

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

BETWEEN:

**LAURENTIAN BANK OF CANADA**

Applicant

- and -

**2145744 ONTARIO LIMITED**

Respondent

APPLICATION UNDER SUBSECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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**MOTION RECORD  
(Returnable February 19, 2020)**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Applicant

- and -

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Respondent

APPLICATION UNDER SUBSECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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# TAB 1

**ONTARIO  
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**NOTICE OF MOTION**  
(returnable February 19, 2020)

**KSV KOFMAN INC.**, in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of 2145744 Ontario Limited (the “**Debtor**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Wednesday, February 19, 2020 at 9:30 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. an order substantially in the form attached at Tab 3 of the Motion Record, among other things:

- (a) validating and abridging the time and manner of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;
  - (b) approving the Sale Process (as defined below), including the engagement by the Receiver of Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”), as listing agent under the Sale Process;
  - (c) approving the First Report of the Receiver dated February 12, 2020 (the “**First Report**”) and the activities of the Receiver set out therein;
  - (d) sealing the Proposal Summary (as defined below) pending further Order of this Court; and
2. such other and further relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- 3. the Debtor owns real property municipally known as 203 Indian Road South, Sarnia, Ontario (the “**Indian Road Property**”);
- 4. a Shell-branded gas station and convenience store as well as a Burger King restaurant are located on the Indian Road Property and operated by two tenants, both of which are related to the Debtor;
- 5. pursuant to the Order of the Honourable Mr. Justice Hainey dated September 30, 2019, BDO Canada Limited (“**BDO**”) was appointed as receiver over all of the assets, undertakings and properties of, among others, the Debtor, further to an application by Canadian Imperial Bank of Commerce;
- 6. under the terms of the loan and security granted by the Debtor to Laurentian Bank of Canada (“**LBC**”), BDO’s appointment as receiver constituted an event of default;

7. pursuant to the Order of the Honourable Mr. Justice Hainey dated December 16, 2019 (the “**Receivership Order**”), the Receiver was appointed over the Property and BDO was discharged in its capacity as receiver of the Debtor’s Property;

### **Approval of the Sale Process**

8. pursuant to the Receivership Order, the Receiver is empowered to market any or all of the Property and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
9. further in that regard, the Receiver, with JLL’s assistance, has designed a sale process for the sale of the Indian Road Property (the “**Sale Process**”);
10. the Receiver solicited proposals from five brokers to act as listing agent for the Indian Road Property and received proposals from each;
11. the Receiver ultimately selected JLL to act as listing agent for the Indian Road Property after taking into consideration, among other things, JLL’s experience selling similar properties, knowledge of the Sarnia market and its commission structure;
12. the process of selecting JLL as listing agent under the Sale Process was fair and reasonable and LBC has consented to JLL’s engagement;
13. the Sale Process and the engagement of JLL as listing agent are expected to maximize the value of the Indian Road Property for the benefit of all stakeholders;

### **Sealing Order**

14. the summary of listing proposals (the “**Proposal Summary**”), which is attached as Confidential Appendix 1 to the First Report, contains confidential and commercially sensitive information, including value estimates for the Indian Road Property, that, if made public at this time, could detrimentally affect the price that could be obtained for the Indian Road Property through the Sale Process;

15. there are no reasonable alternative measures that could be taken at this time to sealing such information from the public record pending further order of this Court;
16. such further and other grounds as set out in the First Report;
17. Rules 1.04, 1.05, 2.01, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

**AND FURTHER TAKE NOTICE** that the following materials will be filed in support of the Receiver's motion, namely:

- (a) the First Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

February 12, 2020

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- and -

**2145744 ONTARIO LIMITED**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**NOTICE OF MOTION  
(returnable February 19, 2020)**

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# TAB 2



**First Report of  
KSV Kofman Inc.  
as Receiver of  
2145744 Ontario Limited**

February 12, 2020

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COURT FILE NO: CV-19-00631895-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

LAURENTIAN BANK OF CANADA

APPLICANT

- AND -

2145744 ONTARIO LIMITED

RESPONDENT

FIRST REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER

FEBRUARY 12, 2020

## 1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver (the "Receiver") of the properties, assets and undertakings of 2145744 Ontario Limited (the "Company").
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on December 16, 2019 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix "A".
3. The Company's principal asset is the real property municipally described as 203 Indian Road South, Sarnia, Ontario (the "Real Property").
4. The principal purpose of the receivership proceedings is to conduct a Court-supervised sale process for the Real Property that maximizes value for the Company's stakeholders, including Laurentian Bank of Canada ("LBC"), the Company's principal secured creditor and applicant in these proceedings.

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Company and these proceedings;
  - b) summarize a recommended sale process (the "Sale Process") for the Real Property, including the retention of Jones Lang LaSalle Real Estate Services, Inc. ("JLL") to act as listing agent pursuant to a listing agreement dated January 29, 2020 (the "Listing Agreement");

- c) provide an overview of the Receiver's activities since the commencement of these proceedings; and
- d) recommend that the Court issue an order:
  - approving the Sale Process, including the retention of JLL to list the Real Property for sale pursuant to the Listing Agreement;
  - sealing the Confidential Appendix to this Report until further order of this Court; and
  - approving this Report and the Receiver's activities detailed herein.

## 1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

## 1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information, provided by LBC, its legal counsel and former employees of the Company and certain of its affiliates. The Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver expresses no opinion or other assurance with respect to the Company's financial or other information presented in this Report.

## 2.0 Background

1. On September 30, 2019, the Court appointed BDO Canada Limited ("BDO") as the receiver of the Company and a number of other related parties under common ownership (collectively, the "Eagle Travel Plaza Companies") pursuant to an application brought by Canadian Imperial Bank of Commerce ("CIBC") on an *ex parte* basis. On that date, the Court also issued a Mareva Order freezing the assets of various parties, including the directors and officers of the Company. The application records supporting both Court orders issued on September 30, 2019 were (and continue to be) sealed.
2. On December 16, 2019, LBC brought its receivership application to have the Receiver appointed and to discharge BDO as receiver. Pursuant to the Receivership Order, KSV was appointed Receiver and BDO was discharged effective December 16, 2019. BDO continues to act as receiver for certain of the Eagle Travel Plaza Companies, including 2145754 Ontario Limited ("754"), a non-arm's length tenant of the Company which operated a Shell gas station on the Real Property.

3. The Company's principal asset is the Real Property. The Real Property is approximately 0.74 acres on which a Shell gas station and commercial building is situated. The commercial building includes a convenience store and a Burger King restaurant. The Company's two tenants at the Real Property are:
  - a) 754, which owns and operated the gas station and convenience store. On December 30, 2019, BDO, in its capacity as receiver of 754, discontinued operations of the Shell gas station and convenience store. They are both presently in an idle state. 754 operated the gas station pursuant to a Retailer Supply Agreement between Shell Canada Products ("Shell") and 754 dated October 26, 2016 (the "Shell Supply Agreement"). The Receiver understands that no steps have been taken by 754 or Shell to terminate the Shell Supply Agreement; and
  - b) 2542372 Ontario Inc. ("372"), a related party, which owns and operates the Burger King restaurant. 372 is also subject to receivership proceedings for which MNP Ltd. ("MNP") was appointed receiver. The Burger King restaurant continues to operate in the normal course, under MNP's supervision.
4. From the commencement of these proceedings, the Receiver has been corresponding periodically with both BDO and MNP regarding their respective sale processes to sell the businesses and assets subject to their receivership proceedings. The Receiver intends to continue to coordinate its Sale Process with BDO and MNP so that prospective purchasers have the opportunity to either: (a) acquire some or all of the businesses and assets subject to the three separate receiverships, if any such prospective purchaser is identified; or (b) understand, as prospective landlord, their prospective tenants, and vice versa.

