

Court File No: CV-22-00685439-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

2314251 ONTARIO INC., MOHAMMAD ABDUL HAFIZ
and KAWSER ZAHAN

Respondents

MOTION RECORD OF THE RESPONDENTS
(to discharge the Receiver)

July 10, 2023

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TO: Service List

SERVICE LIST

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Lawyers for the Receiver,
msi Spergel inc.

AIRD & BERLIS LLP

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Lawyers for the Applicant, The Toronto-Dominion Bank

MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS

8th Floor, 5775 Yong Street
Toronto, ON M2M 4J1

Attention: Norm Rankin
Email: norm.rankin@ontario.ca
Telephone: 416-712-4398

CANADA REVENUE AGENCY

c/o Department of Justice
Ontario Regional Office
120 Adelaide St. W., Suite 400
Toronto, ON M5H 1T1

Attention: Rakhee Bhandari

Tel: 416-952-8563

Email: rakhee.bhandari@justice.gc.ca

**HIS MAJESTY THE KING IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTRY OF FINANCE**

Revenue Collections Branch – Insolvency Unit
33 King Street W., P.O. Box 627
Oshawa, ON L1H 8H5

Email: insolvency.unit@ontario.ca

I N D E X

ONTARIO
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T A B . 1

ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

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Applicant

-and-

2314251 ONTARIO INC., MOHAMMAD ABDUL HAFIZ
and KAWSER ZAHAN

Respondents

NOTICE OF MOTION
(of the Respondent's to discharge the Receiver)

The respondents will make a motion to a Judge on the Commercial List on a date and time to be fixed at a 9:30 attendance or by the Registrar, or soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location: 330 University Avenue, Toronto, Ontario

THE MOTION IS FOR:

1. An order and declaration of the proper amounts owed to the *Stakeholders* (as that term is defined in paragraph 5 below).
2. An order authorizing the receiver to distribute the *Satisfaction Funds* (as that term is defined in paragraph 18 below) to the Stakeholders, in the amounts determined appropriate by the Court (the "*Distribution*").
3. An order discharging the receiver, following the completion by the receiver of the Distribution to the satisfaction of the Court.
4. Such other and further relief as counsel may advise and the Court may determine is appropriate to grant.

THE GROUNDS FOR THE MOTION ARE:

THE STAKEHOLDERS

5. To the knowledge of the respondents, the following stakeholders have an interest in the assets which are the subject of this receivership:
 - (a) The Toronto Dominion-Bank (the "*Bank*");
 - (b) The receiver;
 - (c) The receiver's counsel;
 - (d) Parkland Fuel Corporation; and
 - (e) Various utility providers servicing the Property

(collectively, the "*Stakeholders*").

6. To the knowledge of the respondents, no other persons or other entities are stakeholders in the assets which are the subject of this receivership.

The Bank

7. The receiver was appointed on the application of the Toronto Dominion-Bank (the "*Bank*"), which was and is a creditor of the respondents, secured by a mortgage on the property of the corporate respondent.

8. Since the appointment of the receiver, the Bank has advanced additional funds to the receiver, for the purpose of funding the receiver's activities.

9. At present, the Bank says that it is owed \$2,202,681.14.

Parkland

10. Parkland Fuel Corporation ("*Parkland*") is owed \$180,000 on a "forgivable loan" (the "*Parkland Loan*"), which is secured by a mortgage on the Property.

11. The Parkland Loan is not yet due or payable. Nor has Parkland made any demand on the Parkland Loan.

The Receiver and Counsel

12. The receiver has incurred unknown fees from and after June 5, 2023.

13. The receiver's counsel has incurred unknown fees from and after June 5, 2023.

Various utility providers servicing the Property

14. There may or may not be any amounts owed to utilities servicing the Property. If there are, that is no more than \$10,000.

Total Due to Stakeholders

15. The total due to Stakeholders is approximately \$2,212,681.14, plus an additional amount for professional fees.

SATISFACTION FUNDS

16. The receiver presently has on hand \$157,499.29 cash subject to the receivership, available to pay creditors of 231.

17. 231 has deposited with its solicitor \$2,100,000, in trust, to be held pending the resolution of this motion, and its solicitor has accepted those instructions.

18. Those two amounts (collectively, the "*Satisfaction Funds*") are all available to pay the Stakeholders of 231, and that amount is in excess of the amounts which are payable to those Stakeholders.

DISTRIBUTION AND DISCHARGE

19. It would be just and convenient for the receiver to:

- (a) Pay the Satisfaction Funds to the Stakeholders; and thereafter
- (b) For the receiver to be discharged.

20. Ss. 241-250 of the BIA and s. 101 of the CJA

21. Such other and further ground as counsel may advance and that this Court accepts.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used on the return of the motion:

22. Affidavit of Afreen Hafiz;
23. The First Report of the Receiver; and,
24. Such other and further evidence as counsel may submit and that this Court permits.

Dated: July 9, 2023

RosensteinLaw Professional Corporation
5255 Yonge Street, Suite 1300
Toronto, Ontario M2N 6P4

Jonathan Rosenstein (LSO #44914G)
jrosenstein@rosensteinlaw.ca
416.639.2123 / 647. 827. 0424 f

Lawyer for the Respondents

TO: Service List

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130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

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Melinda Vine (LSO #53612R)

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Fax: (519) 667-3362
Email: thogan@harrisonpensa.com
mvine@harrisonpensa.com

Lawyers for the Receiver,
msi Spergel inc.

AIRD & BERLIS LLP

Barristers & Solicitors
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Lawyers for the Applicant, The Toronto-Dominion Bank

MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS

8th Floor, 5775 Yong Street
Toronto, ON M2M 4J1

Attention: Norm Rankin
Email: norm.rankin@ontario.ca
Telephone: 416-712-4398

CANADA REVENUE AGENCY

c/o Department of Justice
Ontario Regional Office
120 Adelaide St. W., Suite 400
Toronto, ON M5H 1T1

Attention: Rakhee Bhandari

Tel: 416-952-8563

Email: rakhee.bhandari@justice.gc.ca

**HIS MAJESTY THE KING IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTRY OF FINANCE**

Revenue Collections Branch – Insolvency Unit
33 King Street W., P.O. Box 627
Oshawa, ON L1H 8H5

Email: insolvency.unit@ontario.ca

THE TORONTO-DOMINION BANK

Court File No. CV-22-00685439-00CL
2314251 ONTARIO INC. et al.

- and -

Applicant

Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceedings commenced at Toronto</p>	<p>NOTICE OF MOTION (of the Respondent's to discharge the Receiver)</p>	<p>RosensteinLaw Professional Corporation 5255 Yonge Street, Suite 1300 Toronto, Ontario M2N 6P4</p> <p>Jonathan Rosenstein (LSO #44914G) jrosenstein@rosensteinlaw.ca Tel: (416) 639-2123 Fax: (647) 827-0424</p> <p>Lawyer for the Respondents</p>
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T A B . 2

Court File No: CV-22-00685439-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

2314251 ONTARIO INC., MOHAMMAD ABDUL HAFIZ
and KAWSER ZAHAN

Respondents

AFFIDAVIT OF AFREEN HAFIZ
(affirmed remotely on July 9, 2023)

I, Afreen Hafiz, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY that:

1. I am the person with the operational responsibility for 2314251 Ontario Inc. ("231"), and I am the daughter of the individual respondents Mohammad Abdul Hafiz and Kawser Zahan, and as such have knowledge of the matters which I hereinafter depose. Where I do not have direct knowledge of the facts, I have stated my source of information below and I believe such facts to be true.
2. 231 wishes to repay all of its creditors and then to have the present receiver discharged and this receivership thereby brought to an end. The purpose of this affidavit is to provide the evidence necessary for the Court to permit that result.

STAKEHOLDERS

3. I am aware of the following creditors of 231 and related stakeholders:

(a) The Toronto-Dominion Bank (the "Bank"), which:

(i) lent funds to 231, and which loan is secured by a first mortgage on 231's property, located at 26233 Highway 48, Sutton West, Ontario (the "Property"); and

(ii) which advanced funds to the Receiver, which is secured by a receiver's charge;

and that according to the Bank, the total amount owed to it as of July 7, 2023, including interest and other charges, is \$2,202,681.14.

(b) The receiver; though I do not know it's current outstanding fees.

(c) The receiver's lawyers; though I do not know their current outstanding fees.

Copies of emails exchanged between 231's lawyer and the lawyer for the receiver are attached hereto and marked as [Exhibit A](#)

4. I was already familiar with the books and records of 231 prior to the receivership, and to my knowledge, 231 has no other trade or other creditors, either secured or unsecured; with the exception of the following:

(a) There is a mortgage on title to the Property (the "Parkland Mortgage") in favour of Parkland Fuel Corporation ("Parkland"); in the face amount of \$300,000. That mortgage is security for a forgivable loan (the "Parkland Loan") made by Parkland to 231 pursuant to an agreement (the "Parkland Agreement"), and that on its terms, that balance of the Parkland Loan

declines by \$30,000 per year that 231 operates as a gas station. Parkland believes that the balance of the Parkland Loan is presently \$180,000.

A copy of the agreement with Parkland, setting out the terms of that loan, is attached hereto and marked as [Exhibit B](#)

A copy of the letter from Parkland, setting out that balance, is attached hereto and marked as [Exhibit C](#)

- (b) Various utilities in respect of the Property. At the time of the commencement of this receivership, I believe that there was no balance owed in respect of utilities, because I had recently paid those accounts. Thereafter, I attempted to inquire if there were any ongoing balances owed, but when I contacted a number of utilities, I was advised that I could not get any information because the Property was in receivership. From my prior experience, I cannot imagine that the outstanding amounts would total more than \$10,000; assuming that any amounts are actually owed.

PAYMENT OF AMOUNTS OWED

5. Based on the above, I understand that the following must be paid, before the receivership can be brought to an end:

- (a) \$2,202,681.14 to satisfy the Bank,
- (b) An unknown amount to the receiver, and its counsel;
- (c) A small amount, if any, in respect of utilities, but no more than \$10,000;
- (d) Nothing, in respect of the Parkland Mortgage, which will remain on title; and nothing on the Parkland Loan, which is not yet due

for a total of \$2,204,681.15, plus outstanding professional fees.

6. On June 5, 2023, the receiver reported that it had \$228,373.02 on hand, and that at that time:

- (a) The receiver was owed \$60,697.39 inclusive of disbursements and HST; and
- (b) The receiver's counsel was owed \$10,176.34 inclusive of disbursements and HST.

A copy of the First Report of the Receiver is attached hereto and marked as [Exhibit D](#)

7. On July 4, 2023, the Court ordered that the receiver's first report was approved, and I assume that the receiver paid both of those professional accounts at that time; leaving \$157,499.29 on hand to pay 231's creditors.

8. Accordingly, it appears to me and to 231 that the receiver needs an additional \$2,047,181.85 to satisfy all of the stakeholders.

FUNDS AVAILABLE

9. 231 has in excess of \$2,100,000 available to it immediately. 231 wishes to pay \$2,100,000 to the receiver; for the purpose of enabling the receiver to make the payments contemplated in paragraph 5 above. This amount includes an additional \$44,818.15 for professional fees which might be necessary to wind-up this receivership.

10. To that end, 231 has deposited \$2,100,000 in trust with its solicitor, with instructions to him to hold those funds pending this motion and order of the Court. That solicitor has acknowledged and accepted those instructions.

A copy of the letter from Jack Frymer is attached hereto and marked as [Exhibit E](#)

11. Assuming that the receiver indeed uses all of those funds to pay all of the Stakeholders, then after those funds are paid to the Stakeholders, 231 wishes to resume complete control of the Property and its other assets. To that end, 231 wishes for the receiver to be discharged.

AFFIRMED BEFORE ME this 9th day of July, 2023 by video conference, in accordance with the provisions of the Regulations governing Administering Oaths or Declarations Remotely, while the affiant was at the City of Toronto, in the Province of Ontario and I was at the City of Toronto, in the Province of Ontario

DocuSigned by:

Afreen Hafiz

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AFREEN HAFIZ

DocuSigned by:

Morgan Webb

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A commissioner of oaths, etc.

Morgan webb

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This is Exhibit
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to the affidavit of
Afreen Hafiz
affirmed remotely on
July 9, 2023

DocuSigned by:
Morgan Webb

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A commissioner of oaths, etc.

Re: 2314251 Ontario

Jonathan Rosenstein <jrosenstein@rosensteinlaw.ca>

Fri 2023-07-07 4:23 PM

To: Melinda Vine <mvine@harrisonpensa.com>

Cc: 'Mukul Manchanda' <mmanchanda@spergel.ca>; Tim Hogan <thogan@harrisonpensa.com>

Thanks

Do you have any idea what the professional fees will be?

ROSENSTEINLAW P.C.

Jonathan Rosenstein

Certified Specialist – Civil Litigation

jrosenstein@rosensteinlaw.ca

d:416.635.9614

From: Melinda Vine <mvine@harrisonpensa.com>

Sent: Friday, July 7, 2023 4:03 PM

To: Jonathan Rosenstein

Cc: 'Mukul Manchanda'; Tim Hogan

Subject: FW: 2314251 Ontario

Jonathan,

See below. This does not include Receiver or Receiver's counsel fees.

