

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

**B E T W E E N:**

ROYNAT INC.

Applicant

and

2796996 ONTARIO INC.

Respondent

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**MOTION RECORD OF THE RECEIVER**

**Returnable June 22, 2023**

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June 14, 2023

**HARRISON PENZA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel: 519-679-9660  
Fax: 519-667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Solicitors for the Receiver,  
msi Spergel inc.

TO SERVICE LIST

**SERVICE LIST**

TO: **LIPMAN, ZENER & WAXMAN PC**  
Barristers & Solicitors  
100 Sheppard Avenue East, Suite 850  
Toronto, ON M2N 6N5

**Ian Klaiman (LSO #58955G)**  
Tel: 416-789-0658  
Fax: 416-789-9015  
Email: [iklaiman@lzwlaw.com](mailto:iklaiman@lzwlaw.com)

Lawyers for the Applicant, Roynat Inc.

AND

TO: **ROSENSTEINLAW PROFESSIONAL CORPORATION**  
5255 Yonge St., Suite 1300  
Toronto, ON M2N 6P4

**Jonathan Rosenstein (LSO #44914G)**  
Tel: 416-639-2123  
Fax: 647-826-0424  
Email: [jrosenstein@rosensteinlaw.ca](mailto:jrosenstein@rosensteinlaw.ca)

Lawyers for the Respondent, 2796996 Ontario Inc.

AND

TO: **AMJID HUSSAIN CHAUDHRY**  
1240 Sheffield Road  
Sheffield, ON L0R 1Z0  
Email: [amjidchaudhry@yahoo.com](mailto:amjidchaudhry@yahoo.com)

AND

TO: **HARRISON PENZA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553)**  
Tel: 519-661-6743  
Fax: 519-667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver, msi Spergel inc.

AND

TO: **MSI SPERGEL INC.**  
200 Yorkland Blvd., Suite 1100  
Toronto, ON M2J 5C1

**Mukul Manchanda**  
Tel: 416-498-4314  
Fax: 416-498-4314/416-777-7230  
Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

Receiver

AND

TO: **SUTHERLAND LAW**  
3300 Highway No. 7, Suite 904  
Vaughan, Ontario, L4K 4M3

**Rob Moubarak (LSO #54080I)**  
Tel: 905-695-5500 ext. 2800  
Fax: 905-695-5501  
Email: [rmoubarak@sutherlaw.com](mailto:rmoubarak@sutherlaw.com)

Lawyers for Westview Paving, Creditor

AND

TO: **MCHUGH WHITMORE LLP**  
914 Queenston Road  
Stoney Creek, ON L8G 1B7

**Ceili Boer (LSO #66171G)**  
Tel: 905-662-6001  
Fax: 905-662-6004  
Email: [boer@mchughwhitmore.ca](mailto:boer@mchughwhitmore.ca)

Lawyers for Tuddenham Enterprises Inc., Creditor

AND

TO: **HC LAW CHAMBERS**  
Barrister & Solicitor  
81 Zenway Blvd.  
Vaughan, ON L4H 0S5

**Harjinder Chahal (LSO #54224I)**  
Tel: 905-265-0005  
Email- [hclaw@hclawchambers.com](mailto:hclaw@hclawchambers.com)

Lawyers for the Purchaser, Jignesh Parikh

AND

TO: **FOGLER, RUBINOFF LLP**  
77 King Street West, Suite 3000  
TD Centre North Tower  
Toronto, ON M5K 1G8

**Tim Duncan (LSO #61840S)**  
Tel: 416-941-8817  
Fax: 416-941-8852  
Email: [tduncan@foglers.com](mailto:tduncan@foglers.com)

Lawyers for MacEwen Petroleum Inc., Creditor

AND

TO: **DEPARTMENT OF JUSTICE**  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

**Diane Winters**  
Tel: 416-973-3172  
Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

AND

TO: **MINISTER OF FINANCE**  
Legal Services Branch  
777 Bay Street, 11<sup>th</sup> Floor  
Toronto, ON M5G 2C8

**Leslie Crawford**  
Tel: 905-433-5657  
Email: [Leslie.crawford@ontario.ca](mailto:Leslie.crawford@ontario.ca)

**Insolvency Unit**  
Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

AND

TO: **TOWN OF GRIMSBY**  
160 Livingston Avenue  
Grimsby, ON L3M 0J5

Tel: 905-945-9634

AND

TO: **ELLE MORTGAGE CORPORATION**  
1240 Sheffield Road  
Sheffield, ON L0R 1Z0

# INDEX

## INDEX

Tab	Document	Page No.
1	Notice of Motion, dated June 14, 2023	8
	Schedule "A" – Approval and Vesting Order	18
	Schedule "B" – Distribution and Discharge Order	42
2	First Report of the Receiver dated June 14, 2023	55
	Appendix 1 – Interim Receivership Order of Justice McEwen dated July 25, 2022	75
	Appendix 2 – Endorsement of Justice McEwen dated July 25, 2022	88
	Appendix 3 – Receivership Order of Justice Dietrich dated August 5, 2022	91
	Appendix 4 – Endorsement of Justice Dietrich dated August 5, 2022	109
	Appendix 5 – MacEwen Fuel Supply Agreement	112
	Appendix 6 – Redacted Sales and Marketing Proposals submitted by CBRE and Avison Young	133
	Appendix 7 – MLS Listing Agreement with Avison Young	181
	Appendix 8 – Redacted Copy of the Jignesh Parikh Offer	187
	Appendix 9 – Waiver of Condition regarding Fuel Supply Agreement	223
	Appendix 10 – Fee Affidavit of Mukul Manchanda sworn June 14, 2023	225
	Appendix 11 – Fee Affidavit of Jason DiFruscia sworn June 14, 2023	260
	Appendix 12 – Receiver's Interim Statement of Receipt and Disbursements	283
	Appendix 13 – Payout Statement with respect to Roynat Inc., first mortgage	285
	Appendix 14 – Parcel Registers	287
	Appendix 15 – Copy of the Security Opinion of Harrison Pensa LLP	292

# Tab 1

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

**B E T W E E N:**

ROYNAT INC.

Applicant

and

2796996 ONTARIO INC.

Respondent

**NOTICE OF MOTION  
(returnable June 22, 2023)**

msi Spergel inc. ("**Spergel**") in its capacity as Court-appointed receiver (the "**Receiver**") appointed pursuant to the Order of the Honourable Justice Dietrich dated August 5, 2022 (the "**Appointment Order**") of the Property, as defined in the Appointment Order, of 2796996 Ontario Inc. (the "**Debtor**"), will make a Motion to a Judge.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is on consent;
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

On June 22, 2023 at 10:00 a.m., or as soon after that time as the Motion can be heard by judicial teleconference via Zoom at Toronto, Ontario.



