

**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

**MOTION RECORD
(Returnable July 27, 2020)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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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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CONFIDENTIAL APPENDICES

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TAB 1

**ONTARIO
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NOTICE OF MOTION
(returnable July 27, 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 Monday, July 27, 2020 at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally by ZOOM videoconference on account of the COVID-19 pandemic.

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 agreement of purchase and sale between the Receiver and Abdul Khaliq (in trust for a company to be incorporated) (the “**Purchaser**”) dated July 3, 2020 (the “**APS**”) and the transaction contemplated therein pursuant to which the Purchaser has agreed to purchase all of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the APS) and vesting the Purchased Assets in the Purchaser free and clear of any and all security interests, encumbrances (with the exception of any Permitted Encumbrances as set out in the APS), estates, rights and claims, and authorizing and directing the Receiver to complete the aforementioned transaction;
 - (c) authorizing the Receiver to make distributions to Laurentian Bank of Canada (“**Laurentian**”) and BDO Canada Limited (“**BDO**”), in its capacity as receiver of 2145754 Ontario Limited (“**754**”);
 - (d) sealing the Confidential Appendices to the Second Report of the Receiver dated July 20, 2020 (the “**Second Report**”) pending further Order of the Court;
 - (e) approving the Second Report and the activities of the Receiver set out therein; 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 are operated by two tenants, 754 and 2542372

Ontario Inc., respectively, both of which are related to the Debtor and subject to separate receivership proceedings before the Court;

5. pursuant to the Order of the Honourable Mr. Justice Hainey dated September 30, 2019, BDO was appointed as receiver over all of the assets, undertakings and properties of, among others, the Debtor, further to an *ex parte* application by Canadian Imperial Bank of Commerce (“**CIBC**”);
6. under the terms of the loan and security granted by the Debtor to Laurentian, 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;
8. as at the date of the Receivership Order, the Debtor was indebted to Laurentian in the amount of approximately \$3.72 million, plus interest and costs which continue to accrue (the “**Laurentian Indebtedness**”);
9. the Laurentian Indebtedness is secured pursuant to: (i) a first-ranking charge/mortgage on the Indian Road Property in the amount of \$4.0 million; (ii) a general assignment of rents registered on title to the Indian Road Property; and (iii) a first-ranking security interest in the Debtor’s personal property registered pursuant to the *Personal Property Security Act* (Ontario);

Sale Process

10. pursuant to the Order of the Honourable Mr. Justice McEwen dated February 19, 2020, the Court approved a sale process for the Indian Road Property (the “**Sale Process**”);
11. the Receiver entered into a listing agreement with Jones Lang LaSalle Real Estate Services Inc. (“**JLL**”) and authorized JLL to market the Real Property;
12. over the course of the Sale Process, forty-five parties executed confidentiality agreements and were granted access to the data room established by the Receiver;

13. seven parties ultimately submitted offers on or prior to the bid deadline of March 25, 2020;
14. the Receiver entered into negotiations with the party that had submitted the highest, unconditional offer (the “**Initial Buyer**”) but due to challenges arising from the COVID-19 pandemic, the Initial Buyer advised the Receiver that it could no longer pursue the transaction;
15. JLL continued to market the Indian Road Property and three additional offers were received, bringing the total number of offers submitted during the Sale Process to ten;
16. the Receiver ultimately entered into the APS with the Purchaser and the agreement is subject only to approval by the Court;
17. the market was thoroughly canvassed by JLL and the APS provides for the greatest recovery available for the Debtor’s creditors in the circumstances;

Proposed Distributions

18. the primary assets used in the operation of the gas station located on the Indian Road Property included fuel pumps, underground fuel storage tanks, canopy, dispensers and fuel lines and accessories (the “**Gas Assets**”), however, it remains unclear whether the Gas Assets are owned by the Debtor or 754;
19. given the impracticality of selling the Gas Assets separately from the Indian Road Property, an agreement was reached amongst the Receiver, BDO, CIBC and Laurentian to include the Gas Assets in the Sale Process and to address the issue of purchase price allocation to the separate assets after a transaction was identified for the sale of the Indian Road Property;
20. none of the offers submitted during the Sale Process were solely for the Gas Assets and none of the offers allocated value between the Gas Assets and the Indian Road Property;
21. after paying accrued property taxes in respect of the Indian Road Property and subject to a holdback on account of a potential priority claim by Canada Revenue Agency for

harmonized sales tax and a construction lien claim asserted by Di Cocco Contractors (2015) Inc., the Receiver proposes to distribute the remaining sale proceeds to Laurentian and BDO subject to a determination regarding ownership of the Gas Assets and any agreement reached on the allocation of the purchase price under the APS between the Indian Road Property and the Gas Assets;

Sealing Order

22. the summary of offers submitted to the Receiver during the Sale Process (the “**Offer Summary**”) and the unredacted APS, which are attached as Confidential Appendices 1 and 2 to the Second Report, respectively, contain confidential and commercially sensitive information, including the identity of those parties that submitted offers, the amount of those offers and the amount of the offer submitted by the Purchaser;
23. that information, if made public at this time, could detrimentally affect the marketability and price that could be obtained for the Indian Road Property if the transaction contemplated in the APS does not close;
24. 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;
25. such further and other grounds as set out in the Second Report;
26. 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 Second Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

July 20, 2020

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LAURENTIAN BANK OF CANADA

- and -

2145744 ONTARIO LIMITED

Applicant

Respondent

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

NOTICE OF MOTION

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TAB 2



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

July 20, 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

**SECOND REPORT OF
KSV KOFMAN INC.
AS RECEIVER**

JULY 20, 2020

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver (the "Receiver") of the property, assets and undertaking 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. Pursuant to a Court order made on February 19, 2020 (the "Sale Process Approval Order"), the Court approved a sale process for the Real Property (the "Sale Process"). A copy of the Sale Process Approval Order is attached as Appendix "B".
5. The principal purpose of these receivership proceedings has been to conduct a Court-supervised Sale Process for the Real Property that maximizes value for the Company's stakeholders, including Laurentian Bank of Canada ("Laurentian"), 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 the results of the Sale Process;
 - c) summarize a proposed transaction (the "Transaction") with Abdul Khaliq (in trust for a company to be incorporated) (the "Purchaser") for the Real Property and certain other assets pursuant to an Agreement of Purchase and Sale dated July 3, 2020 between the Receiver and the Purchaser (the "APS");
 - d) set out the Receiver's recommendations regarding approval of the Transaction and distributions of the net proceeds thereof;
 - e) provide an overview of the Receiver's activities since the commencement of these proceedings;
 - f) recommend that the Court issue an order:
 - i. approving the APS and the Transaction;
 - ii. authorizing and directing the Receiver to complete the Transaction and convey to the Purchaser the Purchased Assets (as defined in the APS), and vesting the Purchased Assets in the Purchaser on closing, free and clear of claims and encumbrances other than the Permitted Encumbrances (as defined in the APS), upon execution and delivery of a certificate by the Receiver confirming completion of the Transaction;
 - iii. authorizing the Receiver to make distributions to Laurentian and BDO Canada Limited ("BDO"), in its capacity as receiver of 2145754 Ontario Limited ("754"), on the basis detailed herein;
 - iv. sealing the Confidential Appendices to this Report; and
 - v. approving this Report and the Receiver's activities detailed herein.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information, provided by Laurentian, its legal counsel and representatives of the Company and/or BDO, in its capacity as receiver of certain related entities. 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. In the context of the current COVID-19 pandemic, there is uncertainty related to governmental and other macro-economic factors and how these and other factors may affect the Company and these proceedings. The full effect of COVID-19 is unknown and cannot be qualitatively or quantitatively assessed at this time.