2314251 Ontario Inc.			
Bank Indebtedness as at July 7, 2023			
(C\$)			
Loan	Principal	Interest	Total
Term Loan (interest per diem = \$184.21)	1,792,483.83	44,283.66	1,836,767.49
Receiver Line 1 (interest per diem = \$13.89)	60,000.00	2,933.92	62,933.92
Receiver Line 2 (interest per diem = \$55.56)	240,000.00	3,282.74	243,282.74
Legal fees paid to date			53,007.79
Legal (WIP and estimate to close)			8,000.00
			2,203,991.94

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This is Exhibit
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to the affidavit of
Afreen Hafiz
affirmed remotely on
July 9, 2023

DocuSigned by:
Morgan Webb

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A commissioner of oaths, etc.

**MOTOR FUEL SUPPLY AGREEMENT
ESSO-BRANDED MOTOR FUELS**

This Agreement is made on Sept 23, 2017 (the "Effective Date")

BETWEEN:

PARKLAND FUEL CORPORATION
(hereinafter called "Distributor")

- and -

2314251 ONTARIO INC.
(hereinafter called "Dealer") having a
motor fuels "Marketing Premises" located at
26233 Highway #48, city of Sutton, province of Ontario, L0E 1R0

- and -

Noreen Asghar
(hereinafter called the "Guarantors")
18 Samson Court, city of Brampton, province of Ontario, L6Y 3M4

WHEREAS Distributor is engaged in the sale and distribution of high quality petroleum products under the nationally and internationally known ESSO trade mark;

AND WHEREAS the Dealer desires to carry on the business of the sale of petroleum products in accordance with this Agreement;

AND WHEREAS the Guarantors have agreed to guarantee the obligations of the Dealer under this Agreement as consideration in part for the Distributor entering into this Agreement;

AND WHEREAS, based on its marketing strategies Imperial Oil, a partnership of Imperial Oil Limited and McColl-Frontenac Petroleum Inc. ("Imperial Oil") has established the following core values ("Core Values"), namely

- To deliver quality products that customers can trust.
- To employ friendly, helpful people.
- To provide speedy, reliable and friendly service.
- To provide clean, attractive and well maintained retail facilities.
- To be a responsible, environmentally conscious neighbour.

NOW THEREFORE the Distributor and the Dealer agree as follows:

1. Grant

Distributor, under an Esso Branded Distributor Agreement with Imperial Oil, has the right to grant to Dealer the use of certain Imperial Oil owned proprietary marks. Subject to the terms and conditions of this Agreement, Distributor grants Dealer the right to use the "Esso" mark and such other proprietary marks specified by Imperial Oil, from time to time, for use in connection with the sale of Esso-branded motor fuels ("Proprietary Marks") at the Marketing Premises. Dealer hereby accepts the use of the Proprietary Marks subject to the terms and conditions of this Agreement and agrees to conduct its

business in a manner consistent with the commitments in the Core Values and agrees to comply with Imperial Oil business standards and policies, including, without limitation Imperial Oil's National Standards Handbook as amended and updated (including Minimum Acceptable Ratings, if any) and training requirements, as communicated by Distributor from time to time. DEALER ACKNOWLEDGES THAT ITS RELATIONSHIP IS EXCLUSIVELY WITH DISTRIBUTOR. NOTHING IN THIS AGREEMENT MAY BE CONSTRUED AS CREATING A CONTRACTUAL OR OTHER RELATIONSHIP BETWEEN DEALER AND IMPERIAL OIL.

2. Related Businesses

Distributor acknowledges that Dealer may wish to operate, during the term of this Agreement, additional businesses ("Related Businesses") at the Marketing Premises using either the Proprietary Marks specified by Imperial Oil from time to time in connection with any such Related Businesses, Distributor's trademarks, Dealer's own trademarks or third party trademarks. Dealer acknowledges that the operation of the Related Businesses, whether branded with Proprietary Marks or other trademarks, impacts the customers' perception and acceptance of the Esso-branded motor fuels and Proprietary Marks. Accordingly, Dealer may operate a Related Business at the Marketing Premises only in compliance with this Agreement and any and all requirements for that Related Business communicated by Distributor to Dealer from time to time. If Dealer fails to comply with this Agreement or any such requirements, and without limiting Distributor's other rights or remedies under applicable laws or under this Agreement or any related or supplemental agreement, including termination or non-renewal of this Agreement, Distributor may require Dealer to stop operating the Related Business and for Related Businesses bearing Proprietary Marks, or the Distributor's trademarks, may also withdraw its approval for the use of any such Proprietary Marks or trademarks. From the Effective Date, Dealer shall not operate any Related Businesses or other businesses or activities, or change, delete or add any Related Businesses or other businesses or activities at the Marketing Premises unless agreed in writing by the parties hereto.

3. Term

- a. The term of this Agreement is for the period beginning on **the first day of the purchase of gasoline and/or diesel by the Dealer** (hereinafter called the "Commencement Date"), and shall terminate **ten (10) years** after the Commencement Date, unless terminated earlier or extended in accordance with this Agreement. The parties agree to confirm in writing the Commencement Date in order to avoid any ambiguity in this regard. If the said term exceeds the term of the Esso Branded Distributor Agreement that is in effect between the Distributor and Imperial Oil at the beginning of this Agreement, then the term of this Agreement shall expire upon the expiry of the said Esso Branded Distributor Agreement; and
- b. Notwithstanding any provisions herein to the contrary, if Dealer sells less than sixty million (60,000,000) litres of gasoline and/or diesel during the term hereof, the Distributor will have the right to extend the term of this Agreement without any notice on a monthly basis until such time as the above sales volume has been reached.

4. Product Quantities

Distributor shall sell and deliver and Dealer shall purchase, receive and pay for the Dealer's entire requirements of Esso-branded motor fuel for sale at the Marketing Premises in the quantities and at the prices and terms and conditions set out herein. The motor fuels purchased by Dealer from Distributor under this Agreement shall be for resale at the Marketing Premises only. The Dealer shall use good faith and diligent efforts to maximize the sale of Esso-branded motor fuels at the Marketing Premises. Dealer shall at all times have available for sale at the Marketing Premises such quantities of the Esso-branded motor fuels as are sufficient to meet the demand from time to time of the Dealer's retail customers.

5. Price and Terms of Sale

- a. The Dealer shall pay Distributor for the Esso-branded motor fuels purchased pursuant to this Agreement the **Esso posted rack price at Toronto at the time that the motor fuels are loaded for delivery to the Dealer, minus \$0.0210 per litre, plus the cost of delivery of \$0.0075 per litre, plus the Esso Brand value fee of \$0.0050 per litre, plus all applicable taxes.** In the event of a shortage or unavailability of the motor fuels at the Distributors' designated loading rack for any particular delivery to the Dealer the Distributor shall use its best efforts to deliver motor fuels from an alternate loading rack in order to complete the delivery and the Dealer hereby agrees to pay for any increased costs required to complete such delivery.
- b. Measurement of the volume of each delivery of the motor fuels sold and purchased hereunder will be determined as the metered volume loaded at the loading rack adjusted to a temperature of 15 degrees Celsius in accordance with normal industry practice.
- c. All purchases of the Esso-branded motor fuels shall be paid by the Dealer by deduction of the invoice amount on the POS sales from the Dealer's bank account within twenty-four (24) to forty-eight (48) hours for the delivery being made. If Distributor grants credit terms to the Dealer, such credit terms may be amended by Distributor in its sole discretion upon written notice from time to time. If Distributor grants credit terms to the Dealer and the Dealer accepts delivery of any Esso-branded motor fuel in accordance therewith, the Dealer shall comply with such credit terms for all purposes, including without limitation paying interest on overdue accounts at rates to be determined by Distributor from time to time. Distributor reserves the right to withhold any amounts due by the Distributor to the Dealer and apply such amounts directly as a set-off against any amounts due and outstanding owing to the Distributor. If the Dealer's account is past due the Distributor may in its sole discretion and without notice decline to make deliveries of motor fuels to the Dealer and the Distributor shall not be liable for any costs, claims, or damages in connection therewith.
- d. The Dealer shall pay interest on any past due amounts at the rate of 18% per annum calculated daily, not in advance, and compounded monthly so long as payment of any monies due and payable hereunder is outstanding.
- e. Any payment made to Distributor by the Dealer pursuant to this Agreement:
 - (1) shall be made together with applicable taxes and become due and payable on the date and at the time and at the location determined by Distributor, in its sole discretion and from time to time;
 - (2) may be collected by Distributor by pre-authorized debit in the manner set out on Schedule "A" or by wire transfer.
- f. The Dealer shall, from time to time, execute and deliver to Distributor an authorization for pre-authorized debit substantially in the form of Schedule "A" in order to facilitate the collection of payments pursuant to this Section. Distributor may amend Schedule "A", in its sole discretion and from time to time, upon sixty (60) days' prior written notice to the Dealer.
- g. The Dealer shall use the retail credit and debit system and point of sale services prescribed by Imperial Oil from time to time to be used by the Dealer exclusively in the Dealer's business, and for no other purpose. The Dealer shall be entitled to use such equipment and facilities and certain maintenance and support services; provided that the Dealer pays for all costs associated therewith, including complying with all requirements of such retail credit and debit system and

regular maintenance and replacement in the event of loss or damage, and the Dealer complies with all guidelines therefor. Dealer shall pay all fees established from time to time for the use of all such retail credit and debit systems and the Dealer shall comply with all the terms, conditions and regulations relating thereto. The Dealer shall pay all commissions and charges required to be paid by the Dealer to the proprietors and operators of such system(s).

- h. Distributor agrees that, upon receipt of information from Imperial Oil that the Dealer has submitted any valid customer credit card receipts to Imperial Oil for processing, the Distributor will credit the Dealer's purchase of the next delivery of motor fuels with the amount of such receipts.

6. Delivery

- a. Delivery will be by tank truck into Dealer's storage tanks at the Marketing Premises. Property, title and risk of loss of the motor fuel shall pass to the Dealer as the motor fuel is discharged from Distributor's tank truck and passes the collar of the fill pipe of the Dealer's storage tanks at the Marketing Premises.
- b. Dealer shall ensure that the Distributors tank truck will have unimpeded access to the fill pipes and storage tanks while making any delivery to the Marketing Premises.
- c. Dealer will notify Distributor of any required delivery of motor fuels in accordance with Distributors written ordering and delivery procedures. Dealer will only order deliveries in orders of a minimum of **58,000 litres** per delivery (hereinafter referred to as "full truck load"). Distributor reserves the right to amend its ordering and delivery procedures on written notice to the Dealer. Dealer will accept delivery of the Esso-branded motor fuels into the storage tank(s) on the Marketing Premises in accordance with the Distributors ordering and delivery procedures.
- d. Upon the dispatch of a delivery vehicle by Distributor to deliver the Esso-branded motor fuels to the Marketing Premises, the Dealer agrees to either accept the delivery of a "full truck load" of the Esso-branded motor fuels (or less than a "full truck load" of the Esso-Branded motor fuels only pursuant to Subsection (e) of this Section) at the time the delivery truck arrives at the Marketing Premises or pay to Distributor all the reasonable costs incurred by Distributor in connection with any delay or aborted delivery.
- e. Distributor shall not be required to deliver to the Dealer the Esso-Branded motor fuels in any quantity less than a "full truck load" or "deemed full truck load", which shall be determined in each case by Distributor in its sole discretion and from time to time. If the Dealer requests the delivery of and Distributor agrees to deliver the Esso-branded motor fuels in a quantity less than a "full truck load" or "deemed full truck load", then Distributor may charge, and the Dealer shall pay, an additional service charge therefor; however, the delivery by Distributor of Esso-branded motor fuels in a quantity less than a "full truckload" or "deemed full truckload" on any one or more occasions shall not require Distributor to deliver Motor Fuels in such quantity on any other occasion. Whether such additional service charge shall be levied and, if so, in what amount shall in each case be in the sole discretion of Distributor from time to time.

7. Product Control

- a. Dealer shall exercise the highest degree of care in handling, storing, selling and using the Esso-branded motor fuel delivered to the Marketing Premises. Dealer shall not cause or allow any contamination, mixing, commingling, adulteration or otherwise change in the composition of any Esso-branded motor fuel (including without limitation, the blending of such motor fuels with

ethanol). Dealer shall not sell from the Marketing Premises Esso-branded motor fuels that are contaminated or adulterated or fail to meet the fuel requirements under applicable law in effect at the time of delivery including, without limitation, requirements relating to octane, oxygen content, sulfur content, and all other regulated components or characteristics of a motor fuel or motor fuel additive, or unleaded gasoline requirements. Distributor may refuse to make deliveries into Dealer's storage tanks at the Marketing Premises until in Distributor's judgment, any deficiencies in the quality of motor fuels at the Marketing Premises are corrected.

- b. Access to Premises. Dealer grants Distributor and Imperial Oil (including their employees, agents and contractors) the right to enter the Marketing Premises during normal business hours to examine the contents of Dealer's storage tanks in which said motor fuels purchased hereunder are handled or stored. Distributor and Imperial Oil (including their employees, agents and contractors) may obtain samples from any of the aforementioned storage tanks and may otherwise review all documents and records relating either directly or indirectly to Dealer's obligations under this Agreement.