## THE MOTION IS FOR:

1. An Approval and Vesting Order, substantially in the form attached hereto at Schedule “A”, *inter alia*, approving the transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale between 14927524 Canada Inc. (the “**Purchaser**”) and the Receiver dated March 31, 2023, a redacted version of which is appended to the Receiver’s First Report as Appendix “7” and included in the Confidential Brief (as defined below) (the “**Sale Agreement**”) for the sale of the Real Property and vesting all of the right, title and interest in and to the Purchased Assets of the Debtor absolutely in the Purchaser free and clear of and from any security, charge or other encumbrance;
2. An Order (Distribution and Discharge, substantially in the form attached hereto at Schedule “B”, *inter alia*:
  - a. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and dispensing with further service and confirmation thereof;
  - b. Approving the First Report of the Receiver dated June 14, 2023 (the “**First Report**”), and the activities and conduct of the Receiver set out therein and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report;
  - c. Approving the Professional Fees and Fee Accrual (both as detailed in the First Report), and payment of same;
  - d. Approving the Receiver’s statement of receipts and disbursements as of May 31, 2023;
  - e. Approving the fees and disbursements of the Receiver and its counsel, Harrison Pensa LLP, and payment of same;
  - f. Approving the Proposed Distribution, as detailed in the First Report and defined herein;

- g. Sealing the Confidential Appendices to the First Report (the “**Confidential Appendices**”) until the completion of the Transaction, or until a further order of this Court; and,
  - h. Discharging Spergel as the Receiver on the filing of the Certificate of Completion as provided for in the First Report, and releasing the Receiver from liability for its actions while acting in such capacity, save and except for the Receiver’s gross negligence or willful misconduct;
3. The costs of this motion on a substantial indemnity basis, if opposed; and,
  4. Such further and other relief as counsel may request and this honourable court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

The Debtor and the Appointment of the Receiver

1. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario, and was primarily engaged in the business of a gas station from owned premises located at 88 Main Street West, Grimsby, Ontario, (the “**Real Property**”).
2. The Applicant, Roynat Inc. (“**Roynat**”) is the senior secured creditor of the Debtor, and provided certain credit facilities to the Debtor. The Debtor was indebted to Roynat in the sum of \$4,389,736.59 as at June 9, 2023.
3. The Real Property is subject to a first-ranking mortgage/charge granted in favour of Roynat, a second mortgage/charge granted in favour of Macewen Petroleum Inc. (“**MacEwen**”) and a construction lien in favour of Tuddenham Enterprises Inc. (“**Tuddenham**”).
4. Roynat also holds perfected a first in time general security interest in the Debtor’s personal property.
5. The Receiver has an opinion from its independent counsel that the security held by Roynat is perfected and enforceable, subject to the standard assumptions and qualifications.

6. On July 25, 2022, Roynat moved for appointment of an interim receiver. On the same day, the Honourable Mr. Justice McEwan of the Ontario Superior Court of Justice (Commercial List) granted the Order (the “**Interim Receivership Order**”) appointing Spergel as interim receiver without security, of all of the assets, undertakings and properties of the Debtor.
7. On August 5, 2022, Roynat returned to Court and obtained the Appointment Order, appointing Spergel as court-appointed receiver of the Property (as defined in the Appointment Order) of the Debtor, including the Real Property.

MacEwan Petroleum Inc.

8. The fuel supplier of the business of the Debtor was MacEwan. The Debtor entered into a Fuel Supply Agreement with MacEwan (the “**MacEwan FSA**”) for the supply of fuel, which agreement included a right of first refusal with respect to any sale of the Real Property (the “**MacEwan ROFR**”) and a term that the Debtor, if so requested by MacEwan, would obtain covenant from any purchaser to observe and perform the terms of the MacEwan FSA.
9. MacEwan has advised the Receiver that it did not have an interest in purchasing the Real Property, however, it did have an interest in preserving the MacEwan FSA.
10. Prior to listing the Real Property for sale, the Receiver entered into negotiations with MacEwan with respect to the MacEwan FSA and the MacEwan ROFR, and agreed as follows:
  - a. The Receiver would market the Real Property with the MacEwan FSA in place and advise the market that if an offer, acceptable to the Receiver is made that honors the MacEwan FSA, then the MacEwan ROFR would not apply;
  - b. If a prospective purchaser of the Real Property wanted to attempt to re-negotiate the terms of the MacEwan FSA, the Receiver would connect the party and MacEwan for the purpose of same; and,
  - c. If no party makes an offer acceptable to the Receiver and the Receiver, as a court appointed officer, reported to the Court that it concluded that the MacEwan

FSA was impairing the sale, then the Receiver would seek to disclaim the MacEwen FSA.

#### Maruti Grimsby Inc.

11. Maruti Grimsby Inc. operates a Pizza Hut Franchise out of leased premises on the Real Property pursuant to a lease agreement (the “**Maruti Lease**”). The Maruti Lease contains a purported right of first refusal in favour of Maruti. The Receiver and listing broker canvassed Maruti and were advised that Maruti had no interest in purchasing the Real Property.

#### Town of Grimsby

12. Title abstracts for the Real Property disclose a prior registered notice by the Town of Grimsby (the “**Grimsby Notice**”). The Sale Agreement specifically lists the Grimsby Notice as a permitted encumbrance which would remain on title to the Real Property following closing.

#### The Sales Process and Transaction

13. Subsequent to its appointment, the Receiver commenced a sales process (the “**Sales Process**”) for the Real Property.

14. The particulars of the Sales Process are as follows:

- a. The Receiver took the following preliminary actions to ensure that the Sales Process would result in a sale that was in the range of fair market value:
  - i. attended to all necessary repairs at the Real Property;
  - ii. completed an environmental assessment of the Real Property;
  - iii. engaged two (2) appraisers to value the Real Property;
  - iv. commissioned two (2) listing proposals from commercial realtors having knowledge and experience in the industry and local market; and,
- b. The Receiver ultimately chose to list the Real Property for sale with Avison Young Commercial Real Estate Services LP (“**Avison Young**”).

15. Avison Young took the following steps to market the Real Property:
  - a. Posting the listing on the Multiple Listing Service (“**MLS**”);
  - b. Reaching out to over 1900 contacts;
  - c. Engaging in digital campaigns using various social media outlets and email campaigns;
  - d. Print media; and,
  - e. Engaging in discussions and providing property tours to interested parties.
16. The Receiver ultimately received five (5) offers for the Real Property.
17. Included in the Confidential Appendices, in relation to which the Receiver seeks a Sealing Order, is a summary of all offers received through the Sale Process.
18. After reviewing all offers received through the Sales Process, the Receiver determined that the Sale Agreement with the Purchaser would result in the best and highest recovery for the stakeholders of the Debtor’s estate.
19. The details of the Sale Agreement and a redacted copy thereof are provided in the First Report. An unredacted copy of the Sale Agreement is included in the Confidential Appendices. The Receiver recommends the approval and completion of the Sale Agreement for the following reasons, as:
  - a. It is an offer for the Real Property;
  - b. It provides certainty as to realizations, subject to the terms of the Sale Agreement;
  - c. Avison Young undertook a thorough marketing process for the Real, with full exposure to the market;
  - d. The sale price is supported by the appraisals commissioned by the Receiver;
  - e. The Receiver’s sales process was fair, efficient, transparent and one with integrity that resulted in the best possible purchase price in the circumstances; and,

- f. The Sale Agreement is supported by Roynat.
20. It is the Receiver's position that the Sales Process was thorough, impartial and a fair sales process that fully exposed the Real Property and tested the market. The Sale Agreement represents a commercially reasonable transaction which will maximize the recovery from the sale of Real Property and is in the best interests of all stakeholders.

Priority Claims and Proposed Distribution

21. Pursuant to Paragraph 21 of the Appointment Order, the Receiver borrowed funds from Roynat in the amount of \$100,000 (the "**Receiver's Borrowing**") to fund its disbursements during the Receivership.
22. The Receiver has determined that there is an unsecured debt which is owing by the Debtor to the Canada Revenue Agency (the "**CRA**") for HST and that there is no priority claim owing by the Debtor to the CRA for unpaid source deductions.
23. There are additional secured claims approved by the Receiver of approximately \$5,585,000 which are owing by the Debtor to its secured creditors, being the Bank, MacEwen, and Tuddenham (the "**Secured Claims**").
24. Following the closing of the Transaction, if approved by the Court, all known assets of the Debtor, will have been realized on by the Receiver.
25. Therefore, the Receiver intends, with the approval of this Court, to complete the Proposed Distribution (as detailed in the First Report), following the payment of all Professional Fees and the Fee Accrual, as follows:
- a. To Roynat for repayment of the Receiver's Borrowing in the amount of \$100,000 plus interest thereon; and,
  - b. To Roynat with respect to its First Mortgage in the amount of \$4,389,736.59 as at June 9, 2023, plus a per diem amount of \$1,035.48.