2.0 Background

1. On September 30, 2019, the Court appointed BDO as receiver of the Company and a number of other related parties under common ownership (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, Laurentian brought a receivership application to have the Receiver appointed over the Company 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 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 under MNP's supervision, and MNP has continued to pay rent to the Receiver since the date of the Receivership Order.
4. Further information about the Company and its background is set out in the Receiver's First Report to Court dated February 12, 2020 (the "First Report"), a copy of which, without appendices, is attached as Appendix "C".
5. Copies of Court materials filed in these receivership proceedings are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/2145744-ontario-limited>.

2.1 Creditors

1. Laurentian is the Company's principal secured creditor pursuant to a promissory note in the principal amount of \$4 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 Laurentian 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. At the commencement of these proceedings, the Company's indebtedness owing to Laurentian totaled approximately \$3.72 million, plus interest and costs which continue to accrue.
3. 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 Laurentian. The amount owing to CIBC under this charge is unknown at this time;
 - b) a general assignment of rents and a \$2 million Charge/Mortgage registered on October 9, 2018 by Gurcharan Bajwa (these charges have been assigned by Court order dated June 17, 2020 from Gurcharan Bajwa to MSI Spergel Inc., in its capacity as receiver of 2541900 Ontario Limited); and
 - c) a construction lien in the amount of approximately \$67,000 registered by Di Cocco Contractors (2015) Inc. ("Di Cocco").
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.
3. All creditors, lien claimants and/or potential creditors referenced above will be served with the Receiver's Motion Record.

2.2 Funding of these Proceedings

1. These receivership proceedings have been funded from two sources, being:
 - a) the collection of rent on a monthly basis from MNP for 372's Burger King operations; and
 - b) an advance of \$20,000 by Laurentian to the Receiver under the Receiver's Borrowings Charge (as created and defined in the Receivership Order)¹.
2. As at the date of this Report, there is approximately \$5,000 in the Receiver's account.

¹ The Receiver issued a Receiver's Certificate to Laurentian on February 18, 2020 evidencing this advance.

3.0 Sale Process

3.1 Overview

1. The Sale Process Approval Order, *inter alia*, approved a listing agreement and authorized the Receiver to retain Jones Lang LaSalle Real Estate Services, Inc. ("JLL") to market the Real Property.
2. Notwithstanding that the Company is not a party to the Shell Supply Agreement, the Shell Supply Agreement references a right of first refusal ("ROFR") to acquire the Real Property in favour of Shell. Prior to the commencement of the Sale Process, the Receiver was advised by Shell that it is not interested in exercising the ROFR and/or acquiring the Real Property. Accordingly, the enforceability of the ROFR as against the Real Property and the Receiver is not an issue that needed to be dealt with in the context of these proceedings.
3. The Sale Process was detailed in the First Report and is summarized below.

Pre-marketing Phase

- a) JLL, with the Receiver's assistance, prepared:
 - an investment summary detailing the acquisition opportunity for the Real Property (the "Investment Summary");
 - a confidentiality agreement ("CA");
 - a virtual data room, which contained, *inter alia*, copies of the Company's financial statements, lease agreements, environmental report, asset listings, property tax bills and the Shell Supply Agreement; and
 - a confidential information memorandum ("CIM"), which included more detailed information on the Real Property and details concerning the Sale Process.

Marketing

- a) Over the course of the Sale Process, JLL sent the Investment Summary to its network of over 2,000 prospective purchasers;
- b) Interested parties were required to sign the CA to obtain a copy of the CIM and to access the data room; and
- c) JLL corresponded with MNP and BDO regarding potential purchasers in each of their respective sale processes to determine whether any parties may have an interest in the Real Property. Any such parties were provided with the Investment Summary and invited to participate in the Sale Process.

Bid Deadline

- a) Interested parties were requested to submit offers using a standard form asset purchase agreement prepared by DLA Piper (Canada) LLP ("DLA"), the Receiver's legal counsel. Bidders were requested to blackline any changes in their offer against that form of agreement; and
- b) The Sale Process contemplated a bid deadline date of March 25, 2020 (the "Bid Deadline").

3.2 Inclusion of Gas Assets

1. The primary assets used in the gas station operations on the Real Property are four fuel pumps, four underground fuel storage tanks, canopy, dispensers and fuel lines and accessories (collectively, the "Gas Assets"). As at the date of this Report, it remains unclear whether the Company or 754 is the legal owner of the Gas Assets.
2. Given the impracticality of selling the Gas Assets separately from the Real Estate, in late February, 2020, as a result of discussions between the Receiver, BDO, CIBC, Laurentian and/or their respective legal counsel, it was agreed that the Gas Assets would be included in the Receiver's Sale Process. The parties also agreed that, if the Gas Assets were sold together with the Real Property, the purchase price allocation would be determined subsequently.
3. On February 28, 2020, BDO's legal counsel sent an email confirming this arrangement, a copy of which is attached as Appendix "D".

3.3 Sale Process Results

1. A summary of the results of the Sale Process is as follows:
 - a) 49 parties executed the CA, were provided a copy of the CIM and given access to the data room;
 - b) Approximately 15 parties visited the Real Property;
 - c) Seven parties, including the Purchaser, submitted offers (the "Initial Offers") on or prior to the Bid Deadline, including an oral offer representing the highest, unconditional bid which was subsequently submitted in written form on March 27, 2020 by a prospective purchaser (the "Initial Buyer");
 - d) Following the Bid Deadline, the Receiver began negotiating a transaction with the Initial Buyer; however, on April 1, 2020, the Initial Buyer advised it could no longer pursue a transaction due to challenges arising from the COVID-19 pandemic;
 - e) JLL continued to market the opportunity, both by engaging in discussions with parties that submitted offers at the Bid Deadline and parties that were identified following the Bid Deadline. In total, ten offers were submitted in the Sale Process. None of the offers were solely for the Gas Assets and no offers allocated value between the Real Property and the Gas Assets;

- f) On or around May 25, 2020, JLL received two competitive offers. These revised offers included an unconditional offer submitted by the Initial Buyer and a conditional offer submitted by the Purchaser;
 - g) On May 29, 2020, the Receiver entered into an agreement of purchase and sale with the Initial Buyer, pursuant to which a deposit was to be funded by June 2, 2020 (the "May 29th APS");
 - h) After extending the date by which the deposit was to be funded for nearly three weeks, on June 22, 2020, the Receiver sent a letter to the Initial Buyer terminating the May 29th APS and reserving its rights and remedies against the Initial Buyer as a result of its breach of the May 29th APS; and
 - i) Shortly thereafter, the Receiver instructed JLL to engage in further negotiations with the Purchaser regarding, *inter alia*, the value of its offer and the conditions precedent. As a result, the Purchaser agreed to submit an unconditional offer and, on July 3, 2020, the Receiver entered into the APS with the Purchaser. At this time, the APS remains subject only to Court approval.
2. Given that Laurentian is the principal economic stakeholder in these proceedings and is projected to incur a shortfall, the Receiver consulted with Laurentian on each of the steps summarized above.
 3. JLL prepared a summary of offers for the Real Property (the "Offer Summary"), a copy of which is attached as Confidential Appendix "1". The grounds for the Receiver's recommendation that the Offer Summary should be sealed at this time are set out in Section 4.1 of this Report.

4.0 Transaction²

1. A summary of the Transaction is as follows:
 - a) **Purchaser:** Abdul Khaliq in trust for a company to be incorporated.
 - b) **Purchased Assets:**
 - (i) the Real Property (which includes, by definition in the APS, the Gas Assets);
 - (ii) the Assumed Contracts and Leases; and
 - (iii) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property.
 - c) **Purchase Price:** For the reasons provided in Section 4.1 of this Report, the Receiver is seeking to have the purchase price sealed pending further order of the Court.
 - d) **Deposit:** The Purchaser has funded a material deposit which is on deposit in the Receiver's trust account.