8. Contingencies

No party hereto shall be deemed to be in default of or shall be liable for the non-performance of any covenant, agreement, or obligation of this Agreement (except for the Dealer's obligation to pay for any amounts due to Distributor or to Imperial Oil or any person affiliated with distributor under this Agreement) if such default or non performance is caused by any occurrence which is beyond the reasonable control of the party affected. Any delays in or failure of performance by Distributor shall not constitute default hereunder or give rise to any claims for damages if and to the extent that such delay or failure is caused:

- a. Because of compliance with any order, request, or control of any governmental authority; or
- b. When the supply of motor fuel at any facility or the production, manufacture, storage, transportation, distribution or delivery contemplated by Distributor is interrupted, unavailable or inadequate for any reason or cause which Distributor determines is beyond its reasonable control when acting in good faith in the ordinary course of business. The Distributor shall have the right to reduce the quantities of motor fuels to be sold under this Agreement by allocating its available supply of motor fuels among its customers, itself, and its related and subsidiary companies in such manner as it may in its sole and absolute discretion determine and Distributor shall not be obliged to obtain or purchase other supplies of the motor fuels to make up any such shortage.

9. Proprietary Marks

- a. Dealer shall only use the Proprietary Marks designated and permitted by Imperial Oil for Dealer's use and shall only use such marks to designate the origin of the Esso-branded motor fuels and otherwise in the manner authorized and instructed by Distributor from time to time. DEALER AGREES THAT MOTOR FUELS AND PETROLEUM PRODUCTS OF OTHERS WILL NOT BE SOLD BY DEALER UNDER SUCH PROPRIETARY MARKS. If, in the sole opinion of Distributor, any samples taken by Distributor or Imperial Oil under this Agreement are not Esso-branded motor fuels, or are not in the condition in which delivered by Distributor, or any documents and records reviewed by Distributor or Imperial Oil show Dealer has failed to comply with its obligations hereunder, Distributor may, at its sole option, debrand the Marketing Premises in question or cancel and terminate this Agreement.

- b. By written notice to Dealer, Distributor may withdraw its approval to: (i) brand the Marketing Premises ("debrand") or (ii) use or operate any motor fuels business or Related Businesses at the Marketing Premises, if, in Distributor's sole judgment: (i) the Marketing Premises (or the motor fuels business and/or Related Businesses) fails to portray the image and standards expected from Esso-branded retail outlets; or (ii) Dealer is in default of any obligation, condition, representation, or warranty under this Agreement or any related or supplemental agreement.
- c. If Distributor debrands the Marketing Premises, withdraws its approval to use or operate the motor fuels business or Related Businesses at the Marketing Premises, upon termination of this Agreement, or prior thereto upon demand by Distributor, Dealer shall discontinue the posting, mounting, display or other use of the Proprietary Marks, and any sign, poster, placard, plate, device or form of advertising matter whether or not received from Distributor, consisting in whole or in part of the name Imperial Oil or any of the Proprietary Marks except only to the extent they appear as labels or identification of products still in the containers or packages designed and furnished by Imperial Oil.
- d. Dealer agrees to take no action that will diminish or dilute the value of the Proprietary Marks. Dealer shall not sell non-Esso branded motor fuels under any of the Proprietary Marks, including without limitation, any Esso-identified canopy or at any fueling island where Dealer is selling Esso-branded motor fuels.
- e. Dealer shall not use the Proprietary Marks as part of Dealer's corporate or other name.
- f. Dealer hereby consents to Distributor or Imperial Oil removing or painting over the Proprietary Marks the use of which is granted to the Dealer pursuant to this Agreement, including without limitation the Esso trade name, trade-marks, signs and advertising items, prior to the expiration or earlier termination of this Agreement.

10. Customer Service & Operating Standards

- a. Dealer shall ensure that its Marketing Premises meet the following minimum image requirements (unless such compliance will result in the Dealer being in breach of any federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits), failing which Dealer shall lose the right to use or display Proprietary Marks at any such Marketing Premises:
 - (1) Paved driveways with safe and good ingress and egress; and
 - (2) Permanent building which is structurally sound and complies with all fire, building and zoning codes and ordinances; and
 - (3) Clean premises free of debris, trash, and fire hazards; and
 - (4) Modern restrooms for men and women available to the general public; and
 - (5) Offer two (2) grades of Esso-branded motor fuels; and
 - (6) Posting, at all times, of actual motor fuel prices, in numerals, in Imperial Oil-approved price sign systems located on the Marketing Premises; and

- (7) Compliance with applicable operating standards as described in Schedule "B", and facility standards as described in Schedule "C" ("Facility Requirements"), which are incorporated herein and made a part of this Agreement.
- b. While using any Proprietary Marks, Dealer agrees:
- (1) To render appropriate, prompt, efficient, and courteous service, at the Marketing Premises, to respond expeditiously to all customer complaints, making fair adjustment when appropriate, and otherwise conduct Dealer's business in a fair and ethical manner and maintain the Marketing Premises in a manner which will foster customer acceptance of and desire for the Esso-branded motor fuels sold hereunder; and
 - (2) To provide sufficiently qualified and neatly dressed personnel in uniform at the Marketing Premises as appropriate to render first class service to customers; and
 - (3) To keep restrooms clean, orderly, sanitary and adequately furnished with restroom supplies; and
 - (4) To assist in maintaining a high level of customer acceptance of Proprietary Marks by keeping the Marketing Premises open for dispensing of the Esso-branded motor fuels during such hours each day and days a week as are reasonable considering customer convenience, competitive conditions and economic consequences to Dealer; and
 - (5) To purchase, maintain, and display an adequate quantity of Esso-branded motor oils, lubricants, greases, anti freeze, and other petroleum products and related products (the "Petroleum Products") for resale from the Marketing Premises to meet the needs of Dealer's retail customers from time to time. Dealer acknowledges that the Distributor is not a distributor of Petroleum Products and agrees to purchase the Petroleum Products directly from Imperial Oil or its designated distributor of Petroleum Products in the Dealer's market area; and
 - (6) The Dealer shall keep the Marketing Premises open for business on the days and during the hours that are sufficient to meet the demand from time to time of the Dealer's retail customers; and
 - (7) The Dealer shall ensure that the automobile maintenance and repair services, if any, provided on the Marketing Premises are performed to the reasonable satisfaction of the consumers of such services.
- c. Dealer agrees that Distributor may revoke permission to display Proprietary Marks at the Marketing Premises which, after reasonable notice by Distributor to cure, continues to be in violation of this Section.
- d. Dealer shall not permit at the Marketing Premises:
- (1) Any consumption of intoxicating beverages in violation of applicable federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits; or
 - (2) The sale or use of illegal drugs or drug paraphernalia; or

- (3) The sale of any pornographic material or other material that Distributor determines may be offensive to the general public.
- e. Dealer shall not permit at the Marketing Premises the illegal sale of any tobacco products, including without limitation, sales in violation of any federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits relating to youth access to tobacco products. Dealer shall promptly advise Distributor of any charges or notifications of violations received at the Marketing Premises from any regulatory authority resulting from any such tobacco sales and of the resolution of any such charges and notifications.
- f. The Dealer acknowledges receipt of and shall comply with the Imperial Oil Operating Standards Manual (the "Manual"), including without limitation the Operating Standards and the other standards, methods, procedures and specifications established by Imperial Oil from time to time applicable to the operation the Dealer's business. The provisions of the Manual, including without limitation the Operating Standards and the other standards, methods, procedures and specifications applicable to carrying on the Dealer's business, are hereby incorporated into and shall form a part of this Agreement and the Dealer shall comply with same as if fully set forth herein. The Manual shall at all times remain the exclusive property of Imperial Oil and shall be returned to Distributor promptly upon request and, in any event, upon the expiration or earlier termination of this Agreement. Neither the Dealer nor the Dealer's employees shall at any time copy, duplicate or otherwise reproduce or transcribe the Manual or any part thereof without Imperial Oil's prior written consent. The Dealer acknowledges that the entire contents of the Manual is of a proprietary and confidential nature and is a trade secret of Imperial Oil. The Dealer shall maintain the absolute confidentiality of all such information during the term of this Agreement and after the expiration or earlier termination of this Agreement and shall not disclose any such information for any reason whatsoever, disclosing the same to the Dealer's employees only to the extent necessary for the operation of the Dealer's business in accordance with this Agreement. The Dealer further agrees not to use any such information, directly or indirectly, in any other business or in any other manner or obtain any benefit therefrom not specifically approved in writing by Imperial Oil.

11. No Exclusive Marketing Rights

This Agreement does not give Dealer an exclusive right in any market or geographic area to sell Esso-branded motor fuel or conduct any of the Related Businesses. Dealer acknowledges that Distributor and Imperial Oil may directly or indirectly compete with Dealer or the Marketing Premises by using, or authorizing the use of any trademark or trade names owned by Imperial Oil (or any of its subsidiaries or affiliates) from time to time including, without limitation, the Proprietary Marks ("Trademarks"), including in close proximity to, and notwithstanding any commercial impact on the Marketing Premises. Specifically, Distributor reserves, and Imperial Oil has reserved, the right to so compete by:

- a. Establishing or continuing at locations of their choice (including without limitation in close proximity to the Marketing Premises and notwithstanding commercial impact) other distributorships, businesses the same or similar in kind as the motor fuels business or Related Businesses, other retail outlets, franchises, enterprises and other businesses utilizing any of the Trademarks; or
- b. Directly selling Esso-branded motor fuels, other branded motor fuels or operating businesses the same or similar in kind as the motor fuels business or Related Businesses, other retail outlets, enterprises or other businesses at locations of their choice (including without limitation in close

proximity to the Marketing Premises and notwithstanding commercial impact) utilizing any of the Trademarks.

12. Fuel Handling Equipment

Dealer shall properly maintain in a safe condition all tanks, piping, pumps, dispensers, hoses, nozzles and connections in or through which motor fuel is handled while under Dealer's control including any related corrosion prevention and inventory control systems (hereinafter collectively called the "Fuel Handling Equipment"). Distributor may refuse to make delivery if it believes that the Fuel Handling Equipment is not safely maintained or does not comply with applicable safety standards.

- a. The Dealer warrants and represents to Distributor that as of the effective date of this Agreement, the storage tanks, tight fill connections and dispensing equipment on the Marketing Premises are in good condition and repair and meet regulatory requirements.
- b. The Dealer shall keep, at all times, the storage tanks, tight fill connections and dispensing equipment on the Marketing Premises in good condition and repair, and to meet regulatory requirements. The Dealer shall make all needed repairs and replacements promptly.
- c. The Dealer shall have in place on all underground motor fuels storage tanks the following equipment:
 - (1) spill containment boxes; and
 - (2) overfill prevention valves,
 and such equipment shall, at all times, be in good operating condition and repair.
- d. Notwithstanding any other provision in this Agreement, if Distributor is required by law, or if in Distributor's reasonable opinion, the delivery to the Dealer of any motor fuels may constitute a hazard to life, property or the environment (a "hazard"), then Distributor may at any time and without liability therefor suspend or delay delivery of the motor fuels. Distributor shall not be obliged to re-commence delivery of the Motor Fuels until Distributor is satisfied, in its sole discretion, that the hazard does not exist or has ceased to exist.
- e. The Dealer agrees :
 - (1) that if Distributor does or causes the doing of any act to remedy a hazard, whether or not the acts are required by law, the Dealer will pay Distributor for all costs and expenses incurred by Distributor for the doing of such act; and
 - (2) upon completion of the delivery of any product, the Dealer shall inspect the Marketing Premises for any spillage of any motor fuel or other substance and so notify Distributor immediately if any such spillage is determined to have occurred and Dealer shall immediately take all reasonable and safe action to clean up and minimize the environmental impact of any spill.
- f. Distributor shall have no liability whatsoever for losses occasioned by business interruption resulting from or attributable to any other activity taken or not taken, on the Marketing Premises in response to actual or potential environmental hazards.

13. Loaned Equipment

- a. Distributor will loan to the Dealer the equipment listed in Schedule "D" hereto (the "Equipment") as and when it may be available for use on the Marketing Premises in the Dealer's business; and the Dealer hereby accepts such loan. Distributor will pay for all the cost related to the installation of the Equipment.
- b. Distributor shall have the right, in its sole discretion and from time to time, to replace, add to or substitute any one or combination of items of the Equipment.
- c. The Dealer shall:
 - (1) pay all licensing fees, taxes and other fees of every kind applicable to the Equipment;
 - (2) obtain all necessary permits, licences and other rights necessary to permit the installation, maintenance and use of the Equipment on the Marketing Premises, and the removal of the Equipment from the Marketing Premises;
 - (3) not alter, part with possession of, or encumber, lease, or sell the Equipment;
 - (4) complete day to day maintenance and repair, including replacement of parts, of the Equipment unless Distributor advises the Dealer in writing that Distributor shall be responsible for all or any part of such maintenance, repair and replacement for any one or a combination of items of the Equipment;
 - (5) keep and maintain on the Equipment any of the Proprietary Marks or colour scheme which appears thereon;
 - (6) comply with all laws applicable to the Equipment;
 - (7) be responsible for all damage caused to the Equipment by the gross negligence or willful act of any person or persons other than Distributor, its employees, contractors and agents;
 - (8) use the Equipment intended for storage, handling, advertising or displaying the Esso-branded motor fuels and the Petroleum Products, solely for such intended purpose;
 - (9) return to Distributor in good repair and operating condition, reasonable wear and tear excepted (i) all Equipment immediately upon the expiration or earlier termination of this Agreement and (ii) any Equipment replaced by Distributor for any reason immediately upon such replacement;
 - (10) for greater certainty, permit Distributor, its employees, contractors, agents and invitees to enter upon the Marketing Premises at all reasonable times in order to (i) effect maintenance and repair of the Equipment and (ii) replace, add to or substitute any one or combination of items of the Equipment; and
 - (11) upon the expiration or earlier termination of this Agreement, permit Distributor, its employees, contractors, agents and invitees to enter upon the Marketing Premises to remove the Equipment.
- d. The title to and ownership of the Equipment shall at all times remain with the Distributor, and the Dealer agrees not to affix the Equipment to the Marketing Premises in such a way that the Equipment shall become a fixture of the Marketing Premises.