### 3.0 Creditors

#### 3.1 LBC

1. LBC is the Company's principal secured creditor pursuant to a promissory note in the principal amount of \$4.0 million dated April 2, 2018 and a Charge/Mortgage of Land registered on title to the Real Property on April 3, 2018. The Company also granted LBC additional security in the form of, *inter alia*:
  - a) a general assignment of rents registered on title to the Real Property on April 3, 2018; and
  - b) a general security agreement dated March 28, 2018.
2. Based on the affidavit evidence filed in support of LBC's receivership application, the Company's indebtedness owing to LBC as at November 28, 2019 totaled approximately \$3.72 million, plus interest and costs which continue to accrue.

### **3.2 Other Secured/Priority Claims**

1. The following charges are also registered on title to the Real Property:
  - a) a registration by CIBC which, pursuant to a Postponement dated March 27, 2018, was subordinated in favour of LBC. The amount owing to CIBC under this charge is unknown at this time;
  - b) a \$2 million Charge/Mortgage registered on October 9, 2018 by Gurcharan Bajwa (the "Bajwa Mortgage"); and
  - c) a construction lien in the amount of approximately \$67,000 registered by Di Cocco Contractors (2015) Inc. (the "Construction Lien"). The Receiver's counsel has not yet reviewed the Construction Lien.
2. On January 8, 2020, Canada Revenue Agency ("CRA") sent a letter to the Receiver asserting a property claim against the Company for HST obligations of approximately \$255,000, including approximately \$53,000 of interest and penalties. A copy of CRA's letter is attached as Appendix "B".
3. Based on its discussions with BDO, the Receiver understands that CRA's claim is not reflected in the Company's books and records and BDO has been unable to provide any records that substantiate CRA's HST claim. Given that the Company had limited operating activity and transacted largely with related parties, the Receiver is unable to reconcile the Company incurring HST obligations of this magnitude. The Receiver intends to continue to work to understand this obligation, how it may have arisen and/or whether it may be an obligation owing by other entities within the Eagle Travel Plaza Companies.

### **3.3 Other Creditors**

1. According to the Company's books and records, the only other known creditor is City of Sarnia for property tax arrears of approximately \$7,000 (which will continue to accrue pending a transaction for the Real Property).

## **4.0 Sale Process**

### **4.1 Request for Proposals from Realtors**

1. At the commencement of these proceedings, the Receiver solicited proposals from five realtors to act as listing agent for the Real Property, subject to Court approval. All five realtors are known to the Receiver to have considerable experience in the listing and sale of commercial properties in Ontario and elsewhere.
2. The Receiver requested that each realtor provide background information regarding each firm's experience, knowledge of the Sarnia market, a marketing plan for the Real Property, an estimate of the value of the Real Property and the realtor's proposed commission structure. A copy of the request for proposals sent to realtors is attached as Appendix "C".

3. Five proposals were submitted on or prior to January 6, 2020. The Receiver prepared a summary of the proposals (the "Proposal Summary"), a copy of which is attached as Confidential Appendix "1". The rationale for seeking a sealing order for the Proposal Summary is provided in Section 4.3 below.

#### 4.2 Listing Agreement

1. The Receiver is proposing that JLL be selected as the realtor on this assignment. In making its recommendation, the Receiver considered, among other things, JLL's experience working with the Receiver on other matters, JLL's experience selling similar properties in the Sarnia area and its commission rate. LBC has consented to the retention of JLL.
2. On January 29, 2020, the Receiver and JLL finalized the Listing Agreement, subject to Court approval. The key attributes of the Listing Agreement include the following:
  - a) **Term**: earlier of July 30, 2020 or the closing of a transaction.
  - b) **Holdover Period**: 120 days
  - c) **Commission Rate**: 4% of the gross sale proceeds.
  - d) **Serious Prospect Clause**: If a transaction has not closed by the end of the Term, JLL is limited to identify four buyers for which it would be entitled to a transaction fee should a transaction be completed during the 120-day Holdover Period.
  - e) **Other**: in the Receiver's view, the Listing Agreement is standard and consistent with market.
3. A copy of the Listing Agreement is attached as Appendix "D".

#### 4.3 Confidentiality

1. The Receiver is of the view that the Proposal Summary should be filed with the Court on a confidential basis and sealed as the document contains information regarding the estimated value of the Real Property which, if made public, may influence the value of the offers submitted in the Sale Process.
2. The Receiver is not aware of any party that will be prejudiced if the information is sealed at this time. Accordingly, the Receiver believes the proposed sealing order is appropriate in the circumstances.

#### 4.4 Sale Process

1. The Receiver has worked with JLL to develop a Sale Process for this mandate, which is summarized in the table below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	➤ JLL to review all available documents (financial, legal and environmental reports) concerning the Real Property.	Week 1-2
Finalize marketing materials	➤ JLL and KSV to: <ul style="list-style-type: none"> <li>○ prepare a marketing brochure;</li> <li>○ populate an online data room;</li> <li>○ prepare a confidentiality agreement (“CA”); and</li> <li>○ prepare a Confidential Information Memorandum (“CIM”).</li> </ul>	
Prospect Identification	➤ JLL will qualify and prioritize prospects; and ➤ JLL will also have pre-marketing discussions with targeted prospects.	
<i>Phase 2 – Marketing and Offer Solicitation</i>		
Stage 1	➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ offering summary and marketing materials printed;</li> <li>○ publication of the acquisition opportunity in a regional newspaper;</li> <li>○ telephone and email canvass of leading prospects; and</li> <li>○ meet with and interview bidders.</li> </ul>	Week 3-6
Stage 2	➤ JLL to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the data room; ➤ JLL to facilitate diligence by interested parties; and ➤ KSV and legal counsel will prepare a vendor’s form of Purchase and Sale Agreement (“PSA”) which will be made available in the data room.	Week 3-6
Stage 3	➤ Prospective purchasers to submit PSAs.	March 25, 2020
<i>Phase 3 – Offer Review and Negotiations</i>		
	➤ Proposal short listing and approval; ➤ 2 <sup>nd</sup> Round bids and further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions.	Week 7-10
Selection of Successful Bids	➤ Select successful bidder and finalize definitive documents, subject to any final diligence to be performed by the purchaser.	Week 7-10
Due Diligence	➤ Manage and monitor final due diligence process; ➤ Gather and/or commission missing documentation; and ➤ Additional site visits, as required.	
<i>Phase 4 – Closing</i>		
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction; and ➤ Transaction completed 30 days after waiver of final conditions by purchaser.	Week 11-14

