (d) to BMO, following the sale of the Burlington Property, the advances totaling \$87,000 under Receiver Certificates # 1, 8 and 11 plus accrued interest.
73. The Receiver is in the process of finalizing certain matters with BMO prior to making any distributions to BMO in respect of BMO's loans to 1496765 (Etobicoke) and 1651033 (Burlington).
74. The Receiver has requested from CRA a formal request for payment of its deemed trust claims prior to making any payments to CRA.
75. Upon the closing of the sale of the Port Elgin Property, and receipt by the Receiver of the net sales proceeds therefrom, funds will be available for the Receiver to make an interim distribution in respect of BMO's loans to 2495087 (Port Elgin).
76. As set out above, the Receiver has received the Port Elgin Security Opinion indicating that the mortgage granted by 2495087 (Port Elgin) to BMO in respect of the Port Elgin Property is a valid first charge on the Port Elgin Property.
77. On the closing of the sale of the Port Elgin Property, the Receiver proposes to make the following payments from the net proceeds of sale, after payments of the property taxes and commissions payable to Avison Young in respect of the Port Elgin Property (the "**2495087 Interim Distribution**"):

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

XVI. PROFESSIONAL FEES

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

XVII. CONCLUSION AND REQUEST OF THE COURT

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

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

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

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

RSM CANADA LIMITED

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



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

TAB H

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

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

THE HONOURABLE)
JUSTICE *Chiappetta*)
)
)

FRIDAY THE 12TH DAY
OF APRIL, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
251033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "Receiver") of all of the assets, undertakings and properties of 2495087 Ontario Inc. ("**2495087**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated the 30th day of January 2019, as amended on March 1, 2019 (the "**Sale Agreement**") between the Receiver and Amaethan Xavier, in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2678361 Ontario Inc. (the "**Purchaser**") and appended to the Report of the Receiver dated April 1, 2019 (the "**Report**"), and vesting in the Purchaser 2495087's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

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

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 2495087 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of 2495087's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated August 29, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Bruce (#3) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B

hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

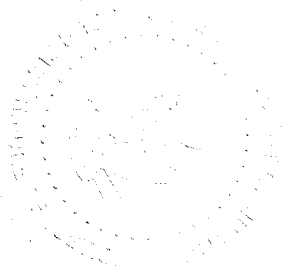
6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 2495087 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 2495087;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 2495087 and shall not be void or voidable by creditors of 2495087, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

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



J. G. P. S.

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

APR 15 2019

PER / PAR: *A*

Schedule A – Form of Receiver’s Certificate

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

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

RECEIVER’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc. ("**2495087**"), including all proceeds thereof (collectively, the "**Property**").
- B. Pursuant to an Order of the Court dated April 12, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 30, 2019, as Amended March 1, 2019 (the "**Sale Agreement**") between the Receiver and Amalethan Xavier, in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2678361 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and 2495087's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied

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

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

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

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

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

and

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

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

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

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

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

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

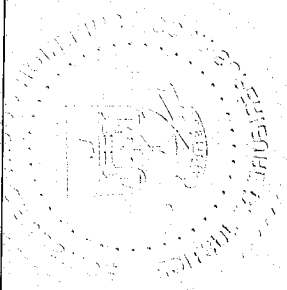
(unaffected by the Vesting Order)

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

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

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

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



-and-

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

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver

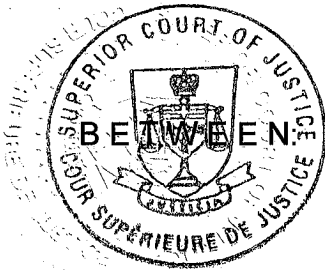
TAB I

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE CHIAPPETTA

) FRIDAY, THE 12TH DAY OF
) APRIL, 2019
)



BANK OF MONTREAL

Applicant

- and -

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

Respondents

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

ORDER

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

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

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

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

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

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

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

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

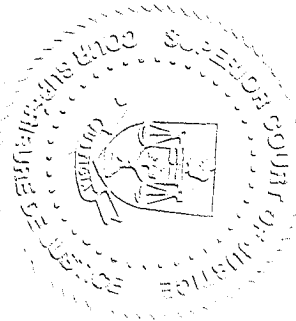
8. **THIS COURT ORDERS** that the Receiver is authorized to terminate the lease in respect of the Port Elgin Property between 2495087 Ontario Inc. and Naveed Amin, operating as "Shawarma King", dated July 27, 2018.

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

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

Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

J. J. J.

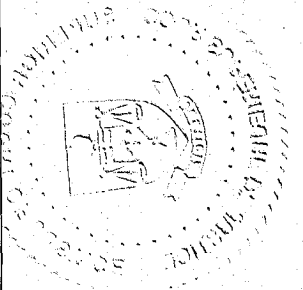


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BANK OF MONTREAL
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Applicant



-and-

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

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

DISTRIBUTION ORDER

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Lawyers for the Receiver

TAB J

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

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

AMENDED DISTRIBUTION ORDER

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

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

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

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

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

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

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

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

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

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

(a) to BMO:

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

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

(a) to BMO:

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

10. **THIS COURT ORDERS** that the Receiver may hold back, in respect of each of the Debtors, amounts to cover unpaid operating expenses, potential deemed trust claims and future professional fees.
11. **THIS COURT ORDERS** the Receiver may attempt to access any data saved on the hard drives of the computers found at the Etobicoke Property, the Port Colborne Property, and the real property known municipally as 274 Bayfield Road, Goderich, Ontario (the "**Goderich Property**") or if that cannot be done, to destroy the hard drives of such computers.
12. **THIS COURT ORDERS** the Receiver may deposit the Cash (as such term is defined in the First Report) into the receivership trust account for the benefit of 1496765 Ontario Ltd.'s creditors.
13. **THIS COURT ORDERS** the Receiver may sell or otherwise dispose of any remaining items at any of the Properties, the Goderich Property or the real property known municipally as 591 and 595 Goderich Street, Port Elgin, Ontario (the "**Port Elgin Property**") and with the Properties and the Goderich Property, the "**Real Properties**") including personal property that may belong to individuals related to the Debtors, that are not removed from those Real Properties, under the Receiver's supervision, within three business days of the date of the Approval and Vesting Order issued in respect of that Property.

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



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202 BANK OF MONTREAL
Applicant

-and-

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

DISTRIBUTION ORDER

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Lawyers for the Receiver

TAB K

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE RECEIVER

APRIL 24, 2019

I. INTRODUCTION

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

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

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

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

II. REQUESTED AMENDMENTS AND RECOMMENDATIONS

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

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

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

RSM CANADA LIMITED

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



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

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