- e. The Dealer acknowledges that it has examined the Equipment provided to the Dealer as of the effective date of this Agreement and is satisfied therewith and shall indemnify Distributor from and against all claims and demands for loss, damage or injury in respect of the Equipment unless such claims or demands arise by reason of Distributor's negligence or a defect in the Equipment, provided the Dealer shall have given Distributor prompt written notice of such negligence or defect.

14. Compliance with Laws

Dealer shall operate and maintain the Marketing Premises and all business conducted at the Marketing Premises, in compliance with all applicable federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits including those concerning the environment, hazardous substances or wastes, toxic substances, and occupational safety and health.

15. Indemnity

The Dealer agrees to indemnify and save harmless Distributor, its partners, directors, officers, employees, agents and affiliates and their respective directors, officers, employees, agents and affiliates (each an "indemnified party") from and against any cause of action, claim, demand, liability, cost, expense, loss or damage (each a "claim") that may be threatened, made or brought against them or that they may suffer or incur directly or indirectly arising out of, in respect of or in connection with:

- a. the operation of the Dealer's business on the Marketing Premises;
- b. the storage, handling and sale of the motor fuels on and from the Marketing Premises; and
- c. the Equipment.

The foregoing indemnity shall not include a claim arising out of, in respect of or in connection with the negligence or willful misconduct of an indemnified party.

16. Insurance

- a. Without in any way limiting any liability of the Dealer under this Agreement, the Dealer shall maintain in full force and effect the following insurance:
 - (1) a comprehensive general liability policy which insures the Dealer in respect of liability to third parties and Distributor arising out of all the operations of the Dealer pertaining to the Dealer's business, whether or not conducted on or from the Marketing Premises with all inclusive limits of at least three million dollars (\$3,000,000) for any one incident. This insurance policy shall insure the Dealer for liability assumed pursuant to this Agreement; and
 - (2) a third party liability policy on all vehicles used in the Dealer's business, with all inclusive limits of at least one million dollars (\$1,000,000) for any one incident.
- b. The insurance policy referred to in subsection 18a.(2) above shall be written using the standard garage automobile policy (S.P.F. No. 4, or its equivalent in provinces with compulsory government insurance plans), or in the alternative, using a standard garage automobile policy in combination with an endorsement excluding owned automobiles and with an owner's form of the standard automobile policy (S.P.F. No. 1).

- c. Upon written request by Distributor, the Dealer shall provide Distributor with a certificate of insurance and such other information as may reasonably be required by Distributor in a form satisfactory to Distributor as evidence of the insurance required under this Section. The insurance policies shall be endorsed to provide that in the event of any change in them which could affect Distributor's interests, or in the event of their cancellation, the insurers shall give prior written notice thereof by registered mail to Distributor thirty (30) days prior to the effective date of any such change or cancellation.
- d. Distributor may amend this Section, in its sole discretion and from time to time, on the anniversary of the commencement date of this Agreement upon sixty (60) days' prior written notice to the Dealer.

17. Technology and Communications

If required by Distributor in writing from time to time, Dealer shall comply with the following:

- a. Install and maintain in good operating condition and at Dealer's expense at the Marketing Premises:
 - (1) a facsimile machine for sending and receiving written communications; and
 - (2) equipment that allows access to the internet or other electronic-transmission or data communications systems designated by Distributor from time to time.
- b. Subscribe, at Dealer's expense, at the Marketing Premises to a voicemail system for transmitting and receiving telephone communications.
- c. Make other reasonable expenditures or investments to update equipment, technology and communications systems at the Marketing Premises, including without limitation, the addition, replacement or updating of point of purchase equipment, pump dispensing technology, credit and cash processing equipment and software.

18. Retail Credit and Debit System

- a. Distributor will provide and the Dealer acknowledges receipt of an imprinter, computer equipment and electronic transmission facilities to be used by the Dealer exclusively in the Dealer Business, and for no other purpose, as the retail credit and debit system presently prescribed by Imperial. The Dealer shall be entitled to use such equipment and facilities and certain maintenance and support services; provided that the Dealer pays for all costs associated therewith, including complying with all requirements of such retail credit and debit system and regular maintenance and replacement in the event of loss or damage, and the Dealer complies with all guidelines therefor.
- b. The Dealer shall pay to Distributor the following fee(s), which Distributor may amend, in its sole discretion and from time to time, upon sixty (60) days' prior written notice to the Dealer:

PIN Pad/Speedpass Mat/Cybera: \$75.00/month.

Sentex Communications: \$10.00/month (Gilbarco) or \$25.00/month (Wayne)

**Bulloch POS Licence Fee: BT9000H \$60.20/month
BT9000PH \$82.60/month
BT9000A \$137.70/month**

Additional Pay Points: 25% of the 1st pay points ALR

- c. The Dealer shall implement and utilize the retail credit and debit system(s) designated by Distributor, in its sole discretion and from time to time, to be used by its dealers and the Dealer further shall comply with all the terms, conditions and regulations relating thereto. The Dealer shall pay all commissions and charges required to be paid by the Dealer to the proprietors and operators of such system(s).
- d. The Dealer shall pay all credit and debit card transaction fees, which are, at the time of the execution of this Agreement, of 1.75% on credit card, 2.20% on fleet cards and 7 cents per debit card transaction.

19. Termination

- a. Where the end of the term of this Agreement set out in Section 3 is later than the end of the term of the Esso Branded Distributor Agreement that is in effect between the Distributor and Imperial Oil at the beginning of this Agreement, or where the said Esso Branded Distributor Agreement is terminated before the end of the term of this Agreement, then this Agreement shall automatically terminate immediately upon the end of the term or the expiry, as the case may be, of the said Esso Branded Distributor Agreement, unless:
 - (1) the said Esso Branded Distributor Agreement is extended, renewed or replaced; and
 - (2) Imperial Oil gives approval to the Distributor that the Marketing Premises are approved as an Esso location.
- b. Distributor, in its sole discretion, shall have the right to terminate this Agreement between Dealer and Distributor immediately and without notice and demand immediate payment of all monies due it as follows:
 - (1) In accordance with the applicable provisions of this Agreement; or
 - (2) Bankruptcy proceedings are instituted by or against Dealer; control of Dealer's business or assets pass by law or otherwise to any person or representative other than Dealer; or
 - (3) Dealer is in breach of a provision under this Agreement; or
 - (4) Dealer fails to timely pay obligations due Distributor under this Agreement; or
 - (5) Dealer is in default of any Third Party Credit Card Agreement entered into between the parties in connection with this Agreement, or in the event the Third Party terminates the Dealers use of the Third Party's credit card processing facilities for any reason whatsoever; or
 - (6) Any intended indemnity, guarantee, or suretyship in connection with this Agreement is revoked or curtailed; or
 - (7) If any motor fuel, other than the Esso-Branded motor fuels are kept, sold or otherwise dealt with on or from the Marketing Premises; or
 - (8) If the Dealer fails to sell the Esso-branded motor fuels strictly in accordance with the grades and kinds designated in the Manual; or

- (9) The Dealer sells any Esso-branded motor fuel: (i) in bulk, (ii) to any person for resale, or (iii) to any person not using a government approved container; or
 - (10) If the Dealer ceases to carry on the Dealer's business on or from the Marketing Premises; or
 - (11) If the Dealer or any of the Guarantors makes or is deemed to have made a general assignment for the benefit of its creditors under the Bankruptcy and Insolvency Act (the "Act"), or if a petition is filed against the Dealer or any of the Guarantors under the Act, or if the Dealer or any of the Guarantors shall be declared or adjudicated bankrupt, or if an application is made in respect of the Dealer or any of the Guarantors under the Companies' Creditors Arrangement Act, or if a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager, moderator or any other officer with similar powers shall be appointed for the Dealer or any of the Guarantors, or if the Dealer or any of the Guarantors shall commit any act of bankruptcy or institute proceedings to be adjudged bankrupt or insolvent or consents to the institution of such appointment or proceedings, or if the Dealer or any of the Guarantors admits in writing the inability to pay its debts generally as they become due or becomes an "insolvent person" as that term is defined in the Act; or
 - (12) If the Dealer or any of the Guarantors shall at any time have any of the goods and chattels of the Dealer's business seized or taken in execution or in attachment by a creditor of the Dealer, or a writ of execution shall issue against such goods and chattels or if the Dealer shall without the prior written consent of Distributor sell any of such goods or chattels except in the normal course of business, such that the foregoing materially impairs the operation of the Dealer's business; or
 - (13) If the Dealer fails to operate the Dealer's business for seventy-two (72) consecutive hours during which time it was not prevented from doing so by fire, flood, labour disturbance or any other cause beyond its control; or
 - (14) If the Dealer or any of the Guarantors is convicted of or pleads guilty to any criminal offense, whether or not related to the Dealer Business; or
 - (15) If the Dealer fails to maintain adequate inventory of the Motor Fuels at the Marketing Premises to meet the needs of its retail customers; or
 - (16) The Dealer or any of the Guarantors attempts to abandon the Marketing Premises or to sell or dispose of its goods or chattels otherwise than in the ordinary course of its business; or
 - (17) If the Dealer (i) is a corporation and a principal shareholder of the Dealer dies or becomes incapacitated or (ii) is a person other than a corporation and the Dealer, a Guarantor or a principal interest holder of the Dealer dies or becomes incapacitated; or
 - (18) If any applicable law now or hereafter in effect renders any provision of this Agreement unenforceable or unlawful.
- c. Upon the expiration or earlier termination of this Agreement for any reason, the Dealer shall immediately:
- (1) cease all use of the Proprietary Marks;

- (2) pay to Distributor or any person, firm or corporation affiliated or associated with Distributor, all amounts and charges as have or will thereafter become due hereunder or under any other agreement between the Dealer and Distributor or any person, firm or corporation affiliated or associated with Distributor, and are then unpaid;
- (3) return to Distributor all copies of the Manual then in the possession of the Dealer;
- (4) notify the telephone company and all listing agencies of the expiration or earlier termination of the Dealer's right to use the Proprietary Marks and terminate all such listings using the Proprietary Marks;
- (5) surrender the Equipment to Distributor; and
- (6) at the request of Distributor, take all such action as may be necessary to cancel any trade or business name registration which contains any part of the Proprietary Marks under any applicable law and furnish Imperial with evidence satisfactory to it of compliance with the Dealer's obligation hereunder within thirty (30) days after the expiration or earlier termination of this Agreement.

Any termination of this Agreement pursuant to this Article shall be without prejudice to any other right (including any right of indemnity), remedy or relief vested in or to which Distributor may otherwise be entitled against the Dealer. All monies paid by the Dealer to Distributor under this Agreement or otherwise shall be retained by Distributor as consideration for the rights and benefits previously conferred on the Dealer hereunder and as liquidated damages. The foregoing remedy shall not exclude any of the remedies which Distributor may have at law or in equity by reason of the default, breach or non-observance by the Dealer of any provision of this Agreement.

20. Claims

- a. Neither Distributor nor Imperial Oil is liable to Dealer for shortages in quantity or quality unless Dealer notifies Distributor within forty-eight (48) hours after delivery (or discovery in the case of latent defect for quality deficiencies) in writing setting forth fully the facts upon which any such claim for shortage in quantity or defect in quality is made and unless Distributor and/or Imperial Oil are given a reasonable opportunity to inspect the Motor fuels concerning which any such claim is being made. Distributor's and/or Imperial Oil's liability with respect to any shortage in quantity shall be limited to an amount equal to the volume of any shortage multiplied by the Dealer's cost of motor fuel including delivery and taxes in effect for the delivery in question. Distributor and/or Imperial Oil's liability with respect to any defect in quality shall be limited to the cost of removing the defective motor fuels from the Marketing Premises at its own expense and replacing them without charge to the Dealer. Distributor and/or Imperial Oil shall not be liable for any special, indirect, or consequential damages to the Dealer for any shortage in quantity or defect in quality. All other claims by Dealer against Distributor or Imperial Oil including their affiliates and subsidiaries of any kind, whether or not arising out of this Agreement, are barred unless Dealer gives Distributor and/or Imperial Oil, as the case may be, notice within ninety (90) days after the event, act or omission to which the claim relates. Whether or not Dealer provides timely notice of a claim, any claim by Dealer is barred unless asserted by the commencement of a lawsuit naming Distributor and/or Imperial Oil as defendant in a court of competent jurisdiction within twelve (12) months after the event, act or omission to which the claim relates.

