

Court File No.:

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

B E T W E E N :

**BANK OF MONTREAL**

**Applicant**

- and -

**8331707 CANADA INC.**

**Respondent**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. c-43, as amended

**APPLICATION RECORD  
(RETURNABLE JANUARY 11, 2021)**

December 11, 2020

**MILLER THOMSON LLP**  
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London, ON Canada N6A 5R8

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Lawyers for the Applicant,  
Bank of Montreal

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# TAB 1

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- and -

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R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. c-43, as amended

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on January 11, 2021, at 2:00 p.m. by judicial videoconference via Zoom (see appendix "A" attached for particulars) at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 9, 2020

Issued by \_\_\_\_\_  
Local registrar

Address of court office 330 University Avenue  
Toronto, ON M5G 1R8

TO: 8331707 Canada Inc.  
34 Dafoe Crescent  
Brampton, ON L6Y 2L2

AND TO: THE SERVICE LIST

## APPLICATION

1. The Applicant makes application for an Order substantially in the form attached as appendix “B”, including,

- (a) if necessary, abridging the time for and validating service of this application and dispensing with further service of same;
- (b) appointing MSI Spergel Inc. (“**Spergel**”) as receiver and manager (the “**Receiver**”), without security, of all assets, undertakings and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended (the “**CJA**”);
- (c) costs on a solicitor and client basis, plus HST, in accordance with the security granted by the Respondent to the Applicant; and
- (d) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:

- (a) the Respondent owns and operates a gas station business (the “**Business**”) located at 59 Woodlawn Road West, Guelph, Ontario (the “**Premises**”);
- (b) as of December 8, 2020, the Respondent was indebted to the Applicant for approximately \$1.825 million, plus costs, on loans (the “**Loans**”) made by the Applicant to finance the Business;
- (c) the Applicant holds security over all of the properties and assets of the Respondent, including the Premises and the assets of the Business;
- (d) Events of default have occurred under the terms of the Loans and the security, including the Respondent failing to make required payments on the Loans, failing to provide required financial reporting and failing to pay the property taxes for the Premises;

- (e) in November 2020, responsibility for the oversight and management of the Loans was transferred to the Applicant's special accounts management unit ("**SAMU**") because of the events of default which had occurred and concerns with the financial performance of the Business and the Respondent's ability to service the Loans;
- (f) following the transfer to the SAMU, the Respondent advised the Applicant that it was making efforts to sell the Business;
- (g) on November 12, 2020, the Applicant demanded payment of the Loans and gave notice to the Respondent pursuant to s. 244 of the *BIA* of the Applicant's intention to enforce its security;
- (h) the Applicant expressed to the Respondent a willingness to enter into a forbearance agreement to provide the Respondent with additional time to sell or refinance the Business and repay the Loans. A draft forbearance agreement was provided to the Respondent on November 17, 2020, but was not signed or implemented;
- (i) On November 30, 2020, the Respondent advised the Applicant that it was in the process of finalizing a sale for the Business, but a copy of the sale agreement was not initially provided to the Applicant. Later, on December 3, 2020 the Respondent provided a copy of a sale agreement dated November 23, 2020 (the "**November 23 Sale Agreement**");
- (j) The Applicant had several concerns with the November 23 Sale Agreement including, (i) it appeared to have already been signed at the time the Respondent advised the Applicant that it was still in the process of finalizing a sale agreement, (ii) no plausible explanation was provided for the delay in the Respondent providing a copy of the November 23 Sale Agreement to the Applicant, and (iii) the November 23 sale Agreement includes a condition precedent which required the Respondent to provide certain information to the purchaser within seven (7) days of acceptance of the offer. Despite requests that it do so, the Respondent has not confirmed to the Applicant that the condition precedent was fulfilled or waived and that the November 23 Sale Agreement is binding and effective;

- (k) the Applicant is unaware whether the November 23 Sale Agreement remains binding and effective;
  - (l) the Applicant has lost confidence in management of the Respondent and the Respondent's willingness to work cooperatively with the Applicant to sell the Business;
  - (m) the security held by the Applicant over the properties and assets of the Business is enforceable;
  - (n) default has occurred under the terms of the security held by the Applicant;
  - (o) the security held by the Applicant provides for the appointment of a receiver and manager on default;
  - (p) the Respondent is party to a motor fuel supply agreement with Parkland Fuel Corporation ("**Parkland**") the terms of which include a right of first refusal for the Premises in favour of Parkland. A court appointed receiver would be better able to realize upon the Premises and assets of the Business for the benefit of the Applicant and all other stakeholders;
  - (q) the appointment of the Receiver is just and convenient;
  - (r) Spergel is a licensed trustee in bankruptcy and has consented to being appointed as Receiver by the Court;
  - (s) Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*;
  - (t) Section 243 of the *BIA* and Section 101 of the *CJA*;
  - (u) Rules 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*; and
  - (v) such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Eugene Chow and the exhibits thereto;

- (b) the Consent of Spergel to act as receiver, if so appointed; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

December 9, 2020

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Bank of Montreal

## APPENDIX “A”

(Conference Details)