(Collectively, the "**Proposed Distribution**")

26. There is not expected to be sufficient funds to make further distribution to the other Secured Claims.

27. The Trustee seeks approval of the Proposed Distribution.

#### Sealing Order

28. Until such time as the Transaction, subject to the Sale Agreement is complete, or until further order of this Court, the Receiver is of the view that the information and documentation contained in the Confidential Appendices should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have.

29. The Receiver states that its actions, as outlined in the First Report, should be approved by this Honourable Court.

#### Approval of the Receiver's Accounts

30. The Appointment Order requires the Receiver and its legal counsel to pass its accounts from time to time.

31. The Receiver has properly incurred fees and disbursements as detailed in the First Report.

32. The Fees incurred by the Receiver for services provided by its legal counsel, Harrison Pensa LLP are detailed in the First Report.

33. The Receiver seeks the approval of the Professional Fees, and payment of same, as defined in the First Report.

34. Roynat, who will suffer a shortfall in these proceedings, supports the Receiver's fees and disbursements.

#### Discharge

35. Following the completion of the Transaction, payment of the Proposed Distribution and Professional fees, and the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the Receivership have been completed to the satisfaction of the Receiver, the Receiver will have completed the administration of the estate of the Debtor, and as such requests its discharge as Receiver.

36. Section 243 of the *BIA*.

37. Sections 100 and 137(2) of the *Courts of Justice Act*.

38. Rules 2, 3, 37, 38, and 60.10 of the *Rules of Civil Procedure*.

39. The grounds as detailed in the First Report.

40. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Appointment Order;
2. The First Report of the Receiver dated June 14, 2023, and the Appendices thereto; and,
3. Such materials as counsel may advise and this Honourable Court may permit.

June 14, 2023

**HARRISON PENZA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel: 519-679-9660

Fax: 519-667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Solicitors for the Receiver,  
msi Spergel inc.

To: Service List



## SCHEDULE A-1

Revised: January 21, 2014

Court File No. CV-22-00683167-00CL \_\_\_\_\_

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

THE HONOURABLE ) WEEKDAY, THE #  
JUSTICE )  
) DAY OF MONTH, 20YR2023

B E T W E E N:

**PLAINTIFF ROYNAT INC.**

PlaintiffApplicant

- and -

**DEFENDANT 2796996 ONTARIO INC.**

DefendantRespondent

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by {RECEIVER'S NAME}msi Spergel inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of 2796996 Ontario Inc.{DEBTOR} (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and {NAME OF PURCHASER} 14927524 Canada Inc. Jignesh Parikh for a Company to be Incorporated (the "Purchaser") dated April 5, 2023, as amended, {DATE} and appended to the Report of the Receiver dated {DATE}June 14, 2023 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") and referenced in Schedule "B" hereto, which Purchased Assets include the real property municipally known as 88 Main Street, Grimsby, Ontario (the

“Lands”) as legally described at Schedule “B” hereto, was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed<sup>1</sup>:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “Receiver’s Certificate”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise

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

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

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

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

(collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~{NAME}~~Dietrich dated ~~{DATE}~~August 5, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~{Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver}~~[Land Titles Division of ~~{LOCATION}~~Niagara (North)(No. 30) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, ~~and/or the Land Registration Reform Act~~<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject ~~real property~~Lands identified in Schedule B hereto (~~the "Real Property"~~) in fee simple, and is hereby directed to delete and expunge from title to the ~~Real Property~~Lands all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the

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

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

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

same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. THIS COURT ORDERS that, notwithstanding:

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

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

transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

~~9.8.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

\_\_\_\_\_  
Justice, Ontario Superior Court of Justice

\_\_\_\_\_  
(Commercial List)

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Revised: January 21, 2014

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-22-00683167-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

BETWEEN:

**ROYNAT INC.**

Applicant

- and -

**2796996 ONTARIO INC.**

Respondent **PLAINTIFF**

Plaintiff

- and -

**DEFENDANT**

Defendant

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dietrich of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~ August 5, 2022, ~~[NAME OF RECEIVER]~~ msi Spergel inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of 2796996 Ontario Inc. ~~[DEBTOR]~~ (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 5, 2023 (the "Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ 14927524 Canada Inc. Jignesh

DOCSTOR-120192714

~~Parikh for a Company to be Incorporated~~ (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section 4.1~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section 4.1~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~[NAME OF RECEIVER]~~ **msi Spergel inc.**, in its capacity as **Court-appointed Receiver of the undertaking, property and assets of 2796996[DEBTOR] Ontario Inc.**, and not in its personal or corporate capacity

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

Name:

Title:



**Schedule B – Purchased Assets**

**Real Property Lands (forming a portion of the Purchased Assets)**

The lands and premises municipally known as 88 Main Street, Grimsby, Ontario, and legally described as:

- a) PT MAIN ST CP PL 4 GRIMSBY CLOSED BY BY-LAW NR417367 BEING REGIONAL ROAD NO. 81, PART 3 30R14573 TOWN OF GRIMSBY {PIN 46020-0217 LT}; and,
- b) PART LOT 389 CP PL 4 GRIMSBY DESIGNATED AS PART 1 PLAN 30R14573 TOWN OF GRIMSBY {PIN 46020-0220 LT}.

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**Other Purchased Assets**

The Debtor's interest in all additional Purchased Assets, as such Purchased Assets are described and defined in the Sale Agreement, including: The Buildings, the Gas and Convenience Business, the Personal Property, the Fuel Inventory, and the Rights.

**Schedule C – Claims to be deleted and expunged from title to Real Propertythe Lands<sup>9</sup>**

PIN 46020-0217 LT

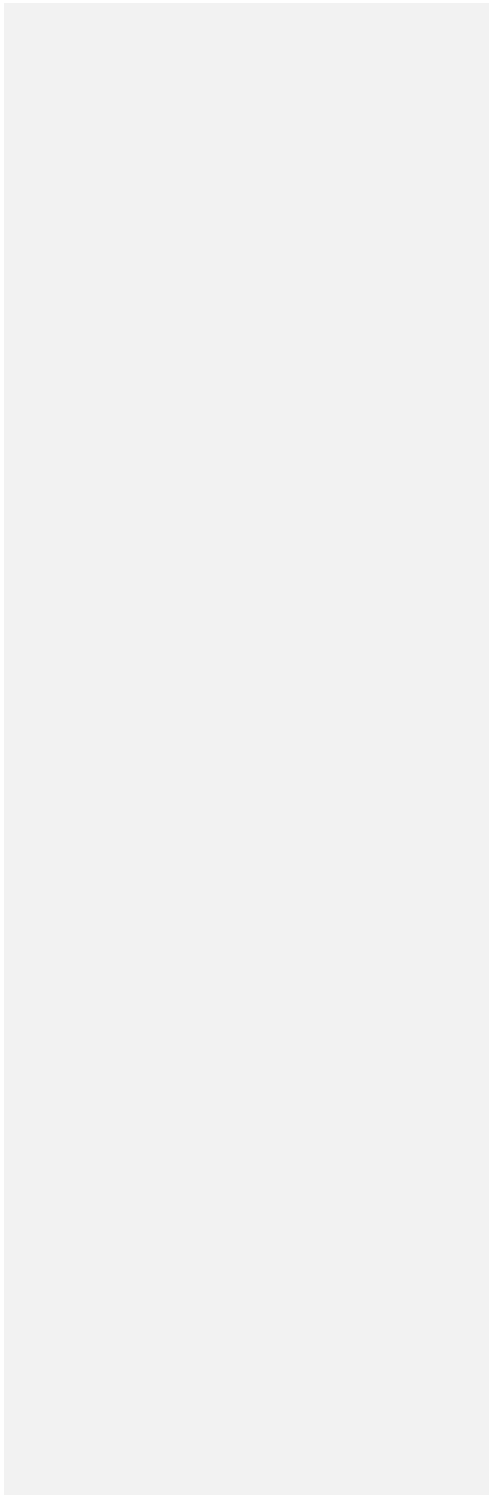
<u>Registration Number</u>	<u>Date</u>	<u>Instrument Type</u>
<u>NR562320</u>	<u>2020/12/22</u>	<u>Certificate</u>
<u>NR591914</u>	<u>2021/10/06</u>	<u>Transfer</u>
<u>NR591915</u>	<u>2021/10/06</u>	<u>Charge</u>
<u>NR591916</u>	<u>2021/10/06</u>	<u>No Assgn Rent Gen</u>
<u>NR604765</u>	<u>2022/02/09</u>	<u>Charge</u>
<u>NR620676</u>	<u>2022/07/21</u>	<u>Construction Lien</u>
<u>NR625708</u>	<u>2022/09/20</u>	<u>Certificate</u>
<u>NR626039</u>	<u>2022/09/23</u>	<u>Apl Court Order</u>
<u>NR628270</u>	<u>2022/10/18</u>	<u>Disch of Charge</u>