2. Additional aspects of the Sale Process include:
  - a) the Receiver will coordinate with BDO and MNP to ensure that potential purchasers have the opportunity to purchase the convenience store and gas station assets and/or the Burger King restaurant in addition to the Real Property. In the event that such a purchaser is identified, the Receiver will work with BDO and/or MNP, as the case may be, on the corresponding issues, including purchase price allocation and coordinating sale approval motions in their respective receivership proceedings;
  - b) since its appointment, the Receiver has been contacted by numerous interested parties, including those referred to it by BDO and MNP. The Receiver has provided preliminary diligence information to those parties upon their execution of a CA. As at the date of this Report, 21 parties have executed CAs with the Receiver. Subject to Court approval of the Sale Process, those parties will be advised of the Sale Process milestones/timelines and referred to JLL for further diligence and process information;
  - c) the Receiver may be required to commission environmental studies and/or reports prior to closing. Court approval of the Sale Process shall authorize the Receiver to take any and all steps necessary to commission such studies/reports, including that the tenants shall cooperate with the Receiver and provide reasonable access to the property for the consultants retained for this purpose to perform their mandate(s);
  - d) the Real Property will be marketed on an “as is, where is” basis;
  - e) the Receiver will be entitled to extend any deadlines in the Sale Process if it considers it appropriate or necessary in the circumstances;
  - f) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s); and
  - g) any transaction will be subject to Court approval.

#### **4.5 Sale Process Recommendation**

1. The Receiver recommends that the Court issue an order approving the Sale Process for the following reasons:
  - a) the Sale Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis. The terms are consistent with traditional real estate sale processes conducted in the context of receivership proceedings;
  - b) there will be no delay commencing the Sale Process – JLL has already commenced its underwriting process. This should allow for the process to be conducted on a timely basis, which will assist to reduce costs;

- c) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and to submit an offer on or before the preliminary offer deadline of March 25, 2020. The marketing process is anticipated to last approximately five weeks, subject to the Receiver's right to extend or amend timelines, as appropriate;
  - d) JLL's team for this assignment is based in Toronto, has experience selling retail/commercial properties in the Sarnia area and has national reach. The Receiver is of the view that JLL's commission rate is consistent with market rates; and
  - e) LBC has consented to the Sale Process, including to JLL's engagement.
2. Based on the foregoing, the Receiver recommends Court approval of the Sale Process, including the retention of JLL.

## 5.0 Overview of the Receiver's Activities

1. The Receiver's activities since the commencement of these proceedings have included, *inter alia*, the following:
  - corresponding with the Receiver's counsel, DLA Piper (Canada) LLP ("DLA"), LBC and Chaitons LLP ("Chaitons"), LBC's counsel, regarding all aspects of this mandate;
  - reviewing and commenting on LBC's receivership application materials, including the draft Receivership Order;
  - opening a receivership bank account and paying post-filing expenses therefrom;
  - arranging for the Company's insurance policies to remain in place during the receivership proceedings;
  - attending at the Real Property to assess its condition and meet with a representative of BDO;
  - arranging for snow removal at the Real Property;
  - corresponding with CRA regarding its HST claim;
  - arranging with LBC for the funding of these proceedings pursuant to the Receiver Certificate mechanism contemplated by the Receivership Order. The Receiver has not yet had to borrow from LBC but anticipates that it will require funding for maintenance costs and professional fees over the course of these proceedings;
  - corresponding with BDO and MNP regarding the receivership proceedings and collecting rent payments from MNP on a monthly basis;

- corresponding with BDO regarding, *inter alia*, the Company's books and records and reviewing same;
- corresponding with BDO regarding the operation of the gas station and convenience store operations and specifically with regards to its discontinuation of operations on or around December 30, 2019;
- preparing a request for proposals to select a realtor;
- reviewing and summarizing the proposals submitted by the realtors and discussing same with LBC;
- attending calls with LBC and certain realtors to finalize the selection of JLL as the proposed realtor;
- negotiating the Listing Agreement with JLL;
- corresponding with potential purchasers regarding the Real Property;
- drafting and sending to all creditors the Notice and Statement of the Receiver pursuant to Sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- updating LBC regularly regarding the status of the receivership proceedings;
- drafting this Report and reviewing all motion materials filed in connection with this motion; and
- dealing with other matters pertaining to the administration of this mandate.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(d) of this Report.

\* \* \*

All of which is respectfully submitted,



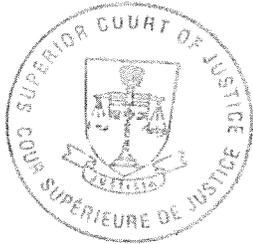
**KSV KOFMAN INC.,  
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF  
2145744 ONTARIO LIMITED  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

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

THE HONOURABLE MR. ) MONDAY, THE 16<sup>th</sup> DAY  
JUSTICE HAINEY ) OF DECEMBER, 2019

BETWEEN:



**LAURENTIAN BANK OF CANADA**

Applicant

- and -

**2145744 ONTARIO LIMITED**

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER  
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Kofman Inc. ("**KSV**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2145744 Ontario Limited ("**744**" or the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario (such appointment hereinafter being referred to as the "**Receivership**").

ON READING the Affidavit of Christopher Corcoran sworn November 28, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Laurentian Bank of Canada ("**LBC**"), and such other parties as attended the hearing of the application,

**SERVICE**

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

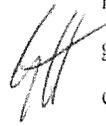
**LIFT STAY OF PROCEEDINGS**

2. THIS COURT ORDERS the stay of proceedings imposed under the Amended Receivership Order dated September 30, 2019 in the action commenced by Canadian Imperial Bank of Commerce (“CIBC”) under Court File No. CV-19-00628293-00CL (the “CIBC Action”) is hereby lifted to permit the bringing of this application and the making of this Order.

**DISCHARGE OF RECEIVER IN THE CIBC ACTION**

 3. THIS COURT ORDERS that BDO Canada Limited (“BDO”), appointed by Order dated September 30, 2019 in the CIBC Action as receiver of the assets, undertakings and properties of, among other parties, 744, is hereby discharged as receiver of 744 effective as of 5:00 p.m. (Toronto time) on the date of this Order.

 4. THIS COURT ORDERS that BDO shall be reimbursed for amounts set out in a payment agreement to be reached among BDO, CIBC and LBC, in accordance with that agreement, or absent such agreement, as determined by this Court, and that said amounts shall be deemed to have been borrowed under this Receivership and have the benefit of the Receiver’s Borrowings Charge. on January 13, 2020 

 5. THIS COURT ORDERS that, other than as provided in this paragraph, nothing in this Order shall affect the charge granted in favour of BDO (the “CIBC Receiver”) in the CIBC Action (the “CIBC Receiver’s Charge”), including the assets pursuant to which such charge was granted, and that the CIBC Receiver’s Charge and the receiver’s borrowings charge granted in the CIBC Action (the “CIBC Receiver’s Borrowings Charge) shall rank *pari passu* with the Receiver’s Charge and the Receiver’s Borrowings Charge (as those terms are defined herein) granted in this Order as they pertain to the Property, provided that <sup>(a)</sup> the Applicant’s right to challenge the priority of the CIBC Receiver’s Borrowings Charge over the Applicant’s security

on January 13, 2020

*GH*

interests, and the quantum owed under such charge as it affects the Property, shall be preserved. For the purpose of this paragraph, the charges in favour of BDO shall apply for the time period from September 30, 2019 to and including the date of this Order, and the amounts secured under such charges shall be agreed upon as between BDO, CIBC and LBC, or absent such agreement, shall be determined by this Court.