Join Zoom Meeting

<https://zoom.us/j/92908034280?pwd=emh3c0NORUQxeVQ2WUt0VzRwS0ludz09>

Meeting ID: 929 0803 4280

Passcode: 335514

One tap mobile

+12532158782,,92908034280#,,,,,0#,,335514# US (Tacoma)

+13017158592,,92908034280#,,,,,0#,,335514# US (Washington D.C.)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington D.C.)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

Meeting ID: 929 0803 4280

Passcode: 335514

Find your local number: <https://zoom.us/u/adstdpEY2RU>



**SERVICE LIST**

TO: **8331707 CANADA INC.**  
34 Dafoe Crescent  
Brampton, ON L6Y 2L2  
Email: 8331707Canadainc@gmail.com

AND TO **MINISTRY OF FINANCE LEGAL SERVICES BRANCH**  
Michael Starr Building  
33 King Street West, 6<sup>th</sup> Floor  
P.O. Box 627, Station A  
Oshawa, ON L1H 8H5

**KEVIN O'HARA**  
Tel: 905-433-6934  
Email: kevin.ohara@ontario.ca

AND TO **CANADA REVENUE AGENCY**  
**c/o DEPARTMENT OF JUSTICE (CRA)**  
The Exchange Tower, Box 36  
130 King Street West, Suite 3400  
Toronto, ON M5X 1K6

**RAKHEE BHANDARI**  
Tel: 416-952-8563  
Email: rakhee.bhandari@justice.gc.ca

AND TO: **MSI SPERGEL INC.**  
200-505 Consumers Road  
Toronto, ON M2J 4V8

**DEBORAH HORNBOSTEL**  
Tel: 416-498-4308  
Email: deborah@spergel.ca

*Proposed Court-Appointed Receiver*

AND TO: **CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**GARY FELDMAN**  
Tel: 416-218-1130  
Email: gary@chaitons.com

**CHRIS STAPLES**  
Tel: 416-218-1147  
Email: chris@chaitons.com

*Lawyers for the Proposed Court-Appointed Receiver*

AND TO: **HONDA CANADA FINANCE INC.**  
180 Honda Blvd  
Markham, ON L6C 0H9

**APPENDIX "B"**

Court File No.

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

THE HONOURABLE

)

WEDNESDAY, THE 11TH

)

JUSTICE

)

DAY OF JANUARY, 2021

**BANK OF MONTREAL**

**Applicant**

- and -

**8331707 CANADA INC.**

**Respondent**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. c-43, as amended

**ORDER  
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "*BIA*") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended (the "*CJA*") appointing msi Spergel Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 8331707 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via judicial videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eugene Chow sworn December \*\*, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing for any other party on the service list although duly served as appears from the affidavit of service of Julie Franchini sworn December \*\*, 2020 and on reading the consent of msi Spergel Inc. to act as the Receiver.

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property"), and without limiting the generality of the foregoing, the Property includes the real property described on schedule "A".

## **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to

time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

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

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from



compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

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

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

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

## **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

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

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

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

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

## **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject

to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

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

#### **GENERAL**

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

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

29. 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.

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

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

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

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**Schedule "A"**

(Real Property)

a) Property Identifier Number 71359-0141, LRO # 61

the real property legally described as PART LOT 4 PLAN 169 AS IN RO803884;  
GUELPH, and municipally known as 59 Woodlawn Road West, Guelph, Ontario.

**Schedule "B"**

**RECEIVER CERTIFICATE**

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

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of all assets, undertakings and properties of 8331707 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor (the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 11th day of January, 2021 (the "Order") made in an action having Court file number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$150,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.



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

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

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

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

BANK OF MONTREAL

and

8331707 CANADA INC.

Applicant

Respondent

Court File No.:

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

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

**MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON CANADA N6A 5R8**

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Bank of Montreal

## **TAB 2**

~~Revised: January 21, 2014~~  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No.

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

THE HONOURABLE	)	<del>WEEKDAY</del> <u>WEDNESDAY</u> , THE <u>#11TH</u>
	)	
JUSTICE	)	DAY OF <del>MONTH</del> <u>JANUARY</u> , <del>20YR</del> <u>2021</u>

**~~PLAINTIFF~~<sup>1</sup>**

~~Plaintiff~~

**BANK OF MONTREAL**

**Applicant**

- and -

**~~DEFENDANT~~**

~~Defendant~~

**8331707 CANADA INC.**

**Respondent**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. c-43, as amended

**ORDER**  
**(appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "*BIA*")

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<sup>1</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

<sup>2</sup> ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. ~~C-43~~, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~msi Spergel Inc. as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~8331707 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via judicial videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Eugene Chow sworn ~~[DATE]~~December \*\*, 2020 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant, no one appearing for ~~[NAME]~~any other party on the service list although duly served as appears from the affidavit of service of ~~[NAME]~~Julie Franchini sworn ~~[DATE]~~December \*\*, 2020 and on reading the consent of ~~[RECEIVER'S NAME]~~msi Spergel Inc. to act as the Receiver,<sub>;</sub>

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and service validated<sup>3</sup> , as necessary, so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, ~~[RECEIVER'S NAME]~~msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property"), and without limiting the generality of the foregoing, the Property includes the real property described on schedule "A".