PIN 46020-0220 LT

<u>Registration Number</u>	<u>Date</u>	<u>Instrument Type</u>
<u>NR562320</u>	<u>2020/12/22</u>	<u>Certificate</u>
<u>NR591914</u>	<u>2021/10/06</u>	<u>Transfer</u>
<u>NR591915</u>	<u>2021/10/06</u>	<u>Charge</u>
<u>NR591916</u>	<u>2021/10/06</u>	<u>No Assgn Rent Gen</u>
<u>NR592161</u>	<u>2022/10/08</u>	<u>Charge</u>
<u>NR604765</u>	<u>2022/02/09</u>	<u>Charge</u>
<u>NR620676</u>	<u>2022/07/21</u>	<u>Construction Lien</u>
<u>NR625708</u>	<u>2022/09/20</u>	<u>Certificate</u>

<sup>9</sup> To be updated prior to the hearing date of the motion, if necessary.

<u>NR626039</u>	<u>2022/09/23</u>	<u>Apl Court Order</u>
<u>NR628270</u>	<u>2022/10/18</u>	<u>Disch of Charge</u>
<u>Registration Number</u>	<u>Date</u>	<u>Instrument Type</u>



**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the ~~Real Property Lands~~<sup>40</sup>  
(unaffected by the Vesting Order)**

PIN 46020-0217 LT

<u>Registration Number</u>	<u>Date</u>	<u>Instrument Type</u>
<u>30R14573</u>	<u>2015/07/22</u>	<u>Plan Reference</u>
<u>NR417367</u>	<u>2016/07/06</u>	<u>Bylaw</u>
<u>NR500529</u>	<u>2018/12/27</u>	<u>Notice</u>

PIN 46020-0220 LT

<u>Registration Number</u>	<u>Date</u>	<u>Instrument Type</u>
<u>NR354944</u>	<u>2014/06/18</u>	<u>Apl Annex Rest Cov</u>
<u>30R14573</u>	<u>2015/07/22</u>	<u>Plan Reference</u>
<u>NR500529</u>	<u>2018/12/27</u>	<u>Notice</u>
<u>NR566205</u>	<u>2021/02/05</u>	<u>Notice</u>
<u>NR592162</u>	<u>2021/10/08</u>	<u>Notice</u>
<u>NR622907</u>	<u>2022/08/17</u>	<u>LR's Order</u>

<sup>40</sup> To be updated prior to the hearing date of the motion, if necessary.

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**ORDER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

## SCHEDULE A-2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 22ND  
JUSTICE ) DAY OF JUNE, 2023  
)

B E T W E E N:

**ROYNAT INC.**

Applicant

- and -

**2796996 ONTARIO INC.**

Respondent

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by msi Spergel inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of 2796996 Ontario Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 14927524 Canada Inc. (the "Purchaser") dated April 5, 2023, as amended, and appended to the Report of the Receiver dated June 14, 2023 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") and referenced in Schedule "B" hereto, which Purchased Assets include the real property municipally known as 88 Main Street, Grimsby, Ontario (the "Lands") as legally described at Schedule "B" hereto, was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Dietrich dated August 5, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Niagara (North)(No. 30) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as



the owner of the subject Lands identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to the Lands all of the Claims listed in Schedule C hereto.

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

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

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. THIS COURT ORDERS that, notwithstanding:

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

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

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

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Justice, Ontario Superior Court of Justice  
(Commercial List)

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-22-00683167-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**B E T W E E N:**

**ROYNAT INC.**

Applicant

- and -

**2796996 ONTARIO INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Dietrich of the Ontario Superior Court of Justice (the "Court") dated August 5, 2022, msi Spergel inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of 2796996 Ontario Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of April 5, 2023 (the "Sale Agreement") between the Receiver and 14927524 Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

**msi Spergel inc., in its capacity as Court-appointed Receiver of the undertaking, property and assets of 2796996 Ontario Inc., and not in its personal or corporate capacity**

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

Name:

Title:

## **Schedule B – Purchased Assets**

### **Lands (forming a portion of the Purchased Assets)**

The lands and premises municipally known as 88 Main Street, Grimsby, Ontario, and legally described as:

- a) PT MAIN ST CP PL 4 GRIMSBY CLOSED BY BY-LAW NR417367 BEING REGIONAL ROAD NO. 81,PART 3 30R14573 TOWN OF GRIMSBY {PIN46020-0217 LT}; and,
- b) PART LOT 389 CP PL 4 GRIMSBY DESIGNATED AS PART 1 PLAN 30R14573 TOWN OF GRIMSBY {PIN 46020-0220 LT}

### **Other Purchased Assets**

The Debtor's interest in all additional Purchased Assets, as such Purchased Assets are described and defined in the Sale Agreement, including: The Buildings, the Gas and Convenience Business, the Personal Property, the Fuel Inventory, and the Rights.

**Schedule C – Claims to be deleted and expunged from title to the Lands**

PIN 46020-0217 LT

Registration Number	Date	Instrument Type
NR562320	2020/12/22	Certificate
NR591914	2021/10/06	Transfer
NR591915	2021/10/06	Charge
NR591916	2021/10/06	No Assgn Rent Gen
NR620676	2022/07/21	Construction Lien
NR625708	2022/09/20	Certificate
NR626039	2022/09/23	Apl Court Order

PIN 46020-0220 LT

Registration Number	Date	Instrument Type
NR562320	2020/12/22	Certificate
NR591914	2021/10/06	Transfer
NR591915	2021/10/06	Charge
NR591916	2021/10/06	No Assgn Rent Gen
NR592161	2022/10/08	Charge
NR620676	2022/07/21	Construction Lien
NR625708	2022/09/20	Certificate
NR626039	2022/09/23	Apl Court Order

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

**(unaffected by the Vesting Order)**

PIN 46020-0217 LT

Registration Number	Date	Instrument Type
30R14573	2015/07/22	Plan Reference
NR417367	2016/07/06	Bylaw
NR500529	2018/12/27	Notice

PIN 46020-0220 LT

Registration Number	Date	Instrument Type
NR354944	2014/06/18	Apl Annex Rest Cov
30R14573	2015/07/22	Plan Reference
NR500529	2018/12/27	Notice
NR566205	2021/02/05	Notice
NR592162	2021/10/08	Notice
NR622907	2022/08/17	LR's Order

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**ORDER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.