- b. Dealer recognizes that, at any time during the term of this Agreement, any of the grades or brands of motor fuels sold hereunder or any of the Proprietary Marks may be changed, altered, amended or eliminated. Dealer also recognizes that, at any time during the term of this Agreement, the quality or specification of any of the motor fuels sold hereunder may be changed or altered. If any such change or alteration materially affects the performance of such motor fuels or the needs of Dealer therefor for the purposes intended by Dealer, Dealer may terminate this Agreement as to any such motor fuels so affected on thirty (30) days' prior written notice to Distributor. However, Dealer may not terminate this Agreement for any change in quality or specification of any said motor fuels resulting from compliance with federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits. In the event that the manufacture of certain of the Esso-branded motor fuels sold hereunder is discontinued, Distributor shall notify Dealer of such an event and this Agreement shall terminate as to such motor fuels when such notice is effective.

21. Entire Agreement; Modifications

This Agreement, any documents referred to in this Agreement and any attachments to this Agreement constitute the entire, full and complete agreement between Distributor and Dealer concerning the subject matter hereof, and supersede all prior agreements relating to that subject matter. Except for any permitted to be made unilaterally by Distributor under this Agreement, no amendment, change or variance from this Agreement is binding on either party unless agreed in writing by Distributor's and Dealer's authorized representative. Except as provided in this Agreement, there are no conditions, representations, warranties, undertakings, promises, inducements or agreements whether direct, indirect, collateral, express or implied made by Distributor to the Dealer.

22. Miscellaneous

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective assigns. Any assignment of this Agreement by Dealer without Distributor's written consent shall be void. Distributor's right to require strict performance shall not be affected by any previous waiver or course of dealing. Neither this Agreement nor any modification or waiver shall be binding on Distributor unless in writing signed by an authorized representative. Past performance shall not be deemed a waiver of this requirement.

23. Guarantee

As consideration in part for Distributor entering into this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Guarantors and Distributor, the Guarantors hereby agree as follows:

- a. To unconditionally and irrevocably guarantee to Distributor, as a primary obligor, the due payment by the Dealer of all monies payable under this Agreement and any other obligations whatsoever by the Dealer to Distributor at the time or times appointed therefor, and the due observance and performance by the Dealer of all the covenants, terms, provisions, stipulations and conditions in this Agreement and any other obligations whatsoever to be observed and performed by the Dealer;
- b. To indemnify and save Distributor harmless from and against all costs, losses, expenses and damages it may suffer as a result of the Dealer's non-compliance with any term or condition of this Agreement;

- c. That this shall be a continuing guarantee and shall be binding upon the Guarantors after as well as before the Dealer's non-compliance with any term or condition of this Agreement, until all monies due under the Agreement have been fully paid and satisfied and all covenants, terms, provisions, stipulations, agreements and conditions observed, performed and carried out;
- d. Distributor shall not be bound to exhaust its recourse against the Dealer before requiring payment of any monies or the observance or performance of any obligations by the Guarantors and the Guarantors waive notice of demand for payment or performance, notice of default, protest and notice of protest and any and all other notices and legal and equitable defenses to which the Guarantors may be entitled;
- e. No release or releases and no indulgence or extensions of time or waiver granted by Distributor to the Dealer with respect to the observance or performance or any defaults or breaches of this Agreement by the Dealer nor any dealings between Distributor and the Dealer shall in any way modify, alter or prejudice Distributor or diminish or affect the liability of the Guarantors under this Agreement;
- f. The covenants and agreements herein entered into by the Guarantors are to be construed as both joint and several;
- g. The guarantee and the liability of each of the Guarantors hereunder is not affected by the death or loss or diminution of capacity of any of the Guarantors; and
- h. For clarification, this guarantee extends to and is binding upon each of the Guarantors and their heirs, executors, administrators, legal representatives and assigns, it being understood that this guarantee will continue to bind the Guarantors even if one or each of the Guarantors, as the case may be, cease to be involved, directly or indirectly in the Dealer Business or in the Dealer.

24. Notices

Any notice to be given hereunder:

- a. By Distributor to the Dealer and the Guarantors shall be conclusively deemed to have been given when addressed to the Dealer and: (i) delivered personally or by courier to the Marketing Premises; (ii) mailed by prepaid registered mail addressed to the Dealer at the Marketing Premises; or (iii) sent by electronic facsimile to the Dealer provided evidence of transmission is retained, and
- b. By the Dealer or the Guarantors to Distributor shall be conclusively deemed to have been given when addressed to the following address and: (i) delivered or mailed by prepaid registered mail to Distributor at the following address, or (ii) sent by electronic facsimile to Distributor, provided evidence of transmission is retained, at the following number:

**6302, 333 – 96 Avenue NE
 CALGARY, Alberta
 T3K 0S3
 Attention: Legal Services Department
 Facsimile No.: (403) 567-2599**

Any notice, if delivered personally or by courier shall be conclusively deemed to have been given when actually received, if mailed by prepaid registered mail, on the fifth business day following the deposit thereof in the mail or, if transmitted by electronic facsimile before 3:00 p.m. on a business day, on that business day and, if transmitted by electronic facsimile after 3:00 p.m. on a business day on the business day following the date of the transmission.

25. Quality Assurance

Dealer agrees to store, handle, sell and dispense the Esso-branded motor fuels purchased and sold hereunder in compliance with the procedures provided by Distributor from time to time.

26. Right of Entry

In addition to any other rights of Distributor under this Agreement, Dealer hereby permits Distributor, Imperial Oil and their respective affiliates, employees, agents, vendors, contractors and representatives to enter, during normal operating hours, the Marketing Premises and other places where Dealer conducts any business covered by the terms of this Agreement, to enforce any and all rights and remedies under this Agreement including taking action to preserve the integrity of the Proprietary Marks and determine Dealer's compliance with this Agreement. Neither Distributor nor Imperial Oil is liable to Dealer for any interference with Dealer's business as a result of Distributor or Imperial Oil entering the Marketing Premises and other places where Dealer conducts any business covered by the terms of this Agreement.

27. Survival

All obligations of the parties hereto which expressly or by their nature survive the expiration, earlier termination, permitted transfer and permitted assignment of this Agreement shall continue in full force and effect, until they are satisfied or by their nature expire.

28. Withholding Payments

The Dealer will not on the grounds of the alleged non-performance by Distributor of any of its obligations under this Agreement or under any other agreement between the parties, withhold payment of any amounts due to Distributor or any person affiliated with Distributor.

29. Further Assurances

The parties agree to diligently do or cause to be done all acts or things and to execute all documents and instruments necessary to implement and carry into effect this Agreement to its full extent.

30. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the province or territory of Canada in which the Marketing Premises is located and the federal laws of Canada applicable therein.

31. Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity of such provision in any other jurisdiction.

32. No Waiver

No waiver of any covenant, agreement or obligation in this Agreement shall be construed as a waiver of any succeeding breach thereof or of any other covenant, agreement or obligation in this Agreement, and no delay or omission on the part of any party to exercise any right acquired through the default of any other shall be construed as a waiver of or shall impair such right.

33. Compliance with Law; Workers Compensation; Environmental

- a. The Dealer shall fulfill all the duties imposed upon it by law and shall obey all laws, regulations, rules, by-laws and ordinances applicable to the Dealer's business and to the Marketing Premises, including without limitation the competition laws of Canada and all other applicable laws relating to competition.
- b. The Dealer shall: (i) comply fully, at the Dealer's sole expense, with provisions of the relevant Workers' Compensation legislation; and (ii) obtain for all the persons employed in the Dealer's business, including the Dealer and the principal shareholder(s) and interest holder(s) of the Dealer, as the case may be, the complete package of benefits available under the relevant Workers' Compensation legislation.
- c. The Dealer shall comply strictly with all applicable laws, including without limitation applicable environmental protection, waste disposal, fire codes and petroleum handling laws and regulations.

34. No Special or Consequential Damages

Distributor shall not be liable for any special or consequential damages or loss of profit arising from any breach of its obligations under this Agreement.

35. Independent Legal Advice

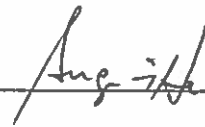
Each of the Dealer and the Guarantors acknowledges that it: (i) has had ample time to read and has read this Agreement and has been afforded the opportunity to retain independent legal advice to assist it in its review, execution and delivery of this Agreement; and (ii) has of its own free will either declined to do so or obtained independent legal advice.

[Remainder of page intentionally left blank. Signature page to follow.]

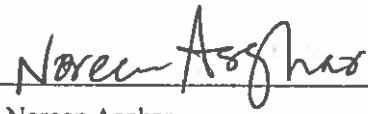
EXECUTED as of the date first herein specified.

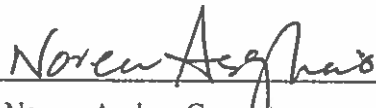
PARKLAND FUEL CORPORATION

Per:  _____

Per:  _____

2314251 ONTARIO INC.

Per:  _____
Noreen Asghar

 _____
Noreen Asghar, Guarantor

SCHEDULE "A"

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Fuel Corporation and 2314251 Ontario Inc.

PRE-AUTHORIZED DEBIT (PAD) FORM

We acknowledge that this authorization is provided for the benefit of the Payee and our financial institution and is provided in consideration of our financial institution agreeing to process debits against our account in accordance with the Rules of the Canadian Payments Association (the CPA rules).

Payee Information		
Company Name: Parkland Fuel Corporation		
Address: #100-4919-59 Street		
City: Red Deer	Prov: AB	Postal Code: T4N 6C9
Telephone: 1-866-357-6400	Fax: 403-346-3015	

Account Holder Information		
Company Name: 2314251 Ontario Inc.		
Address: 18 Samson Court		
City: Brampton	Prov: Ontario	Postal Code: L6Y 3M4
Telephone: 416-885-8749	Fax:	

Financial Institution		
Company Name: RBC		
Address: 401 George St. North		
City: Peterborough	Prov: ONT	Postal Code: K9H 3R4
Telephone: 705-876-3502	Fax:	
Bank Account # 1017326	Institution # 003	Transit # 03782

Account Information: The account that the Payee is authorized to draw upon is indicated above. A specimen cheque available for this account has been marked "VOID" and is attached to this authorization.

Change in Account Information: We undertake to inform the Payee, in writing, of any change in the account information provided in this authorization prior to the next due date of the PAD.

Valid Signing Authority: We warrant and guarantee that all persons whose signatures are required to sign on this account have signed this agreement below.

Authority to Debit Account: The Payor hereby authorizes the Payee to draw on the Account with the Processing Institution (each a pre-authorized debit or ("PAD")) to facilitate the payment of any and all such monies owing by the Payor to the Payee, including without limitation any monies owing pursuant to any agreement(s) among the payee, the Payor and others.

Validation by Financial Institution: We acknowledge that our financial institution is not required to verify that a PAD has been issued in accordance with the particulars of our Authorization including, but not limited to, the amount.




RBC Royal Bank

September 25, 2017

To: Whom it may concern

Re: Void Cheque

Please accept this copy of a void cheque as confirmation of 2314251 ONTARIO INC.'s bank account information for the purposes of pre-authorized debit or credit.

2314251 ONTARIO INC. 18 SAMSON CRT BRAMPTON ON L6Y3M4 CAN	2017 YYYY	09 MM	25 DD
PAY TO THE ORDER OF	VOID		\$ _____
 ROYAL BANK OF CANADA			_____ / DOLLARS
MEMO _____	03782 Transit	- 003 -	1017326 Account Number

Printed from Royal Bank Online Banking.

Royal Bank of Canada Website, © 1995-2017

Frequency and Amounts of Debits: A debit, in paper, electronic or other form may be drawn on our account in accordance with the trade terms, either currently in place or as may be revised under the terms of our trade agreement with the Payee.

Our Rights of Dispute: A PAD may be disputed by us under the following conditions:

1. The PAD was not drawn in accordance with our Authorization; or
2. The Authorization was revoked; or
3. Pre-notification was not received.

In order to be reimbursed, we acknowledge that a declaration to the effect that either (1),(2) or (3) took place, must be completed and presented to our branch of our financial institution up to and including 10 business days in the case of a business PAD after a date on which the PAD in dispute was posted to our account.

We acknowledge that a claim on the basis that our Authorization was revoked, or any other reason, is a matter to be resolved solely between the Payee and ourselves when disputing any PAD after 10 business days in the case of a business PAD.

Acceptance of Delivery of Authorization: We acknowledge that the provision and delivery of this Authorization to the Payee constitutes delivery by us to our financial institution. Any delivery of this Authorization to you constitutes delivery by us.

Cancellation of Arrangement: This Authorization may be cancelled at any time upon notice by us. We acknowledge that, in order to revoke this Authorization, we must provide notice of revocation to the Payee.

Pre-Notification Waiver: We agree with the Payee to waive the requirement under the CPA rules to receive a written pre-notification prior to each PAD as set out in the rules.

Validation by Processing Institution: We acknowledge our financial institution is not required to verify that any purpose of payment for which a PAD was issued has been fulfilled by the Payee as a condition to honouring a PAD issued or caused to be issued by the Payee on our account.

Contract for Goods and Services: Revocation of this Authorization does not terminate any contract for goods or services that exists between us and the Payee. Our Authorization applies only to the method of payment and does not otherwise have any bearing on the contract for goods and services exchanged.

Dated this 23rd day of September, 2017.