² Defined terms in this section of the Report have the meanings provided to them in the APS.

- e) **Excluded Assets:** The right, title and interest of the Company in any of its assets, other than the Purchased Assets, including: (i) books and records that do not exclusively or primarily relate to the Purchased Assets; and (ii) tax refunds relating to the period prior to the Closing Date.
 - f) **Permitted Encumbrances:** None, as set out in Schedule "D" of the proposed Approval and Vesting Order.
 - g) **Representations and Warranties:** Consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
 - h) **Closing Date:** Fifty business days after receiving the Approval and Vesting Order.
 - i) **Broker Fees:** The APS contemplates that the Purchaser's broker fees (2.5% of the purchase price plus HST) are to be paid from the sale proceeds.
 - j) **Material Conditions:** The only material condition precedent that has not been satisfied is the Court's issuance of the proposed Approval and Vesting Order.
 - k) **Burger King Lease:** The Receiver has been advised by MNP that a buyer has been identified for the Burger King restaurant and MNP is likely to bring a motion for Court approval of that transaction in short order. The Receiver has advised the Purchaser of this potential transaction and has made arrangements to introduce the Purchaser to its prospective new tenant. The APS is in the process of being amended so that the Company's leases with 732 (for the Burger King premises) and 754 (for the gas station and convenience store premises) are being assigned and assumed on an as is, where is basis.
 - l) **754 Lease:** As a result of the agreement with BDO that the Gas Assets were to be included in the Sale Process, the sale process conducted by BDO in respect of the Eagle Travel Plaza Companies excluded the Gas Assets. To the extent the Purchaser has any interest in continuing the Shell Supply Agreement, it is not contemplated or addressed under the APS. The APS contemplates an assignment and assumption of the lease between the Company, as landlord, and 754, as tenant of the gas station and convenience store.
2. A copy of the redacted version of the APS is attached as Appendix "E". An unredacted copy of the APS is attached as Confidential Appendix "2".

4.1 Sealing

1. The Receiver recommends that the Offer Summary and the unredacted copy of the APS be filed with the Court on a confidential basis and remain sealed pending further order of the Court as the availability of such information to other parties may negatively impact any future sale process for the Real Property if the Transaction does not close. In addition, the Offer Summary contains sensitive information, including the identity of bidders and the value of other bids received for the Real Property, that similarly could adversely impact the future marketability of the Real Property should that become necessary.

2. The Receiver does not believe that any stakeholder will be prejudiced if the information is sealed or redacted. Keeping this information sealed pending further order of the Court is beneficial to maximizing value in these circumstances and maintains the integrity of the Sale Process through its completion.

4.2 Sale Process Recommendation

1. For the following reasons, the Receiver recommends that the Court issue an order approving the Transaction:
 - a) the Sale Process was conducted in accordance with the Sale Process Approval Order;
 - b) the market was widely canvassed by JLL, an experienced realtor, using strategies commonly used to sell real property, including, but not limited to, direct solicitation of investors, developers and gas station operators. In the Receiver's view, JLL undertook a thorough and commercially reasonable marketing of the Real Property;
 - c) of the ten offers submitted in the Sale Process, the Transaction provides for the greatest recovery available in the circumstances, particularly given the increased level of uncertainty in the market resulting from the ongoing COVID-19 pandemic;
 - d) Laurentian is projected to incur a shortfall on its advances to the Company and has consented to the Transaction;
 - e) JLL is of the view that the Transaction is the best available in the circumstances;
 - f) the purchase price is consistent with the estimated value range set out in the listing proposals sought from realtors at the commencement of these proceedings, as detailed in the First Report;
 - g) should the Gas Assets be determined to be assets owned by 754 (i.e. not the Company), vesting them in the Purchaser is appropriate in the Receiver's view given the agreement with BDO prior to the commencement of the Sale Process to include the Gas Assets in the Sale Process (with value allocation to be determined subsequently); and
 - h) the presence of a gas station on the Real Property increases the risk of environmental issues. In the Receiver's view, further time marketing the Real Property is unlikely to improve recoveries and may enhance the risk of new issues arising and/or further costs being incurred, including for environmental assessments, property taxes, insurance, utilities and professional fees.

5.0 Proposed Distributions

1. Following completion of the Transaction and subject to Court approval, the Receiver is proposing that it be authorized to make distributions to Laurentian. In this regard, DLA provided an opinion dated July 20, 2020 which, subject to the standard assumptions and qualifications contained therein, concluded that the security granted by the Company, as registered on title to the Real Property by way of the Mortgage and under the Ontario *Personal Property Security Act*, creates a valid and perfected security interest in the Company's Real Property and personal property situated in Ontario.
2. After paying the accrued property taxes up to the Closing Date and prior to making any distributions to Laurentian or BDO, the Receiver intends to establish a holdback from the sale proceeds that would consider:
 - a) potential priority claims for HST asserted by CRA, without acknowledging the priority of such claims; and
 - b) Di Cocco's lien claim.
3. The Receiver is not aware of any other secured creditors or any other claim that ranks or may rank in priority to Laurentian, other than property tax arrears of approximately \$23,000³ which will be satisfied on closing of the Transaction.
4. Based on the foregoing, the Receiver recommends that this Honourable Court issue an order authorizing and directing the Receiver to distribute the proceeds of the Transaction to Laurentian and BDO. Should the Receiver, BDO, Laurentian and CIBC be unable to resolve ownership/allocation issues prior to the completion of the Transaction in approximately two months from the date of this Report, the Receiver will bring a further motion before the Court to resolve any such dispute. In the context of that motion, the Receiver will make its recommendation on the appropriate allocation of the Transaction proceeds between Laurentian and BDO.

6.0 Overview of the Receiver's Activities

1. The Receiver's activities up to the date of the First Report (February 12, 2020) were approved pursuant to the Sale Process Approval Order. Since that time, the Receiver's activities have included, *inter alia*, the following:
 - corresponding extensively with DLA, Laurentian and Chaitons LLP, Laurentian's counsel, regarding all aspects of this mandate;
 - corresponding with BDO and MNP regarding the receivership proceedings and collecting rent payments from MNP on a monthly basis;
 - carrying out the Sale Process in accordance with the Sale Process Approval Order, including corresponding extensively with JLL over the course of the Sale Process;

³ Based on a statement of account from the City of Sarnia dated July 9, 2020.

- reviewing and commenting on JLL's marketing materials;
- reviewing and commenting on the form of asset purchase agreement to be included in JLL's data room and corresponding with DLA regarding same;
- corresponding extensively with JLL and Laurentian regarding multiple offers received throughout the Sale Process;
- negotiating the offers with certain prospective purchasers;
- negotiating the APS with the Purchaser;
- corresponding with MNP regarding the sale process of the Burger King restaurant and potential bidders who were interested in making offers jointly under both sale processes;
- corresponding with CRA regarding the status of these proceedings and its HST claim;
- corresponding with the City of Sarnia regarding property tax arrears;
- arranging for the general upkeep of the Real Property, including, *inter alia*, snow removal and lawn maintenance;
- drafting this Report and reviewing all motion materials in connection with this motion;
- drafting and filing an interim report of the Receiver as required under Section 246 of the *Bankruptcy and Insolvency Act*; and
- dealing with all other matters pertaining to the administration of this mandate.

7.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,



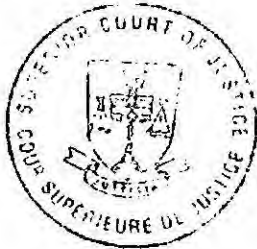
**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF
2145744 ONTARIO LIMITED
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

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

THE HONOURABLE MR.) MONDAY, THE 16th 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.

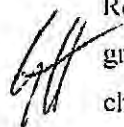
LIFT STAY OF PROCEEDINGS

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 the Applicant's right to challenge the priority of the CIBC Receiver's Borrowings Charge over the Applicant's security

on January 13, 2020

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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 I.B.C, or absent such agreement, shall be determined by this Court.