## SCHEDULE B-1

Revised: May 11, 2010

Court File No. ~~CV-22-00683167-00CL~~

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) ~~WEEKDAY THURSDAY~~, THE #~~22ND~~  
JUSTICE )  
DAY OF ~~MONTH JUNE~~, ~~20YR 2023~~

BETWEEN:

~~PLAINTIFF ROYNAT INC.~~

~~Plaintiff Applicant~~

- and -

~~DEFENDANT 2796996 ONTARIO INC.~~

~~Defendant Respondent~~

~~DISCHARGE ORDER~~

(DISTRIBUTION, DISCHARGE AND ANCILLARY)

THIS MOTION, made by ~~{RECEIVER'S NAME}msi Spergel inc.~~ in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of ~~{DEBTOR}2796996 Ontario Inc.~~ (the "Debtor"), for an order:

1. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;

2. Approving the activities and conduct of the Receiver as set out in the First Report of the Receiver dated {DATE}June 14, 2023 (the "First Report") and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report.

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~~1.~~

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~~3.~~ Approving the fees of the Receiver and its counsel (the "Professional Fees") and ~~disbursements the Fee Accrual of the Receiver and its counsel, as defined and detailed in the First Report, and payment thereof;~~

~~2.4.~~ Approving the Receiver's Statement of Receipts and Disbursements as of May 31, 2023, as defined and detailed in the First Report (the "Statement of Receipts and Disbursements");

~~5.~~ Approving the Proposed Distribution of the remaining proceeds available in the estate of the Debtor, as detailed and defined in the First Report; ~~and~~

~~3.6.~~ Sealing the Confidential Appendices to the First Report (the "Confidential Appendices") until the completion of the Transaction (as defined in the First Report), or until further Order of this Court;

~~4.7.~~ Discharging ~~{RECEIVER'S NAME}msi Spergel inc.~~ as Receiver of the undertaking, property and assets of the Debtor on the filing of the Certificate of Completion, as provided for in the First Report; and

~~5.8.~~ Releasing ~~{RECEIVER'S NAME}msi Spergel inc.~~ from any and all liability, as set out in paragraph ~~85~~ of this Order<sup>1</sup>;

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was heard this day by way of judicial teleconference via Zoom at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Receiver's Notice of Motion dated June 14, 2023, the First Report, the affidavits of the Receiver and its counsel as to the Professional Fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of ~~{NAME}~~ Service of Lindsay Ferguson sworn ~~{DATE}~~ June 14, 2023, filed<sup>2</sup>;

<sup>1</sup> If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

<sup>2</sup> This model order assumes that the time for service does not need to be abridged.

1. THIS COURT ORDERS that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.

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6.2. THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report, are hereby approved and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report as detailed herein.

3. THIS COURT ORDERS that the Professional Fees— and the Fee Accrual and disbursements of the Receiver and its counsel, as set out in the First Report and the Fee Affidavits, and payment thereof, be and are hereby approved.

4. THIS COURT ORDERS that the Statement of Receipts and Disbursements be and is hereby approved.

7.5. THIS COURT ORDERS that the Confidential Appendices be and are sealed until the completion of the Transaction, or until further Order of this Court.

6. THIS COURT ORDERS that, after payment of the Professional Fees and disbursements herein approved, and subject to the Fee Accrual, the Receiver be and is authorized and directed to make the Proposed Distribution, as detailed and described in the First Report, as follows: shall pay the monies remaining in its hands to [NAME OF PARTY]<sup>3</sup>.

(a) To Roynat Inc. for repayment of the Receiver's Borrowing (as detailed and defined in the First Report) in the amount of \$100,000 plus interest thereon; and,

8.(b) The balance of the funds residing in the Receiver's account, less the Fee Accrual, to Roynat Inc. with respect to its First Mortgage.

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9.7. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 and 6 hereof and upon the Receiver filing the Certificate of Completion as provided for in the First Report certifying that it has completed the other activities described in the Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the

<sup>3</sup>This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of [RECEIVER'S NAME]msi Spergel inc. in its capacity as Receiver.

10.8. ~~THIS COURT ORDERS AND DECLARES that [RECEIVER'S NAME]msi Spergel inc.~~ is hereby released and discharged from any and all liability that ~~[RECEIVER'S NAME]msi Spergel inc.~~ now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~[RECEIVER'S NAME]msi Spergel inc.~~ while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, ~~[RECEIVER'S NAME]msi Spergel inc.~~ is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.<sup>4</sup>

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Justice, Ontario Superior Court of Justice (Commercial List)

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<sup>4</sup>The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**ORDER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

## SCHEDULE B-2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 22ND  
 )  
JUSTICE ) DAY OF JUNE, 2023  
 )

B E T W E E N:

**ROYNAT INC.**

Applicant

- and -

**2796996 ONTARIO INC.**

Respondent

**ORDER**

**(DISTRIBUTION, DISCHARGE AND ANCILLARY)**

THIS MOTION, made by msi Spergel inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of 2796996 Ontario Inc. (the "Debtor"), for an order:

1. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;
2. Approving the activities and conduct of the Receiver as set out in the First Report of the Receiver dated June 14, 2023 (the "First Report") and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report.



3. Approving the fees of the Receiver and its counsel (the “Professional Fees”) and the Fee Accrual, as defined and detailed in the First Report, and payment thereof;
4. Approving the Receiver’s Statement of Receipts and Disbursements as of May 31, 2023, as defined and detailed in the First Report (the “Statement of Receipts and Disbursements”);
5. Approving the Proposed Distribution , as detailed and defined in the First Report;
6. Sealing the Confidential Appendices to the First Report (the “Confidential Appendices”) until the completion of the Transaction (as defined in the First Report), or until further Order of this Court;
7. Discharging msi Spergel inc. as Receiver of the undertaking, property and assets of the Debtor on the filing of the Certificate of Completion, as provided for in the First Report; and
8. Releasing msi Spergel inc. from any and all liability, as set out in paragraph 8 of this Order,

was heard this day by way of judicial teleconference via Zoom at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Receiver’s Notice of Motion dated June 14, 2023, the First Report, the affidavits of the Receiver and its counsel as to the Professional Fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of Service of Lindsay Ferguson sworn June 14, 2023, filed;

1. THIS COURT ORDERS that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.
2. THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report, are hereby approved and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report as detailed herein.
3. THIS COURT ORDERS that the Professional Fees and the Fee Accrual, as set out in the First Report and the Fee Affidavits, and payment thereof, be and are hereby approved.

4. THIS COURT ORDERS that the Statement of Receipts and Disbursements be and is hereby approved.

5. THIS COURT ORDERS that the Confidential Appendices be and are sealed until the completion of the Transaction, or until further Order of this Court.

6. THIS COURT ORDERS that, after payment of the Professional Fees herein approved, and subject to the Fee Accrual, the Receiver be and is authorized and directed to make the Proposed Distribution, as detailed and described in the First Report, as follows:

- (a) To Roynat Inc. for repayment of the Receiver's Borrowing (as detailed and defined in the First Report) in the amount of \$100,000 plus interest thereon; and,
- (b) The balance of the funds residing in the Receiver's account, less the Fee Accrual, to Roynat Inc. with respect to its First Mortgage.

7. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 and 6 hereof and upon the Receiver filing the Certificate of Completion as provided for in the First Report certifying that it has completed the other activities described in the Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of msi Spergel inc. in its capacity as Receiver.