Noreen Asghar
Authorized Signatory

NOREEN ASGHAR
Name (please print)

DIRECTOR
Title (please print)

Authorized Signatory

Name (please print)

Title (please print)

SCHEDULE "B"

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Fuel Corporation and 2314251 Ontario Inc.

OPERATING STANDARDS

The following operating standards for the Premises set out the Dealer's responsibilities with respect to safety and other operating procedures for the Premises and must be complied with strictly.

Operating Procedures

- Be aware of, and comply with, any applicable law relating to the operations on the Premises and any accounting and inventory management system requirements.
- Understand all duties in running the Premises.
- Ensure that the Dealer's employees understand the duties delegated to them.

Safety

The Dealer's employees must:

- Use safe work procedures when carrying out their duties.
- Be aware of and follow safe work practices when carrying out their duties.
- Be trained in the recognition and correction of hazardous conditions to avoid emergencies.
- Be aware and comply with applicable safety regulations.

Security/Robbery Prevention

- Take proper preventative measures to reduce the risk of robbery.
- Train the Dealer's employees in security and robbery prevention.
- The Dealer must train the Dealer's employees in the procedures to follow before, during and after a robbery.

Critical Equipment

- Know the critical equipment on the Premises.
- Ensure that the Dealer's employees are aware of the critical equipment on the Premises.
- Ensure that when critical controls are disarmed, appropriate communication takes place prior to such disarming and that such critical controls are re-activated.
- Follow appropriate procedures for disarming the critical equipment, including completing the form for the disarming or removal of critical controls and shutdown systems.

Emergency Response

- Post the emergency response plan wall chart on the Premises in a conspicuous place.
- Train Dealer's employees in emergency response. This should include a review of potential hazards and how to deal with them, and the operation and use of fire extinguishers.
- Have the required equipment and supplies to respond to emergency situations.
- Hold at least two practice drills each year using different emergency situations.
- Document the Dealer's employee training and practice drills.

Workplace Hazardous Materials Information System ("WHMIS")

- Educate and train all the Dealer's employees on the WHMIS program prior to their starting work on the Premises and provide documented evidence thereof.
- Ensure that all Material Safety Data Sheets for controlled products are current, available and accessible to the Dealer's employees.
- Conduct at least once per year a review of WHMIS with the Dealer's employees and provide a forum for the Dealer's employees to discuss any related concerns and issues.
- Ensure that all containers of controlled products are properly labeled.
- Ensure that all fill pipes, gauge pipes and valves are properly tagged.
- Keep an inventory list of controlled products on the Premises in those provinces where it is required.

Waste Management

- Be familiar with and comply with the applicable waste regulations.
- Dispose of waste generated at the Premises according to the applicable waste regulations.
- If required by applicable laws, have a signed contract with a licensed hauler for the removal of hazardous wastes from the Premises.
- Use only a licensed hauler to remove and transport hazardous waste from the Premises.
- Keep copies of all waste manifests on file for a minimum of two (2) years, or longer if required by applicable laws.

Licences and Permits

- Have the necessary operating licences and permits to meet regulatory requirements.
- Have on the Premises all manuals required or advisable to operate the service station.

Incident Definition and Reporting

- Report specified incidents to the territory manager.
- Be aware of and understand the Dealer's responsibilities for reporting specific incidents directly to government agencies.
- Share the benefit of past incidents with the Dealer's employees.
- Document the incidents and keep them on file.

Training

- Provide initial and continuous training to all the Dealer's employees.
- If required by applicable laws, maintain training records for each of the Dealer's employees on the Premises.

Credit Card

- Follow the standards for credit card authorization and processing documented in the Credit Card Guide.
- Retain the credit card slips for:
 - Six (6) months for manual transactions; and
 - Twelve (12) months for electronic transactions.
- Provide copies of credit card slips to Imperial within the time requested.
- Submit manual slips on a timely basis.

Esso Extra Card

- Collect, use and disclose information gathered for use by Imperial in connection with the Esso extra card only in accordance with applicable laws.
- Display all point-of-purchase materials prescribed by Imperial in connection with the Esso Extra card.
- Ask each purchaser of applicable merchandise or services whether he or she has an Esso extra card. If so, whether he or she would like to use it and, if not, whether he or she would like to obtain an Esso extra card.
- Record and process the sales transactions of retail customers with an Esso extra card, using the Esso extra card.
- Maintain an adequate supply of merchandise redeemable by holder of Esso extra cards.
- Redeem valid Esso extra card reward certificates presented by retail customers for prescribed merchandise or services.

Record Retention

- Keep all relevant records on the Premises to be able to prove that you have taken the necessary steps to comply with applicable law.

SCHEDULE "C"

- Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Fuel Corporation and 2314251 Ontario Inc.

FACILITY REQUIREMENTS

Item	Description		"New" & >100K D1 Sites	Min Stds New	Min Stds Renewal Or Upgrade
Weather Canopy	Fascia	3D	X		
(Canopy required at all D1 & D2 sites only)		2D		X	X
(Standards for all other sites with existing canopies)	Column Cladding	New Style (wide perpendicular to pump) Colour - Cambridge White by Color Steel Inc.	X		
		Current (wide facing pump) Colour to match Cambridge White by Color Steel Inc		X	
		None (steel column only) Colour to match Cambridge White by Color Steel Inc.		X	X
Pump/Dispenser		Image 2000 (Blue Graphics for new gasoline dispensers -- Red for existing)	X		
		Previous Esso			X
		Pay at the pumps & Speedpass	X		
MID		New Image (Flag Type)	X***		
		Previous Esso		X	X
Painting	MID Structural Posts, Sign Frames	P - 5 White	X	X	X
	Lighting poles, Posts, island fascia, Message Sign Frames	P - 13 Grey	X	X	X
POS	G-Site		X		
	Operating retail automation system compatible with Imperial's card processing network			X	X

***Subject to MID sign permit availability

Definitions

3D	600mm illuminated Red Frameless Flexface Fascia with 300 non-illuminated white metal Fascia. C/W individually "ESSO" Red illuminated letters.
2D	900mm illuminated Frameless Flexface Fascia, 600mm high red and 300 mm White. with ESSO letters.
MID	Major Identification Sign
D-1	<p>Dealer Forecourt & Backcourt meeting the following requirements:</p> <ul style="list-style-type: none"> • Forecourt: Canopy with proper I.D. Standards that can be upgraded to 3D, 3 Products with proper pump ID. Current Major Identification sign. Good Gas Location. • Backcourt: Modern offer clearly compatible with Gasoline (Customer draw). Note: Not authorized to use "Tiger Express" or "On The Run" trademarks, or interior/exterior colour schemes and graphics.
D-2	<ul style="list-style-type: none"> • Forecourt: Canopy with proper I.D. Standards Minimum 2 (preferred 3) products with proper pump I.D. M.I.D. S/B goal post (minimum) but other to standard acceptable • Backcourt: Modern offer clearly compatible with Gasoline (Customer draw). Note: Not authorized to use "Tiger Express" or "On The Run" trademarks, or interior/exterior colour schemes and graphics.
100k	Market Area Population in 1000's

Changes To Brand Standards - Imperial may change its "Facility Requirements for Distributor Esso-Branded Outlets" from time to time. Imperial will notify the Distributor of all changes and the Distributor must comply with these changes for all future applications.

SCHEDULE "D"

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Fuel Corporation and 2314251 Ontario Inc.

EQUIPMENT

The following is a list of the Equipment:

Equipment Type	Quantity
Esso Owned MID Pylon sign	1
LED mogas price insert	1
LED diesel price insert	1
Esso canopy fascia	1
Exterior merchandiser	1
Windshield washer unit	4
Garbage unit	4

SCHEDULE "E"

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Fuel Corporation and 2314251 Ontario Inc.

CUSTOMER LOYALTY OBLIGATIONS

1. Participation

Dealer shall participate in the Esso Extra Win & Earn promotional program (the "Program") offered by Imperial to its Distributors, retailers and retail customers. Dealer shall comply with all requirements of the Program, including without limitation, the procedures, instructions and guidelines relating to the Program (the "Guidelines"), as provided or amended by Imperial to Dealer from time to time in its sole discretion. Without limiting the generality of the foregoing, Dealer shall:

- collect and communicate customer information to Imperial for Imperial's use only and in accordance with applicable laws and regulations (for greater certainty, Dealer shall not provide any customer information to any person other than Imperial nor shall Dealer use any customer information other than in accordance with the Guidelines or as otherwise directed by Imperial from time to time).
- ensure the Esso Extra card or the Royal Bank Esso VISA card is offered to each retail customer in accordance with the Guidelines,
- record and process sales transactions and the applicable Program points in accordance with the Guidelines for retail customers participating in the Program,
- redeem Program points as requested by customers at the Site for merchandise or services in accordance with the Guidelines,
- maintain an adequate supply of merchandise required to redeem Program points, or, if such merchandise is unavailable, maintain a supply of equivalent merchandise, and display all Program point-of-purchase promotional materials or signage at the times and in the manner prescribed by Imperial during the Program.

2. Electronic Reward Redemption Remuneration

The Distributor shall pay Dealer an amount (the "Reward Payment"), plus applicable taxes (other than income taxes), for each valid Program reward redeemed electronically at the Site in accordance with the Guidelines. The Reward Payment payable by the Distributor to Dealer shall be credited to Dealer's account with the Distributor on or about the 15th day and on or about the last day of each month. Distributor may change the manner and the time the Reward Payment is due and payable in its sole discretion and from time to time upon sixty (60) days prior written notice to the Dealer. The Reward Payment shall be calculated by Imperial as the actual number of reward redemptions for each type of reward redeemed electronically by customers at the Site multiplied by the reward cost rate as determined solely by Imperial and documented in the Guidelines.

3. Promotional Program Fee

If applicable law permits, the Dealer shall pay Distributor a promotional program fee (the "Program Fee"), plus applicable taxes (other than income taxes). The Program Fee payable by Dealer to Distributor shall be debited directly from Dealer's account with the Distributor on or about the 15th day and on or about the last day of each month. Imperial may change the amount, manner and the time the Program Fee is due and payable in its sole discretion and from time to time upon sixty (60) days prior written notice to the Dealer. The Program Fee shall be calculated as the number of points (the "Fee Points") awarded to customers for transactions made at the Site multiplied by the program rate (the "Fee Rate").

The Fee Points are the total of:

- the base points issued at a rate of one point per dollar spent,
- all bonus points issued for sales of different grades of gasoline or car washes, and
- points issued for offers unique to the Site as instituted or extended by Dealer.

For greater certainty, the Fee Points excludes:

- (i) promotional points issued via direct mail offers extended by Imperial to customers
- (ii) points issued to holders of the Royal Bank Esso VISA card at a rate of one point per dollar charged to the card regardless of the vendor where the card is used, and
- (iii) bonus points issued for the purchase of specific merchandise on the Site through a program instituted or extended by Imperial.

The Fee Rate is defined as:

Fuel products & services	\$0.005 for each point issued
Convenience store products & services	\$0.005 for each base point issued
Car wash products & services	\$0.005 for each base point issued
Other products & services	\$0.005 for each point issued
Vehicle repair bay products & services	\$0.005 for each point issued

GUARANTEE**TO: PARKLAND FUEL CORPORATION**

100, 4919 – 59 Street
 RED DEER, Alberta, T4N 6C9
 (hereinafter called "Parkland")


RE: Guarantee of Corporate Indebtedness

The undersigned (hereinafter called the "Guarantor") being a principal of **2314251 Ontario Inc.** (hereinafter called the "Corporation") in consideration of Parkland granting or extending credit (the "Indebtedness") to the Corporation arising from any dealings between Parkland and the Corporation, present or future, direct or indirect, including but not limited to the purchase of petroleum products, including all accessories related thereto, do hereby for myself, my heirs, executors, administrators (and where there are more than one undersigned Guarantor, jointly and severally) unconditionally guarantee the payment when due of all Indebtedness, interest and penalties thereon, if applicable, owing to Parkland by the Corporation from time to time and unconditionally guarantee the performance of all obligations of the Corporation to Parkland. Parkland shall have the right at any time to take and release any collateral or other securities, to extend the time for payment by the Corporation or any person liable upon any collateral or other securities, to compromise or compound with the Corporation or to release the Corporation without notice to the Guarantor and without the Guarantor's consent and without discharging or effecting the liability of the Guarantor to Parkland.

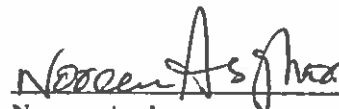
Parkland shall not be bound to exhaust its recourses against the Corporation or other persons, or the securities Parkland may hold before being entitled to payment from the Guarantor.

This Guarantee shall be a continuing Guarantee and shall extend to and be security for all the sums of money, indebtedness and other obligations which shall or at any time be due from the Corporation to Parkland.

GIVEN under hand and seal at Mississauga, in the Province of Ontario this 23rd day of September, 2017.



 Signature of Witness
 (MIRZA Z. CHAUDHARY)



 Noreen Asghar

AFFIDAVIT OF EXECUTION

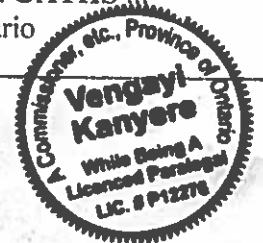
CANADA)
PROVINCE OF ONTARIO)
TO WIT)

I, MIRZA Z. CHAUDHARY
of Mississauga, in the Province of Ontario,
MAKE OATH AND SAY:

1. **THAT** I was personally present and did see **Noreen Asghar** named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes therein.
2. **THAT** the same was executed at Mississauga, in the Province of Ontario and that I am the subscribing witness thereto.
3. **THAT** I know the said **Noreen Asghar** and she is in my belief of the full age of 18 years.