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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").

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(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", shall be delivered to ~~CIBC~~ ^{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} ~~however, the Receiver is not obligated to perform any investigation in respect of the existence of such Non-Debtor Records.~~ ^{and any subsequent order concerning access to documents made in the CIBC Action.}

but the Receiver shall be permitted to retain a copy of any document so delivered and not kept in the possession of the Receiver.

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(h) 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.ksvadvisory.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.



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

DEC 16 2019

PER / PAR.



SCHEDULE "A"

PROPERTY DESCRIPTION

PIN	43226 - 0127 LT
Description	PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212, AMENDED BY DECLARATION L901383; SARNIA
Address	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 \$ _____

1. 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 4th 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

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Toronto, Ontario M2N 7E9

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Lawyers for the Applicant

Appendix “B”

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

THE HONOURABLE MR.) WEDNESDAY, THE 19th DAY
JUSTICE McEWEEN) FEBRUARY, 2020



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 14, 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.

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

FEB 19 2020



PER / PAR: 

LAURENTIAN BANK OF CANADA

- and -

2145744 ONTARIO LIMITED

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

ORDER
(Sale Process Approval)

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

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Danny M. Nunes (LSO No. 53802D)

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Lawyers for the Receiver

Appendix “C”



**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"> ○ prepare a marketing brochure; ○ populate an online data room; ○ prepare a confidentiality agreement (“CA”); and ○ prepare a Confidential Information Memorandum (“CIM”). 	
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"> ○ offering summary and marketing materials printed; ○ publication of the acquisition opportunity in a regional newspaper; ○ telephone and email canvass of leading prospects; and ○ meet with and interview bidders. 	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 nd 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

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

Appendix “D”

From: Kathryn Esaw <kesaw@airdberlis.com>

Sent: February 28, 2020 4:02 PM

To: 'Danielle Iampietro' <iampietro@shlaw.ca>; Joe Speranzini <speranzini@shlaw.ca>; 'George Benchetrit' <George@chaitons.com>

Cc: 'Consoli, Angelo' <aconsoli@bdo.ca>; Steve Graff <sgraff@airdberlis.com>; David Sieradzki <dsieradzki@ksvadvisory.com>

Subject: Sarnia Shell station sales process

I am writing further to discussions BDO and KSV (and its agent) had earlier this week, and in the hopes that this group can confirm in writing the right approach to the sale of the operating assets at the Shell Sarnia station (203 Indian Road). For reference, recall that the real property is the subject of the KSV receivership while the operating assets are the subject of the BDO receivership.

Phase 1 of the BDO sales process concludes at 5pm today. The operating assets of the Shell Sarnia station were not included in this process. Phase 1 of the KSV sales process concludes on March 25, 2020. The KSV process was to include the Sarnia Station operating assets, on the basis that trying to sell the operating assets of a gas station separate from the real property was not value maximizing for either of the secured creditors. It was also contemplated that the fate of the proceeds from the Sarnia sales process may become part of a global settlement on cost allocation issues LBC and CIBC have been discussing for the past few months. I understand that KSV and BDO are on the same page that the sale of both operating and real property at the Sarnia station is the way to go, and we wanted to confirm the secureds are onside with that approach. I note that Shell is very keen on having the property sold as a Shell and will cooperate with any requests. In the event that LBC and CIBC aren't intending to deal with the proceeds as part of a global cost allocation settlement, we will need to work out further details on cost allocation, allocation of proceeds, commissions etc.

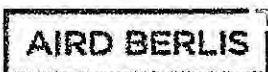
KSV's agent/broker plans on commencing its full marketing efforts very early next week and we would like to have the assets/operations included in the sale process, provided the parties on this chain so agree.

Regards,

Kathryn Esaw

416.865.4707
416.863.1515
kesaw@airdberlis.com

Aird & Berlis LLP Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

Appendix “E”

[AK]

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this ^{3RD} ~~13th~~ day of ^{JUN} ~~MAY~~, 2020. [AK]

BETWEEN:

KSV KOFMAN INC., in its capacity as court-appointed receiver of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited, and not in its personal or corporate capacity

(in such capacity, the "Receiver")

- and -

Abdul Khaliq in Trust For a company to be incorporated, pursuant to the laws of the Province of Ontario

(the "Purchaser")

RECITALS

- A. **WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated December 16, 2019 (the "Receivership Order"), the Receiver was appointed as the Court-appointed receiver over the property, assets and undertakings (the "Property") of 2145744 Ontario Limited (the "Debtor"), including the real property municipally known as 203 Indian Road South, Sarnia, Ontario (the "Lands");
- B. **AND WHEREAS** pursuant to the Receivership Order the Receiver was authorized to, among other things, market the Purchased Assets (as defined herein) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to the purchaser all of the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** pursuant to the Order of the Court dated February 19, 2020 (the "Sale Process Approval Order"), the Receiver was authorized to conduct a sale process in respect of the Property (the "Sale Process"), including the Lands;
- D. **AND WHEREAS** the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:



ARTICLE 1 **DEFINED TERMS**

1.1 Definitions

In this Agreement:

"Acceptance Date" means the date that this Agreement is executed by and delivered to all Parties hereunder;

"Accounts Payable" means all amounts relating to the Purchased Assets owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

"Agreement" means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **"article"**, **"section"** or **"schedule"** mean the specified article, section of, or schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"Approval and Vesting Order" means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the Transaction and conveying to the Purchaser all of each of the Receiver's and the Debtor's right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule "E" hereto subject to reasonable comment from the Parties' solicitors;

"Assignment and Assumption of the Assumed Contracts" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Assumed Contracts and the Purchaser will assume the ongoing obligations of the Debtor arising under the Assumed Contracts from and after the Closing, such agreement to be in form agreed upon by the Receiver and Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"Assignment and Assumption of the Leases" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Leases from and the Purchaser will assume the ongoing obligations of the Debtor arising under the Leases from and after the Closing, such agreement to be in a form agreed upon by the Receiver and the Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"Assumed Contracts" means those Contracts set out in Schedule "B" attached hereto (save and except those that, by written notice to the Receiver on or before the Contract Selection Date,

Purchaser has elected to not assume on Closing (the "Terminated Contracts"), it being acknowledged that all Terminated Contracts will become part of the Excluded Assets;

"Books and Records" means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets in the possession or control of the Vendors; provided, however, that "Books and Records" shall not include any bank or accounting records;

"Building" means, collectively, the building, fixtures and other improvements situated on the Lands, excluding any and all fixtures, equipment and chattels of the Tenants which, in accordance with the Leases, may be removed by the Tenants in accordance with the Leases;

"Business Day" means a day on which banks are open for business in Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Claims" means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and "Claim" means any one of them;

"Closing" means the successful completion of the Transaction; [AK]

"Closing Date" means the first Business Day which is ~~Thirty~~ (30) Business Days after receiving the Court Approval of this purchase; ^{and Vesting Order} ~~Transaction~~; Fifty (50) MV

[AK]

"Closing Time" means 4:00 p.m. on the Closing Date or such other time as agreed in writing by the Parties;

"Confidential Information" has the meaning given in Section 6.1;

"Contracts" means all of the contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party and which relate to the Real Property, provided that the Leases shall not be included as Contracts;

"Contract Selection Date" means the date which is five (5) Business Days after the Acceptance Date;

"Court" has the meaning set out in the recitals hereof;

"Debtor" has the meaning set out in the recitals hereof;

"Deposit" has the meaning given in Section 4.2 herein;

"Encumbrances" means all liens, executions, charges, security interests (whether contractual, statutory or otherwise), pledges, leases, offers to lease, title retention agreements, mortgages,

restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"ETA" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

"Excluded Assets" means the Receiver's and the Debtors' right, title and interest in and to any asset of the Debtor other than the Purchased Assets, which Excluded Assets include the following:

- (a) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Purchased Assets; and
- (b) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date.