8. THIS COURT ORDERS AND DECLARES that msi Spergel inc. is hereby released and discharged from any and all liability that msi Spergel inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of msi Spergel inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, msi Spergel inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

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Justice, Ontario Superior Court of Justice (Commercial List)

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

---

**ORDER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**NOTICE OF MOTION**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

# Tab 2

**Court File No. CV-22-00683167-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN :**

**ROYNAT INC.**

**Applicant**

**- and -**

**2796996 ONTARIO INC.**

**Respondent**

**FIRST REPORT OF MSI SPERGEL INC.,  
IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF  
2796996 ONTARIO INC.**

**June 14, 2023**

## **TABLE OF CONTENTS**

I.	APPOINTMENT AND BACKGROUND .....	1
II.	PURPOSE OF THIS FIRST REPORT AND DISCLAIMER .....	2
III.	ACTIONS OF THE INTERIM RECEIVER AND THE RECEIVER .....	3
IV.	MACEWEN PETROLEUM INC. ....	5
V.	THE SALES PROCESS WITH RESPECT TO THE REAL PROPERTY .....	6
VI.	REQUEST FOR A SEALING ORDER .....	9
VII.	RIGHT OF FIRST REFUSAL MARUTI GRIMSBY INC. ....	9
VIII.	NOTICE REGISTERED BY TOWN OF GRIMSBY .....	10
IX.	FEEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL .....	11
X.	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS .....	11
XI.	CANADA REVENUE AGENCY .....	12
XII.	RECEIVER'S PROPOSED DISTRIBUTION .....	12
XIII.	DISCHARGE OF THE RECEIVER .....	14
XIV.	RECOMMENDATION .....	14



## **APPENDICES**

1. Interim Receivership Order of the Honourable Justice McEwen dated July 25, 2022
2. Endorsement of the Honourable Justice McEwen dated July 25, 2022
3. Receivership Order of the Honourable Justice Dietrich dated August 5, 2022
4. Endorsement of the Honourable Justice Dietrich dated August 5, 2022
5. MacEwen Fuel Supply Agreement
6. Redacted Sales and Marketing Proposals submitted by CBRE and Avison Young
7. MLS Listing with Avison Young
8. Redacted Copy of the Jignesh Parikh Offer
9. Waiver of Condition regarding Fuel Supply Agreement
10. Fee Affidavit of Mukul Manchanda sworn June 14 2023
11. Fee Affidavit of Jason DiFruscia sworn June 14 2023
12. Receiver's Interim Statement of Receipts and Disbursements
13. Payout Statement with respect to Roynat Inc., first mortgage
14. Parcel Registers
15. Copy of security opinion of Harrison Pensa LLP

## **CONFIDENTIAL APPENDICES**

1. Appraisal Reports from Colliers and Wagner Andrews Kovacs
2. Unredacted Sales and Marketing Proposals from CBRE and Avison Young
3. Final Progress Report of Avison Young Commercial Real Estate Services LP dated May 1, 2023
4. Comparative Summary of the Offers received
5. Un-Redacted Copy of the Jignesh Parikh Offer

## I. APPOINTMENT AND BACKGROUND

1. This first report (this “**First Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of 2796996 Ontario Inc. (hereinafter called “**2796**” or the “**Debtor**”).
2. 2796 is a Canadian owned, private corporation which carried on business as an Esso branded gas bar and convenience store. The Debtor’s primary asset consists of the real property located at 88 Main Street West, Grimsby, Ontario (the “**Real Property**”) which includes an Esso branded gas station, a convenience store, a Pizza Hut restaurant operated by a tenant and a Donair takeout restaurant operated by a tenant. The Real Property is owned by the Debtor. The Debtor ceased operating the gas station and the convenience store prior to the appointment of the Receiver.
3. On July 25, 2022, Roynat Inc. (“**Roynat**”) moved by way of an application for a Court Order appointing an interim receiver over the Property of the Debtor. On the same day, the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order (the “**Interim Receivership Order**”) appointing Spergel as the interim receiver (in such capacities, the “**Interim Receiver**”) without security, of all of the assets, undertakings and properties of the Debtor. Attached as **Appendices “1” and “2”** to this First Report are copies of the Interim Receivership Order and the endorsement of the Honourable Mr. Justice McEwen dated July 25, 2022.
4. Subsequent to the appointment of the Interim Receiver, Roynat returned to Court and Spergel was appointed as the Receiver of all the assets, undertaking and properties of the Debtor, including without limitation the Real Property (collectively, the “**Property**”), by Order of the Honourable Madam Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) made August 5, 2022 (the “**Receivership Order**”). Attached as **Appendices “3” and “4”** to this First

Report are copies of the Receivership Order and the endorsement of the Honourable Madam Justice Dietrich dated August 5, 2022.

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

## **II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER**

6. The purpose of this First Report is to report to the Court regarding the Receiver’s activities and conduct since the Interim Receiver’ and the Receiver’s appointment and to seek Orders from this Court:
  - a) approving this First Report and the actions and activities of the Receiver described therein;
  - b) approving the sale transaction contemplated by the agreement of purchase and sale dated March 31, 2023 entered into between 14927524 Canada Inc. (the “**Purchaser**”) and the Receiver, as vendor, (the “**Purchase Agreement**”) with respect to the Real Property and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);
  - c) vesting in the Purchaser, 2796’s right, title and interest in and to the Real Property free and clear of any claims and encumbrances save and except for “Permitted Encumbrances”;
  - d) sealing the Confidential Appendices (as defined herein) to this First Report until the earlier of the completion of the Transaction or further Order of this Court;
  - e) approving the Receiver’s interim statement of receipts and disbursements as of May 31, 2023;
  - f) approving the fees and disbursements of the Interim Receiver for the period to and including August 4, 2023;

- g) approving the fees and disbursements of the Receiver for the period from August 5, 2023 to and including May 31, 2023;
- h) approving the fees and disbursements of the Receiver's Counsel to and including May 31, 2023;
- i) approving the Fee Accrual (as defined herein);
- j) approving the Proposed Distribution (as defined herein);
- k) effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor has been completed to the satisfaction of the Receiver, discharging Spergel as Receiver and granting certain ancillary relief in relation thereto; and
- l) such further and other relief as counsel may advise and this Court may permit.

Disclaimer

- 7. 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.
- 8. In preparing this First Report, the Receiver has relied upon certain information provided to it by Roynat and the Debtor. The Receiver has not performed an audit or verification of any information it received for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
- 9. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

**III. ACTIONS OF THE INTERIM RECEIVER AND THE RECEIVER**

General

10. A copy of the Receivership Order was provided to the Debtor by the Receiver. In addition, the Receiver prepared its statutory Notice and Statement of the Receiver in accordance with sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and mailed a copy to all creditors of the Debtor known to the Receiver and the Office of the Superintendent of Bankruptcy.
11. Requests for the production of books, records and other information of the Debtors were made by the Receiver to the principal of the Debtor. The Debtor has advised the Receiver that such books and records do not exist and accordingly are unavailable.
12. Immediately upon its appointment, the Interim Receiver and the Receiver directly or through Counsel attended to the following:
  - a) secured possession of the Real Property and attended to all necessary repairs where applicable;
  - b) arranged for site attendances on a weekly basis;
  - c) arranged utility accounts to be directed to the Receiver;
  - d) notified the tenants within the premises and re-directed rent payments to the Receiver;
  - e) arranged for the registration of the Receiver’s interest on the title to the Real Property;
  - f) arranged for insurance in the name of the Receiver;
  - g) opened a dedicated trust account for the receivership and dealt with existing accounts;
  - h) arranged for two appraisals of the Real Property;
  - i) arranged for the completion of a Phase II environmental assessment of the Real Property;

- j) communicating with the Town of Grimsby and the principal of the former owner of the Real Property with respect to a prior registered Notice registered on title relating to a development agreement between the former owner and the Town of Grimsby which is discussed in greater detail in this Report;
- k) engaged with MacEwen Petroleum Inc., with respect to its Fuel Supply Agreement for Esso-Branded Fuels and the Right of First Refusal contained therein which is discussed in greater detail in this First Report; and
- l) communicated with known creditors of the Debtor and with the Canada Revenue Agency;

*Dealings with the Real Property*

- 13. Since the date that the Receiver took possession of the Real Property, the Receiver's activities relative to the Real Property have been focused primarily on the day-to-day management and safeguarding of the Real Property, including, without limitation, conducting a full clean-up of the premises, conducting regular inspections of the Real Property, and addressing any site-specific matters as they arose.
- 14. The Receiver sought proposals from K2Group Inc. and KRS Group of Companies Inc. (collectively, the "**Proposals**") with respect to reviving the operations of the gas station in order to market the business as a going concern. After review of the Proposals and in consultation with Roynat, it was determined that significant capital would be required to revive the operations of the gas station and attempt to market the business as a going concern. Accordingly, the Receiver proceeded with the sales and marketing process as outlined in this First Report.