SWORN BEFORE ME at the City
of Brampton, in the Province
of Ontario, this 23 day
of September, A.D. 2017.

VENGAYI KANYERE
A COMMISSIONER FOR OATHS in
and for the Province of Ontario
My Commission expires _____



[Signature]
Signature of Witness
Name: MIRZA Z. CHAUDHARY
Address: 30 Topflight Drive #6
Mississauga ONT L5S 0A8

**THE GUARANTEES ACKNOWLEDGMENT ACT
CERTIFICATE OF NOTARY PUBLIC**

I HEREBY CERTIFY THAT:

1. Noreen Asghar, of Brampton, in the Province of Ontario, the Guarantor in the Guarantee dated September 23, 2017 and made between **Parkland Fuel Corporation and 2314251 Ontario Inc.**, which this Certificate is attached to or noted upon, appeared in person before me and acknowledged that he had executed the Guarantee.

2. I satisfied myself by examination of Noreen Asghar, that she is aware of the contents of this Guarantee and understands it.

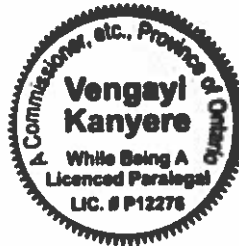
GIVEN at the City of Mississauga, in the Province of ~~Alberta~~, this 23rd day of September, A.D. 2017, under my hand and seal of office.
ONTARIO

Vengayi Kanyere
A NOTARY PUBLIC in and for the
Province of Ontario

STATEMENT OF GUARANTOR

I am the person named in this Certificate.

NOREEN ASGHAR
Noreen Asghar



ADDENDUM

THIS ADDENDUM IS ATTACHED TO AND FORMS PART OF THE ESSO-BRANDED MOTOR FUEL SUPPLY AGREEMENT DATED EFFECTIVE **September 1st, 2017** AND MADE BETWEEN PARKLAND FUEL CORPORATION, AS DISTRIBUTOR, AND 2314251 ONTARIO INC., AS DEALER AND NOREEN ASGHAR, AS GUARANTOR.

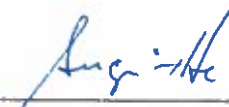
FORGIVABLE LOAN

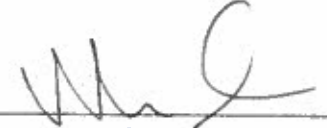
1. At the request of the Dealer, the Distributor will provide a forgivable loan up to a maximum of **THREE HUNDRED THOUSAND DOLLARS (\$300,000)** to be used towards site improvements at the Marketing Premises.
2. The said sum of **\$300,000** will be earned by the Dealer in the following manner: every contract year, the Distributor will forgive an amount equal to **\$30,000**, subject to the following: if the Dealer discontinues the business of a retail petroleum fuels outlet at the Marketing Premises, or if said Esso-Branded Motor Fuels Supply Agreement is terminated or cancelled or expires at any time prior to its having been in full force and effect for a time sufficient for the Dealer to earn the said sum then the Dealer hereby promises to repay, on demand, to the Distributor that portion of the said sum of **\$300,000** that has not been earned by the Dealer.
3. Prior to any advancement of funds:
 - (a) The Dealer will execute and deliver the Esso-Branded Motor Fuel Supply Agreement and this Addendum to the Distributor;
 - (b) The Dealer will cause to be delivered to the Distributor sufficient security in the form of:
 - (i) a Firm Irrevocable Letter of Credit (in form and content acceptable to the Distributor) issued by a recognized financial institution in the sum of **\$300,000.00**; or
 - (ii) a Collateral Mortgage in the principal amount of **\$300,000.00** granted by the Borrower in favour of the Lender, on the Marketing Premises;
 - (d) There is no event of default under this Agreement; and
 - (e) There is, in the opinion of the Distributor, acting reasonably, no material adverse change in risk.

UNIFORMS


4. During the term of this Agreement, the Distributor is to reimburse to the Dealer, upon presentation of supporting invoices at the latest December 1st of each year, the costs incurred by the Dealer for the purchase, from Imperial Oil's authorized supplier, of uniforms (identified "Esso") for the operation of the Marketing Premises up to a maximum annual amount of \$600.

PARKLAND FUEL CORPORATION

Per: 
SERE DILOTTE

Per: 
MADSAIVI

2314251 ONTARIO INC.

Per: 
Noreen Asghar


Noreen Asghar, Guarantor

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This is Exhibit
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to the affidavit of
Afreen Hafiz
affirmed remotely on
July 9, 2023

DocuSigned by:
Morgan Webb

5B9ED62A2A344E2

A commissioner of oaths, etc.



March 06, 2023

To Whom It May Concern


Dear Sirs/Madams:

**RE: OUTSTANDING FORGIVABLE LOAN BALANCE
OUR FILE: STN 52189 – SUTTON, ON**

Pursuant to a request received by Ms. Van Acker, please be advised that Parkland Corporation ("**Parkland**") can confirm that the outstanding balance of the forgivable loan is \$180,000.00 as of February 28, 2023. There is no interest charged on this forgivable loan.

Yours truly,

PARKLAND CORPORATION

DocuSigned by:

150B7C254DAA4DC...

Sofia Burt
Assistant Controller


Parkland Corporation
#1800, 240 – 4th Avenue SW
Calgary, AB T2P 4H4

T. 403 357 6400
F. 403 567 2599
E. info@parkland.ca

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This is Exhibit
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to the affidavit of
Afreen Hafiz
affirmed remotely on
July 9, 2023

DocuSigned by:


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A commissioner of oaths, etc.

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Court File No. CV-22-00685439-00CL

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

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

2314251 ONTARIO INC., MOHAMMAD ABDUL HAFIZ and KAWSER ZAHAN

Respondents

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
2314251 ONTARIO INC.**

JUNE 5, 2023

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APPENDICES

1. Endorsement of The Honourable Mr. Justice Osborne dated October 27,2022
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9. Fee Affidavit of Jason DiFruscia sworn June 5, 2023
10. Receiver's Interim Statement of Receipts and Disbursements as at June 5, 2023

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I. APPOINTMENT AND BACKGROUND

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2. 2314 is a Canadian owned, private corporation incorporated pursuant to the laws of the Province of Ontario.
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- c) The Company shall remain current in all other obligations and covenants under the credit agreement, including without limitation all reporting requirements; and
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Attached to this First Report as **Appendix "1"** is a copy of the October Endorsement.

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7. The Receiver retained Harrison Pensa LLP (the “**Receiver’s Counsel**”) as its independent legal counsel.

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8. The purpose of this First Report is to advise the Court as to the steps taken by the Receiver to date in these proceedings and to seek Orders from the Court, including
 - a) approving this First Report and the actions and activities of the Receiver described herein;
 - b) increasing the Receiver’s Borrowings Charge (as defined in the Receivership Order) from \$300,000 to \$400,000;
 - c) authorizing the sales and marketing process in respect of the Real Property;
 - d) authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the Sales Process (as defined herein) and authorizing the Receiver to take all necessary actions to remediate, as is required, the environmental issues present at the Real Property;
 - e) releasing and discharging the Receiver from any and all liability that the Receiver now has or may hereafter have by reason of, or in any way arising out of the environmental issues at the Real Property, save and except for any gross negligence or wilful misconduct on the Receiver’s part;
 - f) approving the Receiver’s Interim Statement of Receipts and Disbursements as at June 5, 2023; and

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- g) approving the fees and disbursements of the Receiver to and including April 30, 2023 and the fees and disbursements of the Receiver's Counsel to and including June 4, 2023.

Disclaimer

- 9. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for any other purpose than intended.
- 10. In preparing this First Report, the Receiver has relied upon certain information found on site and/or provided to it by the management of the Company including, without limitation, past financial performance, and other financial information. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other forms of assurance with respect to such information. Future oriented financial information relied upon in this First Report is based on assumptions regarding future events, actual results achieved may vary from this information and these variations may be material.
- 11. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

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III. RECEIVER'S ACTIVITIES

12. A copy of the Receivership Order was provided to the Company. In addition, the Receiver prepared its statutory Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and mailed same to all creditors known to the Receiver.
13. Since the appointment of the Receiver on November 15, 2022, the Receiver directly or through the Receiver's Counsel attended to the following:
 - a) secured possession of the Real Property and to all necessary repairs where applicable;
 - b) arranged for insurance on the Real Property and other assets;
 - c) communicating with utility companies and arranging for continuation of supply;
 - d) arranged for snow removal during the winter months;
 - e) arranged for alarm service and regular site (at least three (3) times per week) inspections by a property manager engaged by the Receiver;
 - f) communicated with former employees with respect to the Wage Earner Protection Program ("**WEPP**") and other issues;
 - g) communicated with the York Region with respect to its drinking water system directive and steps required at the Real Property with respect to same;

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- h) communicated with the Canada Revenue Agency (“**CRA**”);
- i) obtained two appraisals of the Real Property; and
- j) engaged the services of an environmental consultant to conduct a Phase II Environmental Assessment and a Soil and Groundwater Delineation Assessment which is discussed in greater detail below.

IV. REAL PROPERTY

- 14. As noted previously in this First Report, 2314 owns the Real Property. The Receiver retained the services of Antec Appraisal Group Inc. (“**Antec**”) and Wagner, Andrews & Kovacs Ltd. (“**Wagner**”) to provide an appraisal of the value of the Real Property. The Receiver also engaged the services of A&A Environmental Consultants Inc. (“**A&A**”) to prepare a Phase II Environmental Assessment Report related to the Real Property.
- 15. On February 6, 2023, A&A provided a Phase II Environmental Site Assessment (“**A&A’s Phase II Report**”) for the Real Property. A&A’s Phase II Report discovered slight exceedances in both soil and groundwater samples and A&A recommended that a delineation assessment should be conducted to identify the extent of the identified impacts. Subsequently, the Receiver engaged A&A to conduct the delineation assessment. Attached to this First Report as **Appendix “4”** is a copy of the A&A Phase II Report.
- 16. On March 22, 2023, A&A provided the Receiver with the delineation assessment report with respect to the Real Property (“**A&A’s Delineation Report**”). A&A’s

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Delineation Report confirmed the contamination on site and indicated that the impacted area of the site appears localized to the northern area of the site. A&A further recommended a cleanup program to reduce the identified impacts to below applicable MECP guidelines. In addition, A&A recommended that all monitoring wells should be maintained in accordance with the provisions of Ontario Regulation 903 including particular attention to ensuring surface casings are properly sealed and protected from damage due to winter maintenance. Attached to this First report as **Appendix “5”** is a copy of A&A’s Delineation Report.

17. On March 24, 2023, A&A provided a quotation for the cleanup/remediation of the contaminated soil and groundwater at the Real Property (the “**A&A Cleanup Proposal**”). Attached to this First Report as **Appendix “6”** is a copy of the A&A Cleanup Proposal. Subsequent to receipt of the A&A Cleanup Proposal, the Receiver participated in multiple conversations with A&A regarding the scope of the work and the potential for fully remediating the Real Property. On April 4, 2023, the Receiver received an email from Dr. Ali Rasoul of A&A providing conclusions and recommendations to address the contamination at the Real Property. Attached to this First Report as **Appendix “7”** is a copy of the email from Dr. Ali Rasoul.
18. The Receiver has discussed this issue with TD, the senior secured creditor of the Company. TD has advised that it is in support of carrying out the cleanup/remediation of the Real Property as outlined in the A&A Cleanup Proposal and has also advanced funds to the Receiver to fund the remediation and the Receiver issued a Receiver’s Certificate to TD with respect to the funding. Accordingly, the Receiver is seeking an order from the Court authorizing the

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Receiver to take all necessary actions to remediate, as is required, the environmental issues present at the Real Property.

V. PROPOSED SALES PROCESS

19. Pursuant to paragraph 3(j) of the Receivership Order, the Receiver is empowered and authorized to, amongst other things, market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
20. Accordingly, the Receiver is proposing that the following sale process be followed in relation to the Real Property (the “**Sales Process**”):
 - a) the Receiver to complete the remediation of the Real Property as described in the A&A Cleanup Proposal; and
 - b) Upon the successful completion of the remediation, the Receiver to:
 - i. obtain marketing proposals from at least two (2) real estate brokerages to list and sell the Real Property;
 - ii. list the Real Property with a real estate brokerage on the multiple listing service in accordance with the marketing plan of the chosen real estate broker; and

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- iii. enter into an agreement of purchase and sale, subject to approval of the Court on a subsequent motion brought by the Receiver, with the successful purchaser.

VI. PROFESSIONAL FEES AND DISBURSEMENTS

21. Attached hereto as **Appendix "8"** is the Affidavit of Mukul Manchanda sworn June 5, 2023, which incorporates by reference a copy of the Receiver's time docket pertaining to the receivership of 2314 to and including April 30, 2023, in the amount of \$60,697.39 inclusive of disbursements and HST. This represents a total of 149.10 hours at an average rate of \$360.26 per hour before HST.
22. Attached hereto as **Appendix "9"** to this First Report is the Affidavit of Jason DiFruscia, sworn June 5, 2023, which incorporates by reference a copy of the time docket of the Receiver's Counsel for the period to and including June 4, 2023, in the amount of \$10,176.34 inclusive of disbursements and HST.
23. The Receiver has reviewed the accounts of the Receiver's Counsel and is of the view that all the work set out in these accounts was carried out and was necessary, that the hourly rates of the lawyers who worked on this matter were reasonable in light of the services required and that the services were carried out by lawyers with the appropriate level of experience.