"Excluded Liabilities" has the meaning given in Section 3.3 herein;

"Fixtures" means all existing fixtures of every nature and kind which are incorporated in the Building and shall include, without limitation, heating, ventilation, air-conditioning, plumbing, electrical, underground storage tanks, leakage detection system (veeder root system), canopy, pumps and dispensers and all other attachments to operate the gas station, sprinkler and drainage systems. For greater certainty, Fixtures shall not include any furniture, chattels or other movable equipment or other tangible personal property owned by the Tenants or leased by the Receiver or the Debtor and incorporated in, situated upon and/or used in connection with the Lands and/or the Building, none of which are included in the Transaction;

"Governmental Authority" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and "Governmental Authority" means any one of them;

"HST" means harmonized sales tax imposed under Part IX of the ETA;

"ITA" means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

"Lands" has the meaning set out in the recitals hereof, the legal descriptions of which are attached as Schedule "A" hereto, and includes all rights and benefits appurtenant thereto;

"Leases" means (i) the existing lease dated June 15, 2016 between the Debtor, as landlord, and 2145754 Ontario Limited, as tenant; and (ii) the existing lease dated February 10, 2017 between the Debtor, as landlord, and 2542372 Ontario Inc., as tenant;

"LRO" means the Land Registration Office for the Land Titles Division of Lambton (#25);

"Notice" has the meaning given in Section 16.3 herein;

"Parties" means the Receiver and the Purchaser;

"Permits" means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Real Property;


"Permitted Encumbrances" means all those Encumbrances described in Schedule "D" hereto;

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

"Property" has the meaning set out in the recitals hereof;

"Purchase Price" has the meaning set out in Section 4.1 herein;

"Purchased Assets" means all of the Receiver's and Debtor's right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property and ~~Gas Station Business~~  [AK]
- (c) the Assumed Contracts and the Leases,

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

"Purchaser" means Abdul Khaliq for a company to be incorporated;

"Purchaser Representatives & their Commission" has the meaning given in Section 6.3 herein;

"Real Property" means collectively the Lands, the Building and the Fixtures including fuel storage tanks, canopy, pumps, dispensers and fuel lines and accessories for gas station operation;

"Receiver" has the meaning set out in the recitals hereof;

"Receiver's Certificate" means the certificate referred to in the Approval and Vesting Order which, when delivered to the Purchaser, has the effect of invoking the foreclosure and vesting out provisions contained in the Approval and Vesting Order;

"Receiver's Solicitors" means DLA Piper (Canada) LLP;

"Receivership Order" has the meaning set out in the recitals hereof;

"Rights" has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

"Taxes" means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

"Tenants" means all persons having a right to occupy any rentable area of the Building pursuant to the Leases;

"Transaction" means the transaction of purchase and sale of the Purchased Assets as contemplated by this Agreement.

ARTICLE 2 **SCHEDULES**

2.1 Schedules

The following schedules attached hereto are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule "A"	Legal Description of Indian Road Property
Schedule "B"	Assumed Contracts
Schedule "C"	Claims and Encumbrances to be Expunged and Discharged
Schedule "D"	Permitted Encumbrances
Schedule "E"	Form of Approval and Vesting Order

ARTICLE 3 **AGREEMENT TO PURCHASE**

3.1 Purchase and Sale of Purchased Assets

- (a) Relying on the representations and warranties herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Receiver and the Debtor in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.

- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the "Rights") under any Assumed Contracts that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the "Third Party"). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
- (i) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the Assumed Contracts in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
 - (ii) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
 - (iii) at the Purchaser's cost, the Receiver will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Assumed Contracts to the Purchaser, including holding those Assumed Contracts in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
 - (iv) in the event that the Receiver receives funds with respect to those Assumed Contracts, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Assumed Contracts.

The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Receiver, in its sole, absolute and unfettered discretion, from seeking to be discharged as receiver of the Debtor at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Receiver contained in this Section 3.1 shall terminate concurrently with the discharge of the Receiver as receiver of the Debtor.

3.2 Excluded Assets

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or

operation of the Real Property or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "Excluded Liabilities"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with (i) the Accounts Payable and incurred prior to Closing or (ii) any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver's Solicitors, in trust, a deposit by wire or certified cheque of [REDACTED] (the "Deposit"), which Deposit shall be held by the Receiver in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

4.3 Satisfaction of Purchase Price

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or certified cheque on Closing by the Purchaser to the Receiver's Solicitors or as the Receiver's Solicitors may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price

- (a) The Purchase Price shall be adjusted as of the Closing Time for all operating costs, realty taxes, local improvement rates and charges, water and assessment rates, current rents, prepaid rents and interest thereon (if any), security deposits and interest thereon (if any), current expense and operations recoveries from the Tenants, utility deposits, amounts prepaid or payable under the Assumed Contracts and any other items which are usually adjusted for in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than five (5) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Notwithstanding any other term in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to the period prior to the Closing Date or relating to the Excluded Liabilities or to any matters or assets other than the Purchased Assets for the period from and after the Closing Date.
- (b) Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 TAXES

5.1 Taxes

In addition to the Purchase Price, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five (5) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6
AUTHORIZATIONS AND CONFIDENTIALITY

6.1 Confidentiality

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the "Confidential Information"), except, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser's legal counsel, and to those Persons who have agreed in writing in favour of the Receiver and the Purchaser not to disclose any Confidential Information (collectively, the "Purchaser Representatives"). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser.

6.2 Authorizations

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

6.3 Representation Fee or Commission

Notwithstanding any other provision in this agreement, this offer includes 2.5% plus HST of the purchase price to be paid to "Prime Commercial Real Estate Inc. Brokerage" upon closing. This commission is in addition to any other commission seller ^{has} agreed to pay to any other Brokerage for this transaction.

has  [AK]

ARTICLE 7
CLOSING ARRANGEMENTS

7.1 Closing

Closing shall take place at the Closing Time at the offices of the Receiver's Solicitors, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

7.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Receiver and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered

for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

7.3 Receiver's Closing Deliverables

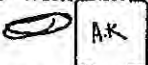
The Receiver covenant to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than five (5) Business Days prior to Closing;
- (c) the Assignment and Assumption of the Assumed Contracts and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (d) the Assignment and Assumption of the Leases, together with an acknowledgement executed by the Tenants, in the Tenants' standard form, confirming that the terms of the Leases are the same as provided to the Purchaser prior to execution of this Agreement and that the Leases are in good standing without any default by the landlord or Tenant thereunder;
- (e) a certificate signed by a senior officer of the Receiver confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the ITA and that, to the best of the Receiver's knowledge, the Debtor is not a non-resident of Canada within the meaning of the aforementioned section 116;
- (f) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (i) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving party; and
 - (ii) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (g) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and

- (h) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

7.4 Purchaser's Closing Deliverables

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) the Assignment and Assumption of the Assumed Contracts and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) the Assignment and Assumption of the Leases ~~with amendment to the lease agreement with Burger King to incorporate a~~  ~~to incorporate a~~
- (d) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (e) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof;
- (f) if desired, a direction directing the Receiver to convey title to any of the Purchased Assets to an entity other than the Purchaser; and
- (g) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, or by Applicable Law or any Governmental Authority.

7.5 Receiver's Certificate

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" to the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions in Favour of the Receiver

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) the Court shall have issued the Approval and Vesting Order.

8.2 Conditions in Favour of Receiver Not Fulfilled

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion (other than as stipulated below), and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.3 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise foreclosed and vested out pursuant to the Approval and Vesting Order; and

- (e) the Court shall have issued the Approval and Vesting Order.