*GH*

*and (b) CIBC and BDO shall each retain the right to challenge the priority and quantum of the Receiver's charge over the Receiver's borrowings charge over the Indian Road Property (as defined below).*

**APPOINTMENT**

6. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including the property municipally known as 203 Indian Road, Sarnia, Ontario, as legally described in Schedule "A", and including all proceeds thereof (the "Property").

*GH*

*(the "Indian Road Property")*

7. THIS COURT ORDERS that the appointment of the Receiver hereunder is effective notwithstanding an Order of Justice Hainey made in the CIBC Action dated October 7, 2019 amending an Order dated September 30, 2019 granting to CIBC a Mareva injunction, as may be amended from time to time (collectively, the "Mareva Order"), and nothing in the Mareva Order shall impair the powers of the Receiver as granted herein, save and except that all bank account balances of the Debtor existing at the time of the making of this Order shall remain subject to the Mareva Order.

**RECEIVER'S POWERS**

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

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

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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

exception of the CIBC Action (which the Receiver shall not be obligated to defend) and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market and sell any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. However, the proceeds of the sale of any real property or non-inventory personal property (tangible or intangible) or accounts of the Debtor existing at the time of the making of this Order in excess of the Debtor's secured indebtedness and subject to paragraphs 8(k), 24, 25 and 26 of this Order or further orders of this Court, shall be retained by the Receiver and remain subject to the Mareva Order;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause or, in the opinion of the Receiver, court approval is otherwise necessary or desirable regardless of the value of the transaction;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality, including without limitation of any Court order, as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

10. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information, including any computer programs, computer tapes, computer disks, or other data storage media containing any such information ("**Non-Debtor Records**"), of any kind related to the business or affairs of any parties subject to:

- (a) the CIBC Receivership Order, including those parties set out in **Schedule "B"**, shall be delivered to BDO; and

(b) the Mareva Order, as amended, but not the CIBC Receivership Order, save and except for the Records of the Debtor, and including those parties set out in ~~Schedule "C"~~ <sup>the Independent Supervising Solicitor appointed in the CIBC Action and shall be subject to the Access Order dated October 16, 2019 in the CIBC Action</sup>, shall be delivered to ~~CIBC~~ <sup>CIBC</sup>, ~~and not kept in the possession of the Receiver; however, the Receiver is not obligated to perform any investigation in respect of the existence of such Non-Debtor Records.~~ <sup>and any subsequent order concerning access to documents made in the CIBC Action.</sup>

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

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

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

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

#### **RECEIVER TO HOLD FUNDS**

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

#### **EMPLOYEES**

20. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

27. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

## **SERVICE AND NOTICE**

31. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksyadvisory.com/insolvency-cases/case/2145744-ontario-limited>.

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

#### **GENERAL**

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

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

35. 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.

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

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

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

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

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

DEC 16 2019

PER / PAR:

A small, handwritten signature or mark, possibly initials, is written above the text "PER / PAR:".

**SCHEDULE "A"**  
**PROPERTY DESCRIPTION**

<b>PIN</b>	43226 - 0127 LT
<b>Description</b>	PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212, AMENDED BY DECLARATION L901383; SARNIA
<b>Address</b>	203 INDIAN RD S, SARNIA

## SCHEDULE "B"

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

- Sarbjit Singh Dhillon;
- Mandhir S. Dhillon;
- Simranjit Dhillon;
- Mandeep Dhillon;
- 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza;
- 1393382 ONTARIO LIMITED;
- 2145744 ONTARIO LIMITED;
- 2145754 ONTARIO LIMITED;
- 1552838 ONTARIO INC.;
- 2189788 ONTARIO INC.;
- 2123618 ONTARIO LIMITED;
- 1849722 ONTARIO LTD.;
- 2469244 ONTARIO LIMITED;
- 2364507 ONTARIO LIMITED;
- 1254044 ONTARIO LIMITED; and
- 2612550 ONTARIO LIMITED.

SCHEDULE "C"

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

- 2541899 Ontario Ltd.;
- 2571279 Ontario Inc.;
- 2541900 Ontario Ltd.;
- 2587984 Ontario Inc.;
- ~~2561534 Ontario Ltd.;~~
- 2431264 Ontario Inc.;
- 2542372 Ontario Inc.;
- 2034039 Ontario Inc.;
- ~~1107943 Ontario Inc.;~~
- ~~1786675 Ontario Limited;~~
- ~~1797598 Ontario Ltd.;~~
- ~~1325109 Ontario Limited;~~
- ~~2660556 Ontario Limited;~~
- ~~2665448 Ontario Ltd.;~~
- ~~5009771 Ontario Limited; and~~
- ~~5009770 Ontario Limited.~~

A handwritten signature in black ink, appearing to be 'G.H.', is written over the list of entities.

**SCHEDULE "D"**

**RECEIVER CERTIFICATE**

1. CERTIFICATE NO. \_\_\_\_\_

2. AMOUNT \$ \_\_\_\_\_

I. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties 2145744 Ontario Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 4<sup>th</sup> day of December, 2019 (the "**Order**") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

2. DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

KSV Kofman Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

LAURENTIAN BANK OF CANADA  
Applicant

-and-

2145744 ONTARIO LIMITED  
Respondent  
Court File No. CV-19-00631895-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**George Benchetrit (LSO No. 34163H)**  
Tel: (416) 218-1141  
Fax: (416) 218-1841  
Email: [george@chaitons.com](mailto:george@chaitons.com)

**Saneea Tanvir (LSO No. 77838T)**  
Tel: (416) 218-1128  
Fax: (416) 218-1853  
Email: [stanvir@chaitons.com](mailto:stanvir@chaitons.com)

**Lawyers for the Applicant**

## **Appendix “B”**



Canada Revenue Agency  
Agence du Revenu du Canada

## Fax Cover Sheet/Feuille de transmission per fax

Date: January 8, 2020

To/À: KSV KOFMAN INC  
Att: David Sieradzki

Phone Number/No de téléphone: (416)932-6030  
Fax Number/No de fax: (416)932-6266

**Kamila Figaszewska**  
Insolvency Collections  
Hamilton Niagara Tax Service Office

Phone Number/No de telephone: (905)570-7075  
Fax Number/No de fax: (905)570-8247

Number of pages transmitted including cover sheet/  
Nombre de pages transmises y compris la page couverture

(3)

Remarks/Remarques:

Please find attached claim letter for the Receivership of:  
2145744 ONTARIO LIMITED

In addition please be advised that the corporation has 3 outstanding HST  
returns for the periods:

2019-11-01 2019-11-30

2019-10-01 2019-10-31

2019-09-01 2019-09-30

Thank You,

  
Kamila Figaszewska



Canada Revenue Agency  
 Agence du revenu du Canada

Tax Centre  
 Hamilton ON L8R 3P7

January 08, 2020

KSV KOFMAN INC.  
 C/O DAVID SIERADZKI  
 150 KING ST WEST, SUITE 2308  
 TORONTO ON M5H 1J9

Account Number  
 84653 8817 RT0001

Dear Sir:

Subject: 2145744 ONTARIO LIMITED

We understand that you have been appointed receiver or receiver-manager (receiver) for the above GST/HST registrant. Currently, the registrant owes goods and services tax / harmonized sales tax (GST/HST) of \$254,918.08.