**IV. MACEWEN PETROLEUM INC.**

- 15. The fuel supplier to the business of 2796 was MacEwen Petroleum Inc. ("**MacEwen**").

16. 2796 entered through an assumption agreement into a Fuel Supply Agreement with MacEwen (“the **MacEwen FSA**”) for the supply of fuel, which agreement, inter alia, contained a right of first refusal (“**MacEwen ROFR**”) with respect to any sale of the Real Property and a term that the Debtor, if so requested by MacEwan, would obtain covenant from any purchaser to observe and perform the terms of the MacEwan FSA. Attached to this First Report as **Appendix “5”** is a copy of the MacEwen FSA.
17. MacEwen advised the Receiver that it did not have an interest in purchasing the Real Property; however; it did have an interest in preserving its rights under the FSA. Accordingly, prior to listing the Real Property for sale, the Receiver entered in negotiations with MacEwen with respect to the MacEwen FSA and MacEwen ROFR and agreed as follows:
  - a) The Receiver would market the Real Property with the MacEwen FSA in place, and advise the market that if an offer, acceptable to the Receiver, is made that honors the MacEwen FSA then the MacEwen ROFR would not apply;
  - b) If a party was interested in the Real Property and wanted to attempt to re-negotiate the terms of the MacEwen FSA, the Receiver would connect the party and MacEwen for such negotiations to take place; and
  - c) If no party made an offer acceptable to the Receiver and the Receiver, as a court appointed officer, reported to the Court that it concluded that the MacEwen FSA was impairing the sale, then the Receiver would seek to disclaim the MacEwen FSA.

**V. THE SALES PROCESS WITH RESPECT TO THE REAL PROPERTY**

18. Pursuant to the terms of the Receivership Order, the Receiver was empowered and authorized to, inter alia, market any or all of the Debtor’s assets, including advertising and soliciting offers in respect of the assets and negotiating such terms and conditions of sale as the Receiver, in its discretion, deemed appropriate.



19. The Receiver engaged the services of Colliers International Realty Advisors Inc. (“**Colliers**”) and Wagner, Andrews & Kovacs Ltd. (“**Wagner**”) to attend at and conduct full narrative appraisals of the Real Property. The Receiver obtained appraisals in relation to the Real Property from Wagner on October 26, 2022, and from Colliers on November 5, 2022. Attached to this First Report as **Confidential Appendix “1”** are copies of the appraisal reports.
20. In addition to the above noted appraisal, the Receiver requested sales and marketing proposals from two Greater Toronto Area commercial real estate brokers, CBRE Limited (“**CBRE**”) and Avison Young Commercial Real Estate Services LP (“**Avison Young**”). Copies of the sales and marketing proposals with valuations redacted are attached to this First Report as **Appendix “6”**. Unredacted copies of the sales and marketing proposals are attached to this First Report as **Confidential Appendix “2”**
21. The Receiver concluded that the Avison Young proposal was most beneficial to the estate and entered into an MLS Listing Agreement with Avison Young dated December 7, 2022, at a list price of \$5,500,000 (the “**Listing Agreement**”). Attached to this First Report as **Appendix “7”** is a copy of the Listing Agreement.
22. Avison Young widely marketed the Real Property to garner maximum interest and several offers to purchase. This included listing the Real Property on MLS and reaching out to over 1900 contacts. This resulted in 32 interested parties executing Confidentiality Agreements, 30 people accessing the data room for the property and a number of interested parties touring the Real Property. Attached to this First Report as **Confidential Appendix “3”** is a copy of the Final Progress Report issued by Avison Young dated May 1, 2023.
23. The bid deadline was set for March 31, 2023, and five Offers were received by Avison Young with respect to the Real Property at that time. Attached hereto as **Confidential Appendix “4”** is a comparative summary of the Offers received.

24. By direction of the Receiver, Avison Young reached out to the top three bidders requesting them to re-submit and put forth their highest and best offer on or before April 6<sup>th</sup>, 2023. Shortly after this request was made by Avison Young, two of the top three bidders advised that they were withdrawing from the process no longer wishing to purchase the property. The original top bidder re-submitted their best offer, but their original offer price remained the same.
25. On the basis of the foregoing marketing efforts, the Receiver accepted the Offer submitted by Jignesh Parikh in Trust for a company to be formed (the “**Parikh Offer**”) as being the best of the Offers received.
26. The Parikh Offer is on an “as-is, where-is” basis, conditional upon the Purchaser being able to obtain a satisfactory fuel supply agreement with MacEwen, and an Approval and Vesting Order being issued by the Court. The condition relative to the fuel supply agreement was waived by the parties on April 27, 2023. Attached to this First Report as **Appendix “8”** is a redacted copy of the Parikh Offer. Attached to this First Report as **Confidential Appendix “5”** (together with **Confidential Appendices “1”, “2”, “3” and “4”**, the “**Confidential Appendices**”) is an unredacted copy of the Parikh Offer. Attached to this First Report as **Appendix “9”** is a copy of the waiver of the condition relative to the fuel supply agreement dated April 27, 2023.
27. The Parikh Offer was subsequently amended to show the Purchaser as 14927524 Canada Inc.
28. The Receiver is of the view that the sale process was one that resulted in the best price in these circumstances, consider the interests of all parties, was a fair and public process and was conducted in a commercially reasonable manner.
29. The Receiver is of the view that that the market was extensively canvassed pursuant to Avison Young’s professional, and industry standard marketing efforts are detailed above and are provide for in the Avison Young’s sales and marketing proposal. Further, the Receiver is of the opinion that the efforts of Avison Young

through the listing of the Real Property on MLS and Avison Young's internal and external network have provided sufficient exposure of the Real Property to the market.

30. It is the opinion of the Receiver that the terms and conditions contained within the Parikh Offer are commercially reasonable in all respects and that the purchase price in the Parikh Offer is at market value for the Real Property and is the best outcome to the estate in the circumstances.
31. Roynat has been consulted with respect to the Transaction and supports the completion of same and the relief sought by the Receiver within this motion.
32. The Receiver recommends that the Court approve the Transaction.
33. If the closing of the transaction is approved, same will close on ten business dates after the date that the Approval and vesting Order is granted by the Court.
34. Accordingly, the Receiver is seeking, among other things, an Order from this Honourable Court approving the Transaction.

## **VI. REQUEST FOR A SEALING ORDER**

35. The Receiver is also seeking a sealing order in respect of the Confidential Appendices to this First Report as they each contain commercially sensitive information, the release of which prior to the completion of the Transaction would be prejudicial to the stakeholders of the Debtor's estate in the event the Transaction does not close. The requested sealing of the Confidential Appendices is for a temporary period, until the earlier of the completion of the Transaction or further Order of this Court.

## **VII. RIGHT OF FIRST REFUSAL MARUTI GRIMSBY INC.**

36. Maruti Grimsby Inc. ("**Maruti**") operates a Pizza Hut Franchise out of leased premises on the Real Property (the "**Maruti Lease**"). The Maruti Lease contains a purported right of first refusal. The Receiver and the listing broker canvassed

Maruti and both were advised that Maruti had no interest in purchasing the Real Property. Accordingly, the Receiver negotiated an amendment to the Maruti Lease deleting the provision in relation to the right of first refusal.