8.4 Conditions in Favour of Purchaser Not Fulfilled

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and the Deposit shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 9 **REPRESENTATIONS & WARRANTIES OF THE RECEIVER**

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) subject to obtaining the Approval and Vesting Order, the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver and this Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms; and
- (b) the Receiver has been duly appointed as the receiver of the Real Property pursuant to the Receivership Order and such Receivership Order is in full force and effect and has not been stayed, and the Receiver has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Receiver and the Debtor in and to the Purchased Assets;
- (c) the Receiver is not a non-resident of Canada for the purposes of the ITA.
- (d) Subject to any charges created by the Receivership Order, the Receiver has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Debtor that may affect its ability to convey any of the Purchased Assets as contemplated herein.

ARTICLE 10
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (a) the Purchaser is a corporation duly formed and validly subsisting under the laws of ONTARIO;
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Administrative Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 11
COVENANTS

11.1 Mutual Covenants

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to have the Transaction approved pursuant to the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof. The Purchaser covenants and agrees to assist in this regard and provide any approvals, consents, authorizations or information, as reasonably necessary.

11.2 Receiver's Covenants

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect

of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

ARTICLE 12

POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

12.2 Risk

- (a) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (b) If prior to the Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance reference to such damage or destruction. For the purpose of this Section 12.2(b), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).
- (c) If, prior to the Closing, all or a material part of the Lands is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Lands is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or the Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those

obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 13 **AS IS, WHERE IS**

13.1 Condition of the Purchased Assets

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor have guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.C. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given concerning the accuracy of such description.

ARTICLE 14 **POST-CLOSING MATTERS**

14.1 Books and Records

The Purchaser shall keep and maintain the Books and Records for a period of Two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Receiver (the "**Retention Period**"). Upon reasonable advance notice, during such Two (2) year period after the Closing Date, the Purchaser will grant the Receiver and the Debtor and, in the event the Debtor is adjudged bankrupt, any trustee of the estate of the Debtor and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver or the bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser. After the Retention Period, the Purchaser shall give the Receiver or bankruptcy trustee of the estate of the Debtor, as the case may be, thirty (30) calendar days' prior written notice of its intent to destroy the Books and Records. The parties agree that the covenants of the Purchaser in this Section 14.1 shall survive the closing of the Transaction.

ARTICLE 15 **TERMINATION**

15.1 Termination of this Agreement

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Receiver;
- (c) pursuant to Section (d) hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.

15.2 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

15.3 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and the Deposit shall be forthwith returned to the Purchaser without deduction and:

- (a) the obligations of each Party hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser; and
- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided for herein.

ARTICLE 16
GENERAL CONTRACT PROVISIONS

16.1 Further Assurances

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

16.2 Survival Following Completion

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 15.2 and Section 15.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

16.3 Notice

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Receiver:

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

Attention: David Sieradzki / Jordan Wong
Tel: (416) 932-6030 / (416) 932-6025
Email: dsieradzki@ksvadvivory.com / jwong@ksvadvivory.com

and a copy to the Receiver's Solicitors:

DLA Piper (Canada) LLP
100 King Street West, Suite 6000
Toronto, ON M5X 1E2

Attention: Edmond Lamek / Danny Nunes
Tel: (416) 365-3444 / (416) 365-3421
Email: edmond.lamek@dlapiper.com / danny.nunes@dlapiper.com

(b) to the Purchaser:

ATTN: SHAHID MUBEEN Broker
Prime Commercial Real Estate Inc. Brokerage
400 Brunel Road Mississauga
Ph: 416-856-1803 Email: Smubeen1@hotmail.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3rd) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1st) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4th) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

16.4 Waiver

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

16.5 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

16.6 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

16.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

16.8 Time of the Essence

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

16.9 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

16.10 Assignment

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval which approval shall be in the Receiver's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until Closing, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The forgoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion.

16.11 Expenses

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

16.12 Severability

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

16.13 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

16.14 Cumulative Remedies

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be

cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

16.15 Currency

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

16.16 Receiver's Capacity

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

16.17 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

16.18 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

16.19 Counterparts

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

16.20 Time for Acceptance

This offer to purchase comprising this agreement shall be irrevocable by the ~~Purchaser~~ and open for acceptance by the Vendor until 5:00 p.m. on ~~June 10th~~ 2020, after which time, if not accepted and notice of such acceptance not communicated to the Purchaser then this offer to purchase shall be null & void and of no further force and effect.

[A.K.] Purchaser
Receiver

[A.K.] *Purchaser*

Vendor

July 6^m


July 7:00

[A.K.] *Receiver*

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

KSV KOFMAN INC., in its capacity as court-appointed receiver of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited, and not in its personal or corporate capacity

Per:




Name: DAVID SIERADUCKI

Title: MANAGING DIRECTOR



Per:

Authentic


Name: Ahmad Khaliq

Title:

SCHEDULE "A"

LEGAL DESCRIPTION OF REAL PROPERTY

PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212, AMENDED BY DECLARATION L901383; SARNIA

Municipally described as: 203 Indian Road South, Sarnia, Ontario

SCHEDULE "B"
ASSUMED CONTRACTS

1).

SCHEDULE "C"

**INSTRUMENTS/ENCUMBRANCES TO BE DELETED
FROM PIN 432260127**

- I. ALL ENCUMBRANCES TO BE DELETED FROM THE PIN 432260127

SCHEDULE "D"

**PERMITTED INSTRUMENTS/ENCUMBRANCES TO REMAIN
ON PIN ♦**

1.

SCHEDULE "E"

FORM OF APPROVAL AND VESTING ORDER

Court File No. CV-19-00631895-00CL

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

THE HONOURABLE ♦) ♦, THE ♦ DAY
JUSTICE ♦) ♦, 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

APPROVAL AND VESTING ORDER

THIS MOTION made by KSV Kofman Inc., in its capacity as receiver (in such capacity, the "Receiver"), of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited (the "Debtor"), for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and **ABDUL KHALIQ IN TRUST (FOR A COMPANY TO BE INCORPORATED)** (the "Purchaser"), as purchaser, dated June 8th, 2020 (the "Sale Agreement"), a copy of which is attached as Confidential Appendix ♦ to the Second Report of the Receiver dated ♦, 2020 (the "Second Report"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Receiver's and the Debtor's right,

title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was read this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second 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 ♦ sworn ♦, 2020, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Receiver's and Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in Schedule "B" hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licenses, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated December 16, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders and

declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser, or as it may direct, as the owner of the Real Property in fee simple and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

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

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

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

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

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be

a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-19-00631895-00CL

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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court (Commercial List) (the "Court") dated December 16, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the "Receiver"), without security, of the real property known as 203 Indian Road South, Samia, Ontario (the "Lands") and all other property, assets and undertakings of 2145744 Ontario Limited (the "Debtor"), related thereto (collectively, together with the Lands, the "Property").

II. Pursuant to an order of the Court dated ♦, 2020, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and ♦ (the "Purchaser"), as purchaser, dated June 8th, 2020 (the "Sale Agreement"), and provided for the vesting in the Purchaser, or as it may

direct in accordance with the Sale Agreement, of all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement.
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as court-appointed receiver of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited, and not in its personal or corporate capacity.