Period outstanding	GST/HST payable	Penalty & interest	Total
2019-08-31	\$ 6,658.04	\$ 110.32	\$ 6,768.36
2017-12-31	\$25,223.25	\$ 4,193.85	\$29,417.10
2017-09-30	\$40,592.50	\$ 7,349.68	\$47,942.18
2017-07-31	\$ 2,247.44	\$ 429.18	\$ 2,676.62
2017-06-30	\$ 4,628.00	\$ 907.27	\$ 5,535.27
2017-03-31	\$ 2,730.00	\$ 576.60	\$ 3,306.60
2016-12-31	\$36,530.00	\$ 8,258.05	\$44,788.05
2016-09-30	\$ 2,730.00	\$ 659.53	\$ 3,389.53
2016-06-30	\$ 2,730.00	\$ 702.40	\$ 3,432.40
2016-03-31	\$ 2,730.00	\$ 745.82	\$ 3,475.82
2014-12-31	\$36,920.00	\$11,182.44	\$48,102.44
2013-12-31	\$15,340.00	\$ 6,511.32	\$21,851.32
2013-09-30	\$ 5,460.00	\$ 2,429.41	\$ 7,889.41
2012-12-31	\$ 9,230.00	\$ 4,626.71	\$13,856.71
2012-09-30	\$ 2,730.00	\$ 1,420.38	\$ 4,150.38
2012-08-31	\$ 5,460.00	\$ 2,875.89	\$ 8,335.89
<b>TOTAL</b>	<b>\$201,939.23</b>	<b>\$52,978.85</b>	<b>\$254,918.08</b>

.../2



National Insolvency Office  
 55 Bay Street North  
 Hamilton ON L8R 3P7

Local : 905-570-7075  
 Toll Free : 1-855-630-8851  
 Fax : 905-570-8247  
 Web site : canada.ca/taxes

- 2 - Acct No: 84653 8817 RT0001

Under the Excise Tax Act, \$201,939.23 of the above totals represents property of the Crown held in trust and does not form part of 2145744 ONTARIO LIMITED's property, business, or estate. This is the case whether or not those funds are kept separate and apart from the registrant's own money or from the estate's assets.

You must pay the Receiver General for Canada \$201,939.23 out of the realization of any property subject to the trust created by subsection 222(3) of the Act before paying any other creditor. Please send us your payment right away. If this is not possible, please tell us when you will make the payment. Also, please tell us when you will pay the remaining balance of \$52,978.85.

As a receiver, you must collect and remit the registrant's GST/HST for the period you are acting as a receiver. You also must file the registrant's returns for any periods ending while you were acting as receiver. This includes any returns the registrant did not file for a period ending in or immediately before the fiscal year you became receiver.

For more information or clarification, please call us at 905-570-7075.

Yours truly,



K. Figaszewska 1213  
Insolvency Officer

## **Appendix “C”**

**Request for Proposals for  
REAL ESTATE BROKER SERVICES**

**Re: 2145744 Ontario Limited (the “Company”)**

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Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated December 16, 2019 (the “Receivership Order”), KSV Kofman Inc. was appointed receiver (“Receiver”) of the Company’s property, assets and undertaking, which is principally comprised of real property municipally described as 203 Indian Road South, Sarnia, Ontario (the “Real Property”).

The Receiver invites proposals to provide real estate broker services for the listing and sale of the Real Property.

**Proposals must be submitted by email to David Sieradzki, Managing Director, KSV Kofman Inc., at [dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com).**

**A. Background**

- The Receiver is now accepting proposals (“Proposals”) to act as listing agent to solicit offers for the Real Property. The Receiver may engage one or more realtors to market the Real Property.
- The terms of any sale process (the “Strategic Process”) and the selection of a realtor(s) are subject to Court approval.
- Copies of all Court materials filed in these proceedings are available on the Receiver’s website at:  
  
<https://www.ksvadvisory.com/insolvency-cases/case/2145744-ontario-limited>
- A brief summary of the Real Property is provided below. Additional information is provided in a data room maintained by the Receiver. Realtors can obtain access to the data room once they sign the confidentiality agreement attached as Appendix “B”.

203 Indian Road South, Sarnia, ON

- In 2007, the Company purchased the Real Property comprising a gas station with an area of 0.74 acres and a retail building containing a convenience store and Burger King fast food restaurant collectively with a total area of 6,546 square feet.
- The Shell gas station and convenience store of 4,146 square feet is being leased to 2145754 Ontario Limited (“754”), a related party, for a term of 5 years commencing on July 1, 2016 at a net rate of \$344,000 per annum. The lease agreement provides the tenant with the right to renew the lease for a further term of 60 months on the same terms.
- In its agreement with 754, Shell has a right of first refusal (“ROFR”) should an offer be made for the Real Property. The Receiver will determine how to address the ROFR in the Strategic Process in due course.

- 754 is subject to a separate receivership proceeding. The operations of the Shell gas station and convenience store may be discontinued in the coming weeks and, accordingly, the Real Property may need to be listed as partially vacant.
- After renovations to the building, the Burger King fast food restaurant was added in spring 2017 and is being leased to 2542372 Ontario Inc. ("254"), a related party, for a term of 20 years commencing on February 20, 2017. Rent is based on a percentage of sales (7% to 7.5%). Historically, rent has totaled approximately \$180,000 per annum (i.e. annual sales of approximately \$2.4 million).

**B. Proposal Submission Deadline**

- Proposals are to be submitted to the Receiver by 5:00 p.m. (Toronto time) on December 30, 2019.

**C. Realtor's Role**

The realtor's role will include, *inter alia*:

- developing a detailed marketing process, including recommended timelines for the Strategic Process;
- establishing an estimated value for the Real Property;
- preparing all marketing materials, with input from the Receiver;
- advertising the Real Property at the agent's expense;
- obtaining and negotiating confidentiality agreements from interested parties;
- showing the Real Property to interested parties and working with the Receiver to maintain a data room to facilitate the Strategic Process;
- qualifying interested parties from a financial perspective;
- assisting interested parties with their due diligence;
- assisting the Receiver to assess offers submitted;
- providing the Receiver with a report summarizing the Strategic Process, to be relied upon by the Receiver to support the Receiver's recommended transaction; and
- assisting the Receiver to close a transaction.

#### **D. Proposal Content**

The Proposal must contain the following:

1. Work Plan: all bidders shall provide a detailed work plan.
2. Value: all bidders shall provide an estimate of the value of the Real Property, together with supporting assumptions including a discussion concerning the highest and best use for the Real Property and what impact, if any, may result from the Real Property being partially vacant.
3. Firm Background and Staff Experience: all bidders shall provide background information concerning their firm, including the experience of their staff who will be leading this assignment (including résumés for team leaders).
4. Bidder's Liability Insurance Certificate: a copy of the bidder's liability insurance certificate is to be included.
5. Compensation Structure: all Proposals shall indicate the proposed compensation structure.
6. Conflict of Interest Statement: all bidders shall disclose any professional or personal financial interests which could be a possible conflict of interest. In addition, all bidders shall further disclose any arrangements to derive additional compensation.