VII. FUNDING OF THE RECEIVERSHIP

24. Pursuant to paragraph 21 of the Receivership Order, the Receiver is empowered to borrow by way of a revolving credit or otherwise, such monies from time to time

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as it may considers necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (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 periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Receivership Order, including interim expenditures.

25. In accordance with the above, the Receiver has borrowed \$300,000 from TD to deal with the operational and environmental issues related to the Real Property. As at June 5, 2023, the Receiver has \$228,373.02 in the receivership estate's trust account which is mostly earmarked for payment of cost associated with: a) the remediation described under A&A's Cleanup Proposal; and b) operational expenses for the next six months. In the event, the Receiver was required to borrow further funds to deal with unknown issues, it will not be able to borrow additional funds given the Receiver has already borrowed the maximum allowed under the Receivership Order. Accordingly, the Receiver is requesting that the Court increases the Receiver's Borrowing Charge (as defined in the Receivership Order) from \$300,000 to \$400,000.

VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
AS AT JUNE 5, 2023

26. Attached hereto as **Appendix "10"** is a copy of the Interim Statement of Receipts and Disbursements as at June 5, 2023 prepared by the Receiver.

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IX. RECOMMENDATIONS

27. The Receiver respectfully requests that this Honourable Court grant the relief sought in this First Report.

All of which is respectfully submitted.

Dated at Toronto, this 5th, day of June 2023

msi Spergel inc.,
solely in its capacity as Court-appointed
Receiver of 2314251 Ontario Inc. and not
in any corporate or personal capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

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This is Exhibit
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to the affidavit of
Afreen Hafiz
affirmed remotely on
July 9, 2023

DocuSigned by:

Morgan Webb

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A commissioner of oaths, etc.



**THE LAW OFFICES OF JACK FRYMER
PROFESSIONAL CORPORATION**

Reply to: Jack Frymer
Direct Line: (416) 446-1230
Email: jfrymer@ynlclaw.com

DELIVERED VIA EMAIL to: pgennis@spergel.ca

June 30, 2023

**msi Spergel Inc., in its Capacity as
Court-Appointed Receiver of
2314251 Ontario Inc.**
200-505 Consumers Road
Toronto, ON, M2J 4V8

Attention: Philip H. Gennis

**RE: Motion by 2314251 Ontario Inc. with respect to the Discharge of the Receivership
regarding the Lands, Premises and Business located at 26233 Highway 48 Sutton, Ontario.**

Dear Mr. Gennis,

We are the lawyers for 2314251 Ontario Inc. with respect to its real estate and commercial matters.

This letter confirms that our client has deposited the sum of \$2,100,000.00 into our trust account (see copy of trust ledger attached), and has instructed us to hold this money in our trust account pending the outcome of the subject motion.

We confirm that we have accepted these instructions and are prepared to follow them.

**Yours very truly,
THE LAW OFFICES OF JACK FRYMER
PROFESSIONAL CORPORATION**

JACK FRYMER

JF/attach.

cc. Client

cc. Jonathan Rosenstein (jrosenstein@rosensteinlaw.ca)

cc. Melinda Vine (mvine@harrisonpensa.com)

Date	Received From/Paid To	Chq#	General		Fees	Bld	Trust Activity		Balance
Entry #	Explanation	Rec#	Repts	Disbs		Inv#	Acc	Ropts	Disbs
1491	Hafiz, Afreen								
230164	231... Ontario Payment of Debt								
Jul 8/2023	Transfer: 230159 To 230164								
149594	pursuant to direction	X1554				1	2100000.00		2100000.00

Resp Lawyer: JF

UNBILLED					BILLED					BALANCES							
TOTALS	CHE	+	RECOV	+	FEEES	=	TOTAL	DISBS	+	FEEES	+	TAX	-	RECEIPTS	=	A/R	TRUST
PERIOD	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	2100000.00
END DATE	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	2100000.00

UNBILLED					BILLED					BALANCES							
FIRM TOTAL	CHE	+	RECOV	+	FEEES	=	TOTAL	DISBS	+	FEEES	+	TAX	-	RECEIPTS	=	A/R	TRUST
PERIOD	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	2100000.00
END DATE	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	2100000.00

REPORT SELECTIONS - Client Ledger

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- Matter Intro Lawyer: All
- Responsible Lawyer: All
- Assigned Lawyer: All
- Type of Law: All
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- New Page for Each Matter: No
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- Entries Shown - Disbursements: Yes
- Entries Shown - Receipts: Yes
- Entries Shown - Time or Fees: Yes
- Entries Shown - Trust: Yes
- Incl. Matters with Retainer Bal: No
- Incl. Matters with Neg Unbld Disb: No
- Trust Account: All
- Working Lawyer: All
- Include Corrected Entries: No
- Show Cheque # on Paid Payables: No
- Show Client Address: No
- Consolidate Payments: No
- Show Trust Summary by Account: No
- Show Interest: No
- Interest Up To: Jul/ 7/2023
- Show Invoices that Payments Were Applied to: No
- Display Entries in: Date Order

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Court File No. CV-22-00685439-00CL

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

B E T W E E N:

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- g) approving the fees and disbursements of the Receiver to and including April 30, 2023 and the fees and disbursements of the Receiver's Counsel to and including June 4, 2023.

Disclaimer

- 9. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for any other purpose than intended.
- 10. In preparing this First Report, the Receiver has relied upon certain information found on site and/or provided to it by the management of the Company including, without limitation, past financial performance, and other financial information. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other forms of assurance with respect to such information. Future oriented financial information relied upon in this First Report is based on assumptions regarding future events, actual results achieved may vary from this information and these variations may be material.
- 11. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

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III. RECEIVER'S ACTIVITIES

12. A copy of the Receivership Order was provided to the Company. In addition, the Receiver prepared its statutory Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and mailed same to all creditors known to the Receiver.
13. Since the appointment of the Receiver on November 15, 2022, the Receiver directly or through the Receiver's Counsel attended to the following:
 - a) secured possession of the Real Property and to all necessary repairs where applicable;
 - b) arranged for insurance on the Real Property and other assets;
 - c) communicating with utility companies and arranging for continuation of supply;
 - d) arranged for snow removal during the winter months;
 - e) arranged for alarm service and regular site (at least three (3) times per week) inspections by a property manager engaged by the Receiver;
 - f) communicated with former employees with respect to the Wage Earner Protection Program ("**WEPP**") and other issues;
 - g) communicated with the York Region with respect to its drinking water system directive and steps required at the Real Property with respect to same;

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- h) communicated with the Canada Revenue Agency (“**CRA**”);
- i) obtained two appraisals of the Real Property; and
- j) engaged the services of an environmental consultant to conduct a Phase II Environmental Assessment and a Soil and Groundwater Delineation Assessment which is discussed in greater detail below.

IV. REAL PROPERTY

14. As noted previously in this First Report, 2314 owns the Real Property. The Receiver retained the services of Antec Appraisal Group Inc. (“**Antec**”) and Wagner, Andrews & Kovacs Ltd. (“**Wagner**”) to provide an appraisal of the value of the Real Property. The Receiver also engaged the services of A&A Environmental Consultants Inc. (“**A&A**”) to prepare a Phase II Environmental Assessment Report related to the Real Property.
15. On February 6, 2023, A&A provided a Phase II Environmental Site Assessment (“**A&A’s Phase II Report**”) for the Real Property. A&A’s Phase II Report discovered slight exceedances in both soil and groundwater samples and A&A recommended that a delineation assessment should be conducted to identify the extent of the identified impacts. Subsequently, the Receiver engaged A&A to conduct the delineation assessment. Attached to this First Report as **Appendix “4”** is a copy of the A&A Phase II Report.
16. On March 22, 2023, A&A provided the Receiver with the delineation assessment report with respect to the Real Property (“**A&A’s Delineation Report**”). A&A’s

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Delineation Report confirmed the contamination on site and indicated that the impacted area of the site appears localized to the northern area of the site. A&A further recommended a cleanup program to reduce the identified impacts to below applicable MECP guidelines. In addition, A&A recommended that all monitoring wells should be maintained in accordance with the provisions of Ontario Regulation 903 including particular attention to ensuring surface casings are properly sealed and protected from damage due to winter maintenance. Attached to this First report as **Appendix “5”** is a copy of A&A’s Delineation Report.

17. On March 24, 2023, A&A provided a quotation for the cleanup/remediation of the contaminated soil and groundwater at the Real Property (the “**A&A Cleanup Proposal**”). Attached to this First Report as **Appendix “6”** is a copy of the A&A Cleanup Proposal. Subsequent to receipt of the A&A Cleanup Proposal, the Receiver participated in multiple conversations with A&A regarding the scope of the work and the potential for fully remediating the Real Property. On April 4, 2023, the Receiver received an email from Dr. Ali Rasoul of A&A providing conclusions and recommendations to address the contamination at the Real Property. Attached to this First Report as **Appendix “7”** is a copy of the email from Dr. Ali Rasoul.
18. The Receiver has discussed this issue with TD, the senior secured creditor of the Company. TD has advised that it is in support of carrying out the cleanup/remediation of the Real Property as outlined in the A&A Cleanup Proposal and has also advanced funds to the Receiver to fund the remediation and the Receiver issued a Receiver’s Certificate to TD with respect to the funding. Accordingly, the Receiver is seeking an order from the Court authorizing the

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Receiver to take all necessary actions to remediate, as is required, the environmental issues present at the Real Property.

V. PROPOSED SALES PROCESS

19. Pursuant to paragraph 3(j) of the Receivership Order, the Receiver is empowered and authorized to, amongst other things, market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
20. Accordingly, the Receiver is proposing that the following sale process be followed in relation to the Real Property (the “**Sales Process**”):
 - a) the Receiver to complete the remediation of the Real Property as described in the A&A Cleanup Proposal; and
 - b) Upon the successful completion of the remediation, the Receiver to:
 - i. obtain marketing proposals from at least two (2) real estate brokerages to list and sell the Real Property;
 - ii. list the Real Property with a real estate brokerage on the multiple listing service in accordance with the marketing plan of the chosen real estate broker; and

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- iii. enter into an agreement of purchase and sale, subject to approval of the Court on a subsequent motion brought by the Receiver, with the successful purchaser.

VI. PROFESSIONAL FEES AND DISBURSEMENTS

21. Attached hereto as **Appendix "8"** is the Affidavit of Mukul Manchanda sworn June 5, 2023, which incorporates by reference a copy of the Receiver's time docket pertaining to the receivership of 2314 to and including April 30, 2023, in the amount of \$60,697.39 inclusive of disbursements and HST. This represents a total of 149.10 hours at an average rate of \$360.26 per hour before HST.
22. Attached hereto as **Appendix "9"** to this First Report is the Affidavit of Jason DiFruscia, sworn June 5, 2023, which incorporates by reference a copy of the time docket of the Receiver's Counsel for the period to and including June 4, 2023, in the amount of \$10,176.34 inclusive of disbursements and HST.
23. The Receiver has reviewed the accounts of the Receiver's Counsel and is of the view that all the work set out in these accounts was carried out and was necessary, that the hourly rates of the lawyers who worked on this matter were reasonable in light of the services required and that the services were carried out by lawyers with the appropriate level of experience.

VII. FUNDING OF THE RECEIVERSHIP

24. Pursuant to paragraph 21 of the Receivership Order, the Receiver is empowered to borrow by way of a revolving credit or otherwise, such monies from time to time

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as it may considers necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (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 periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Receivership Order, including interim expenditures.

25. In accordance with the above, the Receiver has borrowed \$300,000 from TD to deal with the operational and environmental issues related to the Real Property. As at June 5, 2023, the Receiver has \$228,373.02 in the receivership estate's trust account which is mostly earmarked for payment of cost associated with: a) the remediation described under A&A's Cleanup Proposal; and b) operational expenses for the next six months. In the event, the Receiver was required to borrow further funds to deal with unknown issues, it will not be able to borrow additional funds given the Receiver has already borrowed the maximum allowed under the Receivership Order. Accordingly, the Receiver is requesting that the Court increases the Receiver's Borrowing Charge (as defined in the Receivership Order) from \$300,000 to \$400,000.

VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
AS AT JUNE 5, 2023

26. Attached hereto as **Appendix "10"** is a copy of the Interim Statement of Receipts and Disbursements as at June 5, 2023 prepared by the Receiver.

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IX. RECOMMENDATIONS

27. The Receiver respectfully requests that this Honourable Court grant the relief sought in this First Report.

All of which is respectfully submitted.

Dated at Toronto, this 5th, day of June 2023

msi Spergel inc.,
solely in its capacity as Court-appointed
Receiver of 2314251 Ontario Inc. and not
in any corporate or personal capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

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THE TORONTO-DOMINION BANK

- and -

Court File No. CV-22-00685439-00CL
2314251 ONTARIO INC. et al.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD OF THE
RESPONDENTS
(to discharge the Receiver)

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