Name:
Title:

SCHEDULE "B"

LEGAL DESCRIPTION OF REAL PROPERTY

PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212, AMENDED BY
DECLARATION L901383; SARNIA

Municipally described as: 203 Indian Road South, Sarnia, Ontario

SCHEDULE "C"

**INSTRUMENTS/ENCUMBRANCES TO BE DELETED
FROM PIN 432260127**

SCHEDULE "D"

**PERMITTED INSTRUMENTS/ENCUMBRANCES TO REMAIN
ON PIN 432260127**

<p>LAURENTIAN BANK OF CANADA</p>	<p>Applicant</p>
<p>LAURENTIAN BANK OF CANADA</p>	<p>Respondent</p>
<p>Court File No. CV-19-00631895-00CL</p>	
<p>- and -</p>	
<p>2145744 ONTARIO LIMITED</p>	
<p>ONTARIO</p>	
<p>SUPERIOR COURT OF JUSTICE</p>	
<p>(Commercial List)</p>	
<p>ORDER</p>	
<p>(Sale Process Approval)</p>	
<p>DLA PIPER (CANADA) LLP</p>	
<p>1 First Canadian Place, Suite 6000</p>	
<p>100 King Street West</p>	
<p>Toronto ON M5X 1E2</p>	
<p>Edmond F.B. Lamck (LSO No. 33338U)</p>	
<p>Tel: 416.365.4444</p>	
<p>Email: edmond.lamck@dlapiper.com</p>	
<p>Danny M. Nunes (LSO No. 53802D)</p>	
<p>Tel: 416.365.3421</p>	
<p>Email: danny.nunes@dlapiper.com</p>	
<p>Lawyers for the Receiver</p>	

LAURENTIAN BANK OF CANADA

- and -

2145744 ONTARIO LIMITED

Applicant

Respondent

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

**SECOND REPORT OF KSV KOFMAN INC. AS RECEIVER
OF 2145744 ONTARIO LIMITED DATED JULY 20, 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
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Danny M. Nunes (LSO No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

Lawyers for the Receiver

TAB 3

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

THE HONOURABLE MR.) MONDAY, THE 27th DAY
JUSTICE KOEHNEN) JULY, 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

APPROVAL AND VESTING ORDER

THIS MOTION made by KSV Kofman Inc., in its capacity as receiver (in such capacity, the “**Receiver**”), of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Abdul Khaliq (in trust for a company to be incorporated) (the “**Purchaser**”), as purchaser, dated July 3, 2020 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix 2 to the Second Report of the Receiver dated July 20, 2020 (the “**Second Report**”), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Receiver’s and the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day via ZOOM videoconference as a result of the COVID-19 pandemic.

ON READING the Second 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 ♦ sworn July ♦, 2020, filed:

SERVICE

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

APPROVAL OF SALE AGREEMENT

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the right, title and interest of the Receiver, the Debtor and 2415754 Ontario Limited (if any) in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in Schedule "B" hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licenses, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated December 16, 2019;

(ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

4. **THIS COURT ORDERS** that upon registration in the Land Registry Office for the Land Titles Division of Lambton (#25) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

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

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

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF DISTRIBUTIONS

8. **THIS COURT ORDERS** that the Receiver is authorized to make distributions to Laurentian and BDO Canada Limited, in its capacity as receiver of 2145754 Ontario Limited, in accordance with the Second Report.

SEALING

9. **THIS COURT ORDERS** that Confidential Appendices 1 and 2 to the Second Report shall be sealed pending further Order of this Court.

APPROVAL OF SECOND REPORT

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

GENERAL

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

desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SCHEDULE "A"

FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-19-00631895-00CL

**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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court (Commercial List) (the "**Court**") dated December 16, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the "**Receiver**"), without security, of the real property known as 203 Indian Road South, Sarnia, Ontario (the "**Lands**") and all other property, assets and undertakings of 2145744 Ontario Limited (the "**Debtor**"), related thereto (collectively, together with the Lands, the "**Property**").

II. Pursuant to an order of the Court dated July 27, 2020, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Abdul Khaliq (in trust for a company to be incorporated) (the "**Purchaser**"), as purchaser, dated July 3, 2020 (the "**Sale Agreement**"),

and provided for the vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement.
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as court-appointed receiver of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited, and not in its personal or corporate capacity.

Name:
Title:

SCHEDULE "B"

LEGAL DESCRIPTION OF REAL PROPERTY

PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212, AMENDED BY
DECLARATION L901383; SARNIA

Municipally described as: 203 Indian Road South, Sarnia, Ontario

The Real Property shall include fuel storage tanks, canopy, pumps, dispensers and fuel lines and accessories located on the Real Property and used for gas station operation

SCHEDULE "C"

INSTRUMENTS/ENCUMBRANCES TO BE DELETED FROM PIN 43226-0127

1. Charge registered on April 3, 2018 as Instrument No. LA200573
2. Notice of Assignment of Rent registered on April 3, 2018 as Instrument No. LA200574
3. Charge registered on October 9, 2018 as Instrument No. LA210064
4. Notice of Assignment of Rent registered on October 9, 2018 as Instrument No. LA210065
5. Application to Register Court Order registered on November 1, 2019 as Instrument No. LA227047
6. Restrictions Order registered on November 4, 2019 as Instrument No. LA228832
7. Construction Lien registered on November 8, 2019 as Instrument No. LA229126
8. Application to Register Court Order registered on December 18, 2019 as Instrument No. LA231244
9. Certificate registered on January 6, 2020 as Instrument No. LA231975
10. Application to Register Vesting Order registered on July 8, 2020 as Instrument No. LA240147

SCHEDULE "D"

**PERMITTED INSTRUMENTS/ENCUMBRANCES TO REMAIN
ON PIN ♦**

LAURENTIAN BANK OF CANADA

- and -

2145744 ONTARIO LIMITED

Applicant

Respondent

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

**ORDER
(Approval and Vesting 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

Danny M. Nunes (LSO No. 53802D)
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Email: danny.nunes@dlapiper.com

Lawyers for the Receiver

Revised: January 21, 2014

Court File No. CV-19-00631895-00CL

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

THE HONOURABLE _____)
JUSTICE _____)
OF _____, 20__

BETWEEN:-

~~PLAINTIFF~~

Plaintiff

THE HONOURABLE MR. _____)
JUSTICE KOEHNEN _____)
MONDAY, THE 27th DAY
JULY, 2020

BETWEEN:

LAURENTIAN BANK OF CANADA

Applicant

- and -

~~DEFENDANT~~

Defendant

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Kofman Inc., in its capacity as ~~the Court appointed receiver (in such capacity, the "Receiver")~~, of the ~~undertaking, real property and assets of [DEBTOR]~~ known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited (the "Debtor"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver, as vendor, and ~~[NAME OF PURCHASER]~~ Abdul Khaliq (in trust for a company to be incorporated) (the "Purchaser"), as purchaser, dated ~~[DATE]~~ and appended July 3, 2020 (the "Sale Agreement"), a copy of which is attached as Confidential Appendix 2 to the Second Report of the Receiver dated [DATE] July 20, 2020 (the "Second Report"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Receiver's and the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**" (as defined in the Sale Agreement)), was heard this day at ~~330 University Avenue, Toronto, Ontario~~ via ZOOM videoconference as a result of the COVID-19 pandemic.

ON READING the Second Report and the appendices thereto and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ the Applicant and those parties listed on the counsel slip, no one else appearing for any other person on the service list, although ~~properly~~ duly served as appears from the affidavit of ~~[NAME]~~ service of ◇ sworn ~~[DATE]~~ July ◇, 2020, filed¹:

SERVICE

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

APPROVAL OF SALE AGREEMENT

¹ This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

2. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of the ~~Debtor's~~ right, title and interest of the Receiver, the Debtor and 2415754 Ontario Limited (if any) in and to the Purchased Assets described in the Sale Agreement ~~[and listed on, including without limitation the subject real property identified in Schedule "B" hereto]~~⁴ (the "Real Property"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licenses, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] Haincy dated [DATE] December 16, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

4. ~~3-~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~{Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver}~~ [Land Titles Division of {LOCATION} Lambton (#25) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. ~~4-~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. ~~5-~~ **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6-~~ ~~THIS COURT ORDERS~~ that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "o" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

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

~~(a)~~ (a) the pendency of these proceedings;

~~(b)~~ (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; ~~and~~

~~(c)~~ (c) any assignment in bankruptcy made in respect of the Debtor;

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

APPROVAL OF DISTRIBUTIONS

8. **THIS COURT ORDERS AND DECLARES** that the Transaction Receiver is exempt from the application of the ~~*Bulk Sales Act (Ontario)*~~ authorized to make distributions to Laurentian and BDO Canada Limited, in its capacity as receiver of 2145754 Ontario Limited, in accordance with the Second Report.