#### **E. Proposal Consideration**

The factors on which each Proposal will be considered include the following:

- Bidder's marketing plan;
- Relevant experience with retail gas providers and/or in the Sarnia and surrounding area;
- Depth of reach, including international targets (to the extent applicable);
- Professional qualifications of individuals leading the project;
- Compensation structure; and
- Other factors as determined by the Receiver at its sole discretion.

## **Appendix “D”**



Jones Lang LaSalle Real Estate Services, Inc.  
National Retail Investment Group  
Bay Adelaide East,  
22 Adelaide Street West, Suite 2600,  
Toronto, ON M5H 4E3  
tel +1 416 304 6000

January 29, 2020

KSV Kofman Inc.  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

Attention: David Sieradzki – Managing Director

Re: **203 Indian Road South, Sarnia, ON (the “Property”)**

Dear Mr. Sieradzki,

Jones Lang LaSalle Real Estate Services, Inc., an Ontario corporation ("**JLL Canada**"), is pleased to confirm the agreement under which JLL Canada has been exclusively engaged by KSV Kofman Inc., in its capacity as court appointed receiver (the "**Vendor**") of the property, assets and undertakings of 2145744 Ontario Limited (the "**Owner**") to provide the services described below in connection with the Property.

#### I. SCOPE OF SERVICES

On the terms and subject to the conditions described in this letter agreement ("**Agreement**"), the Vendor hereby engages JLL Canada as its exclusive and sole agent to arrange a sale or other disposition (the "**Transaction**") of the Owner's interest in the Property. The following representatives of JLL Canada's Capital Markets Group, together with such other representatives as may be required by local law, shall provide services to Vendor hereunder: Matthew Smith and Nick Macoritto (collectively the "**Listing Team**"). JLL Canada acknowledges that the Vendor's objective is to obtain the best terms suitable for the Vendor in connection with the Transaction; and in order to achieve that objective, JLL Canada shall perform the following services and responsibilities (the "**Services**"):

##### 1. Preparation of Marketing Presentation

JLL Canada will prepare a comprehensive marketing presentation ("**Offering Memorandum**") which shall be subject to the approval of the Vendor. This Offering Memorandum will provide detailed information necessary for the analysis and evaluation of the Transaction. In addition to descriptive material, the Offering Memorandum will contain financial projections as well as an explanation of the terms and conditions under which a Transaction will be pursued.

The Vendor has determined that the Offering Memorandum shall not list a purchase price for the Property, and that the Property shall be subject to bid or offer. The purchase price shall be determined by Vendor after receipt of acceptable offers or bids, in Vendor's sole discretion.

##### 2. Creation and Implementation of Marketing Plan

During this phase of the engagement, representatives of JLL Canada will identify qualified parties who may be potentially interested in the Transaction. Such parties will be selected for their perceived interest in the Transaction and financial capability to perform under the terms of the Offering Memorandum. Each such party will be required to sign a confidentiality agreement in a form approved by the Vendor and then presented with a copy of the Offering Memorandum and provided with access

to the electronic data room for the Property/Transaction. Follow-up discussions and on-site property tours will be conducted by JLL Canada as needed.

3. Electronic Data Room

JLL Canada will create an electronic data room containing information with respect to the Property, including, but not limited to, financial information and budgets, third party reports, copies of leases, document summaries, physical property details, site plans and such other information to the extent deemed reasonably appropriate by JLL Canada.

4. Contract Negotiations

The status of the marketing efforts, discussions, and terms and conditions of any and all offers will be systematically communicated to and discussed with the Vendor. The Vendor shall refer all inquiries regarding the Transaction to JLL Canada, and JLL Canada will assist the Vendor in conducting all negotiations; provided, however, in no event shall JLL Canada have the authority to make any commitments or representations, enter into any agreements or sign any documents on behalf of the Vendor. All final terms and conditions of the Transaction will be subject to approval by the Vendor in its sole discretion, and JLL Canada acknowledges that any Transaction will be subject to the general terms and conditions listed in Schedule "A" attached hereto. The Vendor shall have the sole and absolute discretion to accept or reject any offer or to withdraw the Property from the market.

5. Transaction Closing

The final phase of JLL Canada's involvement will be to assist the Vendor in the coordination of activities required to consummate the Transaction. This will include assistance in the resolution of due diligence and business issues and assistance in the satisfaction of closing requirements.

The Vendor acknowledges, however, that JLL Canada is not an expert in and is not responsible for any legal, regulatory, tax, accounting, engineering, environmental or other technical matters, all of which shall be solely the Vendor's responsibility; provided, however, JLL Canada shall, based on its professional expertise, assist the Vendor in connection with such matters, including giving the Vendor recommendations as to experts to use for such matters and coordinating the work of such experts with the other parties working on the Transaction, but in no event shall JLL Canada have responsibility for the work of such experts.

## II. COOPERATION OF THE VENDOR

Promptly after execution of this Agreement, the Vendor shall provide JLL Canada with the names of all parties, if any, with whom the Vendor has discussed the Transaction prior to the date hereof. The Vendor shall likewise inform JLL Canada and the Listing Team of the dates and nature of all communications by the Vendor with any prospective parties concerning the Transaction after the date hereof and shall refer all inquiries from such parties to JLL Canada. The Vendor shall also make available to JLL Canada such documents, materials and information regarding the Property which, in the reasonable professional judgment of JLL Canada, are necessary or appropriate for the proper marketing of the Transaction. In addition, the Vendor agrees to review and verify the accuracy of the rent roll for the Property, the operating expenses of the Property, and all financial and other factual data and other information included in the Offering Memorandum or any other materials submitted to or prepared by JLL Canada regarding the Property; and JLL Canada shall have no liability with respect to the use of any data or information provided by other parties.

### III. COMPENSATION

As compensation for the services to be performed by JLL Canada under this Agreement, JLL Canada shall be entitled to be paid a transaction fee (the "**Transaction Fee**") equal to an amount determined in accordance with the following schedule:

#### **TRANSACTION FEE:**

- 4% of the Gross Proceeds

For purposes of calculating the Transaction Fee payable to JLL Canada under this Agreement, the term "**Gross Proceeds**" shall mean the total fair market value of the gross consideration (including without limitation, cash, notes, securities, property, obligations or mortgages assumed or taken subject to, and any other form of consideration) to be received by the Vendor in connection with the Transaction. Gross Proceeds shall include any portion of the purchase price placed in escrow or subject to a holdback as part of the Transaction but shall not be adjusted by any fees, prorations or closing expenses. The Transaction Fee will become due and payable by the Vendor upon the closing date of a Transaction, whether or not through the efforts of JLL Canada, provided the Vendor has entered into a letter of intent or definitive agreement for the Transaction during the term of this Agreement. The Vendor agrees to instruct the acting notary/lawyer on the Transaction to pay JLL Canada its Transaction Fee directly from the proceeds on the closing day of said Transaction, regardless of whether or not an invoice has been produced. Payment of the non-refundable Transaction Fee noted above shall confirm that all contingencies relative to JLL Canada earning a commission have been satisfied.