#### **VIII. NOTICE REGISTERED BY TOWN OF GRIMSBY**

37. The title abstracts for the Real Property (see Appendix 14) disclose a prior registered Notice by the Town of Grimsby with respect to a development agreement dated December 19, 2018, between 88 Grimsby Inc., a former owner of the Real Property and the Town of Grimsby (the “**Grimsby Notice**”). 88 Grimsby Inc. had applied to the Town of Grimsby for approval of a development upon the Real Property in accordance with drawings, plans, specifications, and site plans, all of which had been approved by and filed with the Town of Grimsby.
38. The Receiver made enquiries of the Town of Grimsby and was informed as to the outstanding repairs that were required of the former owner of the Real Property. The Receiver was also made aware that the Town held an irrevocable letter of credit or some other form of cash collateral as security for the repairs lodged by the former owner of the Real Property.
39. On or about the 8<sup>th</sup> day of June 2023, counsel for the Receiver contacted the Town of Grimsby and was advised that discussions with the former owner had broken down as the former owner was unwilling to pay for an updated engineer’s report. The Town of Grimsby also confirmed that it was holding cash collateral in the approximate amount of \$80,000 which counsel was advised would likely be sufficient or close to sufficient to remedy any deficiencies; however, the costs may potentially be in excess of the security held.
40. The Parikh Offer specifically listed the Grimsby Notice as a permitted encumbrance which would remain on title to the Real Property following closing.

## **IX. FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL**

41. Attached to this First Report as **Appendix “10”** is the Affidavit of Mukul Manchanda sworn June 14, 2023 (the “**Manchanda Affidavit**”) which incorporates, by reference a copy of the time docket pertaining to the interim receivership for the period to and including August 4, 2022 and the receivership for the period from August 5, 2022 and including May 31, 2023. The total fees and disbursements of the Interim Receiver of \$23,750.90 (inclusive of HST and disbursements) were charged by Spergel as detailed in the Manchanda Affidavit. This represents a total of 56.80 hours at an effective hourly rate of \$370.04. The total fees and disbursements of the Receiver of \$157,042.03 (inclusive of HST and disbursements) were charged by Spergel as detailed in the Manchanda Affidavit. This represents a total of 364.35 hours at an effective hourly rate of \$381.43.
42. The fees for Receiver’s Counsel from July 20, 2022 to May 31, 2023 are in the total amount of \$46,329.16, inclusive of HST and disbursements. Attached to this First Report as **Appendix “11”** is the Affidavit of Jason DiFruscia, sworn June 14, 2023. The Receiver has reviewed the Receiver’s Counsel’s accounts and the Receiver is satisfied that all the work set out the Receiver’s Counsel’s accounts was carried out and was necessary. The hourly rates of the lawyers who worked on this matter were reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience.
43. Provided there is no opposition to the relief sought in this First Report and that such relief is granted, the Receiver estimates that the costs to conclude the Transaction, if approved, and complete the administration of the estate should not exceed \$100,000, and as such is seeking approval to hold this sum pending completion of all matters and the Receiver’s discharge (the “**Fee Accrual**”).

## **X. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

44. Attached to this First Report as **Appendix “12”** is a copy of the Receiver’s Interim Statement of Receipts and Disbursements as of May 31, 2023.

## **XI. CANADA REVENUE AGENCY**

45. On or about June 6, 2023, made enquiries of the insolvency unit of the Canada Revenue Agency (“**CRA**”) and was advised that there was an unsecured HST debt owing by the Debtor. During the same conversation, the Receiver was advised that there was no priority claim for unpaid source deductions.

## **XII. RECEIVER’S PROPOSED DISTRIBUTION**

### *Receiver’s Borrowing*

46. Pursuant to Paragraph 21 of the Receivership Order, the Receiver borrowed funds from Roynat in the amount of \$100,000.00 (the “**Receiver’s Borrowing**”) to fund its disbursements during the receivership.
47. Further pursuant to Paragraph 21 of the Receivership Order, the issuance of the Receiver’s Certificate has the effect of creating a charge on the Property, by way of a fixed and specific charge as security for the repayment of the monies borrowed, together with interest and charges thereon, in priority to all statutory interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order) over the property of the Debtors in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order) but subordinate to the Receiver’s Charge (as defined in the Receivership Order) and the charges set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
48. A title search conducted with respect to the Property has indicated the following registrations on title in order of priority:
- i) A Notice in favour of the Town of Grimsby registered on the 27<sup>th</sup> day of December 2018, with respect to a Development Agreement between a former owner of the Real Property and the Town of Grimsby, the details of which are described above.

- ii) A first mortgage registered October 6, 2021 in the principal amount of \$4,025,000 held by Roynat Inc. Attached to this First Report as **Appendix “13”** is a copy of correspondence from Roynat dated June 9, 2023 confirming the amount owing in respect of the first mortgage was \$4,389,736.59 as at June 9, 2023, with a per diem rate thereafter of \$1,035.48.
  - iii) A second mortgage registered October 8, 2021, in the principal amount of \$450,000 held by MacEwen Petroleum Inc.
  - iv) A construction lien registered July 21, 2022, in the amount of \$59,320 held by Tuddenham Enterprises Inc.
49. Attached to this First Report as **Appendix “14”** are copies of title abstracts with respect to the Real Property dated June 14, 2023. Attached to this First Report as **Appendix “15”** is the security opinion issued by Harrison Pensa LLP dated August 16, 2022, providing its opinion that the security comprised of the first mortgage held by Roynat is good and enforceable in accordance with its terms.
50. The Receiver has concluded that the first mortgage held by Roynat is a senior charge over the Real Property, subject to the claims under the Receivership Order.
51. On the basis of the foregoing, the Receiver is proposing to make a distribution (after payment of the fees and disbursements of the Receiver and the Receiver’s Counsel outlined in this First Report, including the Fee Accrual) as follows (the **“Proposed Distribution”**):
- i) To Roynat for repayment of the Receiver’s Borrowing in the amount of \$100,000 plus interest thereon in accordance with the Receiver’s Certificate;
  - ii) Balance of any and all funds available in Debtor’s estate to Roynat, on account of the Debtor’s secured indebtedness to Roynat. It is anticipated that Roynat will suffer a shortfall, and accordingly there will be no funds

available for distribution for subsequent mortgage holders and any other stakeholders.

### **XIII. DISCHARGE OF THE RECEIVER**

52. In the event that the Order approving the sale of the Real Property is granted by the Court, the Receiver proposes to attend to the matters listed below:

- a) closing of the Transaction;
- b) payment of realty tax arrears;
- c) payment of real estate commission;
- d) preparing and filing of the Receiver's closing certificate provided for in the Sale Approval and Vesting Order sought from this Honourable Court;
- e) preparing and filing of final BIA notices; and
- f) preparing and filing of the Receiver's discharge certificate provided for in the Ancillary Order sought from this Honourable Court.

53. The Receiver seeks an Order from the Court approving its activities and conduct described in this First Report and upon the Receiver filing a Certificate with the Court confirming that it has completed the administration of these receivership proceedings, that the Spergel be discharged and released from any and all liability that it has now or may hereafter have by reason of, or in any way arising out of the acts or omissions of Spergel while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part.

### **XIV. RECOMMENDATION**

54. Based on the foregoing, the Receiver respectfully recommends that the Court make Orders granting the relief detailed in paragraph 6 of this First Report.



All of which is respectfully submitted to the Court this 14<sup>th</sup> day of June 2023.

**msi Spergel inc.,**  
solely in its capacity as court-appointed Receiver of  
2796996 Ontario Inc. and not in its personal or  
corporate capacity

Per:   
Name: Mukul Manchanda  
Title: Managing Partner

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**FIRST REPORT OF THE RECEIVER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

ROYNAT INC.

v.

2796996 ONTARIO INC.

Applicant

Respondent

Court File No. CV-22-00683167-00CL

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**ONTARIO  
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PROCEEDING COMMENCED AT  
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**MOTION RECORD OF THE RECEIVER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.