SEALING

9. THIS COURT ORDERS that Confidential Appendices 1 and 2 to the Second Report shall be sealed pending further Order of this Court.

APPROVAL OF SECOND REPORT

10. THIS COURT ORDERS that the Second Report and the activities of the Receiver set out therein are hereby approved.

GENERAL

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

desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

~~Schedule A Form of Receiver's Certificate~~

SCHEDULE "A"

FORM OF RECEIVER'S CERTIFICATE

Court File No. _____ CV-19-00631895-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

-

BETWEEN:

LAURENTIAN BANK OF CANADA

Applicant

- and -

~~DEFENDANT~~

Defendant

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

RECEIVER'S CERTIFICATE

RECITALS

A]. Pursuant to ~~an~~the Order of the Honourable ~~[NAME OF JUDGE]~~Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~December 16, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the "Receiver"), without security, of the undertaking, real property and assets of ~~[DEBTOR]~~known as 203 Indian Road South, Sarnia, Ontario (the "Lands") and all other property, assets and undertakings of 2145744 Ontario Limited (the "Debtor"), related thereto (collectively, together with the Lands, the "Property").

BII. Pursuant to an ~~Order~~order of the Court dated ~~[DATE]~~July 27, 2020, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ (the "Sale Agreement") between the Receiver ~~[Debtor]~~, as vendor, and ~~[NAME OF PURCHASER]~~Abdul Khaliq (in trust for a company to be incorporated) (the "Purchaser"), as purchaser, dated July 3, 2020 (the "Sale Agreement"), and provided for the vesting in the Purchaser ~~of, or as it may direct~~ in accordance with the Sale Agreement, of all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price ~~purchase price~~ for the Purchased Assets; (ii) that the conditions to ~~Closing~~closing as set out in ~~section 0~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the ~~Transaction~~transaction has been completed to the satisfaction of the Receiver.

€III. Unless otherwise indicated herein, capitalized terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price ~~purchase price~~ for the Purchased Assets payable on the ~~Closing Date~~closing date pursuant to the Sale Agreement;
2. The conditions to ~~Closing~~closing as set out in ~~section 0~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The ~~Transaction~~ transaction has been completed to the satisfaction of the Receiver; and

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER]~~ _____

KSV KOFMAN INC., in its capacity as Receiver

_____ receiver of the _____

_____ Per: _____

court on

_____ Indian Road S _____

_____ Name: _____

_____ other property _____

_____ 2145744 Onta _____

_____ personal or cc _____

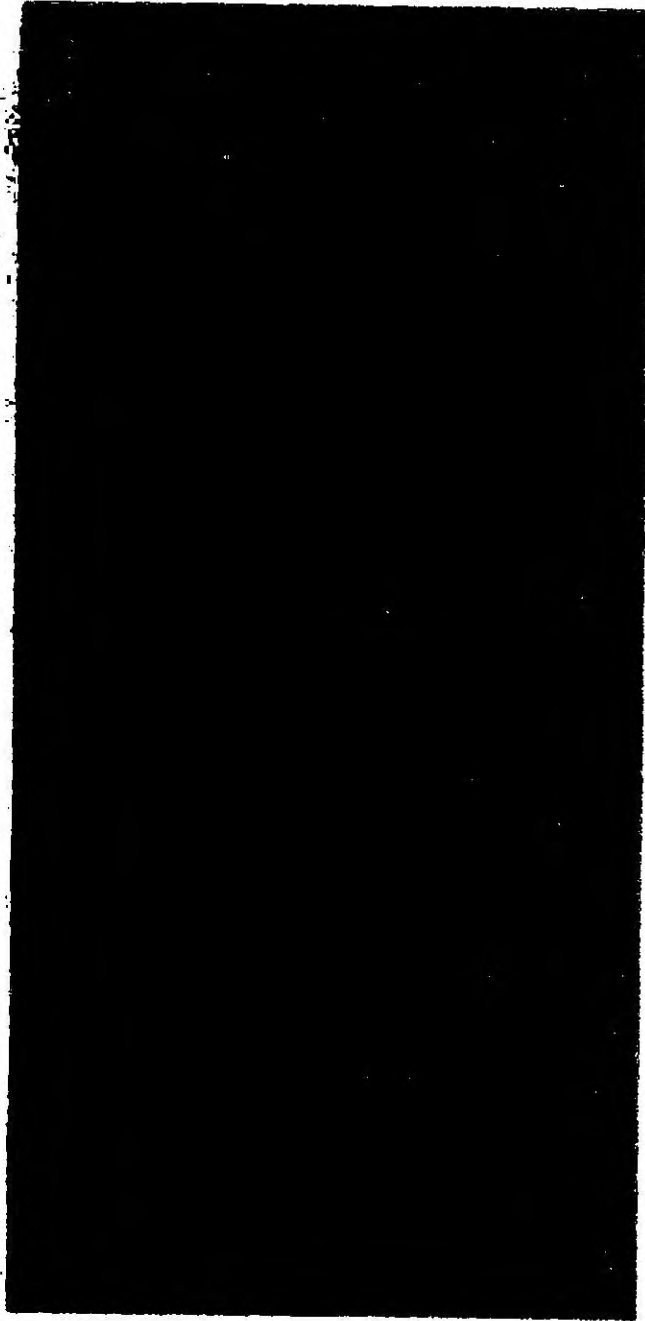
SCHEDULE "B"

LEGAL DESCRIPTION OF REAL PROPERTY

PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212. AMENDED BY DECLARATION L901383: SARNIA

Municipally described as: 203 Indian Road South, Sarnia, Ontario

The Real Property shall include fuel storage tanks, canopy, pumps, dispensers and fuel lines and accessories located on the Real Property and used for gas station operation



SCHEDULE "C"

Schedule B — Purchased Assets

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

~~Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property~~

~~(unaffected by the~~

**INSTRUMENTS/ENCUMBRANCES TO BE DELETED
FROM PIN 43226-0127**

1. Charge registered on April 3, 2018 as Instrument No. LA200573
2. Notice of Assignment of Rent registered on April 3, 2018 as Instrument No. LA200574
3. Charge registered on October 9, 2018 as Instrument No. LA210064
4. Notice of Assignment of Rent registered on October 9, 2018 as Instrument No. LA210065
5. Application to Register Court Order registered on November 1, 2019 as Instrument No. LA227047
6. Restrictions Order registered on November 4, 2019 as Instrument No. LA228832
7. Construction Lien registered on November 8, 2019 as Instrument No. LA229126
8. Application to Register Court Order registered on December 18, 2019 as Instrument No. LA231244
9. Certificate registered on January 6, 2020 as Instrument No. LA231975
10. Application to Register Vesting Order registered on July 8, 2020 as Instrument No. LA240147

SCHEDULE "D"

PERMITTED INSTRUMENTS/ENCUMBRANCES TO REMAIN
ON PIN ♦

LAURENTIAN BANK OF CANADA

- and -
Applicant

2145744 ONTARIO LIMITED

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

ORDER
(Approval and Vesting Order)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
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Lawyers for the Receiver

LAURENTIAN BANK OF CANADA

- and -

2145744 ONTARIO LIMITED

Applicant

Respondent

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

**MOTION RECORD
(returnable July 27, 2020)**

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Toronto ON M5X 1E2

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Lawyers for the Receiver