In addition, if the Vendor enters into a definitive agreement for a Transaction within One Hundred Twenty (120) days following the termination of JLL Canada's engagement under this Agreement (the "**Holdover Period**") with one of the Serious Prospects (as defined below) and such Transaction subsequently closes, the Vendor shall be obligated to pay JLL Canada the Transaction Fee determined in accordance with the terms of this Agreement upon the consummation of the Transaction.

The Transaction Fee payable in connection with a Holdover Period, shall only apply to up to a maximum of four (4) different prospective *bona fide* purchasers who: (i) had been introduced by JLL Canada to the Property during the Listing Period and had entered into material negotiations with JLL Canada to purchase the Property, but said material negotiations had not resulted in a binding agreement of purchase and sale prior to the expiry of the Listing; and (ii) are designated as serious prospects by JLL Canada in writing within three Business Days following the effective date of the termination of this Agreement (each being a "**Serious Prospect**").

During the Holdover Period, the Listing Brokerage will not be entitled to any Transaction Fee as the Receiver's agent if the Listing Team (as defined below) represents the Serious Prospect purchaser.

For purposes of this Agreement, the term "**Transaction**" shall include a direct or indirect transaction with respect to the Property or of the interests in any entity holding title to the Property, whether accomplished through a sale, merger, consolidation or otherwise; any direct or indirect transaction with respect to a partial ownership interest in the Property; or any capital investment structured as a financing, joint venture or any combination thereof. In no event, however, shall a Transaction be deemed to have occurred if the Transaction does not close for any reason; and in such case JLL Canada shall not be entitled to any Transaction Fee.

IV. EXPENSES

JLL Canada will be responsible for all marketing expenses associated with producing the marketing materials. The Vendor will be responsible for expenses associated with its own tax, accounting and legal advice, as well as the costs associated with any third party reports that may be required, including but not limited to, any environmental and building condition reports. The Vendor will also be responsible for the payment of all applicable federal or provincial goods and services taxes and any other similar taxes relating to our services hereunder or the payment of the Transaction Fee and any expenses.

V. TERMINATION

The term of JLL Canada's engagement by Vendor shall begin as of the date hereof and shall end on the earlier of:

- (a) July 30, 2020; or
- (b) the date of the closing of a Transaction.

Upon termination of this Agreement, neither party will have any liability or continuing obligation to the other, except that: (i) any provision of this Agreement concerning rights or obligations of the parties with respect to representations, reimbursement, indemnification, the return or delivery of documents and other property, and confidentiality shall survive such termination; and (ii) JLL Canada's right to payment of a Transaction Fee, if any, under this Agreement shall survive such termination.

VI. GENERAL PROVISIONS

1. Notices. Any notice or other communication required or desired to be given to any party under this Agreement shall be in writing and shall be either: (a) delivered personally by hand; (b) sent by certified Canadian mail, return receipt requested; (c) sent by a nationally recognized overnight courier service; or (d) sent by email. All notices to either party shall be delivered to the following address provided either party may change such address by delivering notice to the other party in accordance with the provisions of this paragraph:

Notice to JLL Canada:  
Jones Lang LaSalle Real Estate Services, Inc.  
Bay Adelaide East,  
22 Adelaide Street West, Suite 2600,  
Toronto, ON M5H 4E3  
Attention:  
Matthew T. Smith, Executive Vice President  
[matthewT.smith@am.jll.com](mailto:matthewT.smith@am.jll.com)  
Nick Macoritto, Executive Vice President  
[nick.macoritto@am.jll.com](mailto:nick.macoritto@am.jll.com)

Notice to the Vendor:  
KSV Kofman Inc.  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9  
Attention: David Sieradzki  
Email: [dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com)

All notices shall be deemed given upon receipt or upon the date such receipt is refused by the party receiving such notice.

2. Confidentiality. JLL Canada agrees, for itself and all persons retained or employed by JLL Canada in performing its services, to hold in confidence and not to use or disclose to others any confidential or proprietary information of the Vendor heretofore or hereafter disclosed to JLL Canada, which may become known to JLL

Canada in the performance of, or as a result of, its services, except where the Vendor specifically authorizes JLL Canada to disclose any of the foregoing to others or such disclosure reasonably results from the performance of JLL Canada's duties hereunder; provided, however, that for purposes of this Agreement information shall not be deemed to be confidential if it is otherwise within the public domain or if JLL Canada has obtained such information from a source other than the Vendor or its employees or agents.

3. Taxes. The Vendor shall be responsible for all federal (GST) and provincial taxes (for ex. HST, QST etc.) due and payable on the Transaction Fee or any other payments (including expenses) hereunder.

4. Interest; Litigation Costs. If any payment due hereunder is not paid when due, such payment shall bear interest at the rate of one percent (1%) per month from the date due to the date paid. In the event there is any litigation between the Vendor and JLL Canada with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and disbursements in such litigation from the other party.

5. Authority. The Vendor represents and warrants that it is duly authorized to enter into this Agreement and perform its obligations hereunder and that it is authorized to enter into the Transaction, subject to approval thereof by the Ontario Superior Court of Justice (Commercial List), in accordance with the terms hereof. JLL Canada represents and warrants that it is duly authorized to enter into this Agreement and perform its obligations hereunder. This Agreement is intended to create an independent contractor relationship between JLL Canada and the Vendor, and nothing herein shall be construed as creating an employer/employee or partnership relationship between the parties.

6. Financing. In an effort to maximize proceeds from a Transaction, the Vendor recognizes that JLL Canada may also be contacting lending institutions regarding their potential interest in financing the Property; in some cases potential purchasers may request JLL Canada's assistance in placing debt on the Property. In such cases JLL Canada will notify and obtain consent from the Vendor. The Vendor will have the right to approve or decline permission.

7. Assignment; Successors. Neither party shall assign their rights or obligations under this Agreement, in whole or in part, or any payments due or to become due under this Agreement without prior written consent of the other party (and any such attempted assignment or delegation shall be void); provided, however, either party may assign this Agreement to an affiliate or to an entity which succeeds to all or substantially all of the business of the assignor, but no such assignment shall relieve the assignor of its obligations hereunder. Except as described in the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the parties to this Agreement.

8. Dual Representation. The Vendor understands and acknowledges that JLL Canada may solicit offers for the Property from clients of JLL Canada or its affiliates and that JLL Canada may, in addition to its representation of the Vendor hereunder, represent one or more other prospective parties to the Transaction. In addition, the Vendor understands and acknowledges that JLL Canada or one of its affiliates may make an offer on behalf of itself for the Property. JLL Canada shall disclose to the Vendor any such potential relationship and obtain the Vendor's prior approval thereof, and JLL Canada shall not be entitled to any compensation from the Vendor, in addition to that set forth above, for representing itself or any other party.

9. Limited Liability. Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages; and excluding (i) third party claims for bodily injury or property

damage, and; (ii) claims based on JLL Canada's gross negligence or willful misconduct, in no event shall JLL Canada's liability to the Vendor exceed the greater of (i) two hundred (200%) percent of fees paid to JLL Canada pursuant to this Agreement or (ii) five hundred thousand (\$500,000) dollars.

10. Counterparts; Electronic Copies. This Agreement may be executed in any number of separate counterparts and by facsimile signatures, each of which shall together be deemed an original, but the several counterparts shall together constitute one and the same instrument. In addition, the parties agree that (i) an electronic signature shall be considered an original signature, and (ii) a copy of the Agreement shall be considered an original instrument, and each, together or separately, shall become binding and enforceable as if original and the parties may rely on the same to prove the authenticity of the Agreement.

11. Governing Law and Forum. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any dispute regarding this Agreement shall be determined by the Ontario Superior Court of Justice (Commercial List) which shall have exclusive jurisdiction.

12. Waiver of Trial by Jury. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

13. Privacy Consent. The Vendor hereby acknowledges that it has retained JLL Canada to provide the Services. As part of the Services, the Vendor hereby authorizes and expressly consents to the collection, use and disclosure by JLL Canada and the Listing Team, managing broker(s), associate broker(s) and representatives of JLL Canada, and the provincial real estate board in which the Property is located, of personal information about the Vendor: i) for all purposes consistent with the listing, marketing and sale of the Property and ii) for enforcing codes of professional conduct and ethics for members of the board.

14. Currency. All dollar amounts referred to in this Agreement are stated in Canadian dollars.

15. FINTRAC. The Vendor at all times agree to: i) comply with all legal requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and FINTRAC and ii) provide any and all reasonable assistance/information as soon as reasonably possible (but in no event no later than 5 business days) upon request by JLL Canada in order to allow it to do the same.

16. Complete Agreement. This document (including any exhibits referred to herein and attached hereto, which are incorporated herein by reference) contains the entire agreement between the parties and supersedes any prior discussions, negotiations, representations, or agreements, written or oral, between the parties hereto or any of their respective affiliates respecting the subject matter hereof. No alterations, additions, or other changes to this Agreement shall be made or binding unless made in writing and signed by both parties to this Agreement.

*\*Signatures on following page\**

**KSV Kofman Inc.**

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If the foregoing accurately reflects our Agreement, please execute this Agreement below and return it to the undersigned.

**JONES LANG LA SALLE REAL ESTATE SERVICES, INC.**

By:   
Title: Executive Vice President

AGREED and ACCEPTED  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**KSV KOFMAN INC., in its capacity as receiver of 2145744 Ontario Limited, and not its personal or corporate capacity**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



Jones Lang LaSalle Real Estate Services, Inc.  
National Retail Investment Group  
Bay Adelaide East,  
22 Adelaide Street West, Suite 2600,  
Toronto, ON M5H 4E3  
tel +1 416 304 6000

**Schedule "A"**  
**(Property Address)**

This Schedule is attached to and forms part of the Agreement (the "**Agreement**") between Jones Lang LaSalle Real Estate Services, Inc., an Ontario corporation ("**JLL Canada**") and KSV Kofman Inc., in its capacity as receiver and manager (the "**Vendor**") of 2145744 Ontario Limited, including the real property located at 203 Indian Road South, Sarnia, ON (the "**Property**").

All capitalized terms not defined herein shall have the meaning defined in the standard pre-set portion of the Agreement.

JLL Canada and the Vendor hereby agree that, notwithstanding anything else contained in the Agreement:

1. JLL Canada will market the Property on an "as is, where is" basis, meaning that the Vendor will not be making any representations or warranties regarding the Property.
2. The Vendor will have the right to reject any and all offers submitted for the Property, including the highest dollar value offer(s).
3. The Vendor is entering into the Agreement and all related documentation from time to time solely in its capacity as court-appointed receiver and manager of the Property, with no personal or corporate liability.
4. The form of agreement of purchase and sale submitted by any buyer will include a condition in favour of the Vendor providing that completion of the sale transaction will be subject to approval of the Ontario Superior Court of Justice (Commercial List), to be obtained by the Vendor.

**LAURENTIAN BANK OF CANADA**

- and -

**2145744 ONTARIO LIMITED**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**FIRST REPORT OF KSV KOFMAN INC. AS RECEIVER OF 2145744  
ONTARIO LIMITED DATED FEBRUARY 12, 2020**

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto ON M5X 1E2

**Edmond F.B. Lamek (LSO No. 33338U)**  
Tel: 416.365.4444  
Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSO No. 53802D)**  
Tel: 416.365.3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

**Lawyers for the Receiver**

# TAB 3

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

THE HONOURABLE ♦ ) WEDNESDAY, THE 19<sup>th</sup> DAY  
JUSTICE ♦ ) FEBRUARY, 2020

BETWEEN:

**LAURENTIAN BANK OF CANADA**

Applicant

- and -

**2145744 ONTARIO LIMITED**

Respondent

APPLICATION UNDER SUBSECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER**

**THIS MOTION** made by KSV Kofman Inc., in its capacity as receiver (in such capacity, the “**Receiver**”), of the assets, undertakings and properties of 2145744 Ontario Limited, for an order approving the Sale Process and sealing the Proposal Summary attached as Confidential Appendix 1 to the First Report of the Receiver dated February 12, 2020 (the “**First Report**”) (both terms as defined in the First Report), pending further Order of this Court, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and the appendices thereto and on hearing the submissions of counsel for the Receiver, the Applicant and those parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the affidavit of service of Danny M. Nunes sworn February ♦, 2020, filed:

**SERVICE**

1. **THIS COURT ORDERS** that the motion is properly returnable today and that the service of the Notice of Motion and Motion Record herein as effected by the Receiver is hereby validated in all respects and this Court hereby dispenses with further service thereof.

**APPROVAL OF ACTIVITIES**

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver set out therein are hereby approved.

**ENGAGEMENT OF LISTING AGENT**

3. **THIS COURT ORDERS** that the listing agreement for the property municipally known as 203 Indian Road South, Sarnia, Ontario, between the Receiver and Jones Lang LaSalle Real Estate Services, Inc., as listing agent (the “**JLL Listing Agreement**”), be and is hereby approved.

**APPROVAL OF SALE PROCESS**

4. **THIS COURT ORDERS** that the Sale Process as described in the First Report, be and is hereby approved and the Receiver be and is hereby authorized to perform its obligations under and in accordance with the Sale Process, including under the terms of the JLL Listing Agreement, and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

**SEALING ORDER**

5. **THIS COURT ORDERS** that the Proposal Summary attached as Confidential Appendix 1 to the First Report is hereby sealed and shall not form part of the public record pending further Order of this Court.

---

**LAURENTIAN BANK OF CANADA**

- and -

**2145744 ONTARIO LIMITED**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**ORDER  
(Sale Process Approval Order)**

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto ON M5X 1E2

**Edmond F.B. Lamek (LSO No. 33338U)**  
Tel: 416.365.4444

Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSO No. 53802D)**  
Tel: 416.365.3421

Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

**Lawyers for the Receiver**

**LAURENTIAN BANK OF CANADA**

- and -

**2145744 ONTARIO LIMITED**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**MOTION RECORD  
(returnable February 19, 2020)**

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto ON M5X 1E2

**Edmond F.B. Lamek (LSO No. 33338U)**  
Tel: 416.365.4444

Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSO No. 53802D)**  
Tel: 416.365.3421

Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

**Lawyers for the Receiver**