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<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

## RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$ 50,000, provided that the aggregate consideration for all such transactions does not exceed \$ 100,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~f~~ or section 31 of the Ontario *Mortgages*

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<sup>4</sup> ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

Act, as the case may be,<sup>5</sup> shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply.~~

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

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<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~



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

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

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this

paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance

with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

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

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

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

## **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

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

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the

Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

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

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates

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<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. ~~This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘@’.~~

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

#### **GENERAL**

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

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

29. 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.

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

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

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~~SCHEDULE "A"~~ Schedule "A"

(Real Property)

a) Property Identifier Number 71359-0141, LRO # 61

the real property legally described as PART LOT 4 PLAN 169 AS IN RO803884;  
GUELPH, and municipally known as 59 Woodlawn Road West, Guelph, Ontario.

Schedule "B"

RECEIVER CERTIFICATE

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

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ msi Spergel Inc., the receiver (the "Receiver") of ~~the all~~ assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of 8331707 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, ~~including all proceeds thereof (collectively,~~ (the "Property") appointed by Order of the Ontario Superior Court of Justice (~~Commercial List~~) (the "Court") dated the 11th day of January, 2021 (the "Order") made in an action having Court file number CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ 150,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

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

~~[RECEIVER'S NAME]~~ [msi Spergel Inc.](#), solely in  
its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

BANK OF MONTREALand8331707 CANADA INC.ApplicantRespondentCourt File No.:

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

Proceeding commenced at TORONTO

**RECEIVERSHIP APPOINTMENT ORDER**

**MILLER THOMSON LLP**  
**ONE LONDON PLACE**  
**255 QUEENS AVENUE, SUITE 2010**  
**LONDON, ON CANADA N6A 5R8**

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Bank of Montreal

Document comparison by Workshare 10.0 on Thursday, December 10, 2020  
10:17:17 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/50906599/1
Description	#50906599v1<Legal> - MODEL RECEIVERSHIP ORDER
Document 2 ID	iManage://mtdmswssc.millerthomson.corp/Legal/51015381/1
Description	#51015381v1<Legal> - Draft Receivership Order January 11, 2021 (833 Canada)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
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<u>Moved to</u>	
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Deleted cell	
Moved cell	
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Padding cell	

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Moved to	0
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Total changes	187
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## **TAB 3**

Court File No.:

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

B E T W E E N :

**BANK OF MONTREAL****Applicant**

- and -

**8331707 CANADA INC.****Respondent**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. c-43, as amended

**AFFIDAVIT OF EUGENE CHOW  
(SWORN DECEMBER 10, 2020)**

I, Eugene Chow, of the City of Toronto, Province of Ontario, MAKE OATH AND SAY:

**INTRODUCTION**

1. I am an account manager with the Special Accounts Management Unit (“**SAMU**”) of Bank of Montreal (the “**Bank**”) and have been personally involved in the administration of the loans and accounts of the respondent, 8331707 Canada Inc. (“**833 Canada**” or the “**Respondent**”) since October 2020. My knowledge of the matters to which I hereinafter depose is based on my involvement with the Respondent’s loans and accounts since that time and from my review of the Bank’s files for the period prior to that time. I have knowledge of the matters to which I hereinafter depose unless otherwise indicated. Where I do not have personal knowledge of the matters to which I hereinafter depose, I have identified the source of my information and do verily believe same to be true.

**BACKGROUND**

2. 833 Canada owns and operates an ESSO branded gas station and convenience store (the “**Business**”) from the premises located at 59 Woodlawn Road West, Guelph (the “**Premises**”). 833 Canada is the owner of the Premises.



3. 833 Canada is indebted to the Bank on loans for approximately \$1.825 million. The Bank holds security over all of the properties and assets of the Respondent including the Premises and the assets of the Business.

4. 833 Canada has defaulted on its loans with the Bank, including failing to make required payments, failing to provide required financial reporting and failing to pay the realty taxes for the Premises.

5. On November 12, 2020, the Bank demanded payment of its loans and gave notice to 833 Canada under s. 244 of the *Bankruptcy and Insolvency Act* of the Bank's intention to enforce its security over the Business and Premises.

6. The Bank was initially prepared to consider a forbearance arrangement to provide the Respondent with additional time to refinance or sell the Business and Premises; however, recent events have lead the Bank to believe that the Respondent has not been completely forthcoming with the Bank on the status of its sale efforts. As a result, the Bank has lost confidence in management and the Respondent's willingness to work with the Bank on a cooperative basis to either sell or refinance the Business and Premises. The Bank seeks to enforce its security by the appointment of a receiver and manager.

7. This affidavit is sworn in support of the Bank's application for an order appointing msi Spergel Inc. ("**Spergel**") as receiver and manager by the court of the assets, undertakings and properties of the Respondent.

## THE LOANS

8. The Bank became the banker to 833 Canada in or about October 2018.

9. The Bank has made two loans (the "**Loans**") to 833 Canada pursuant to a Letter of Agreement dated October 15, 2018 (the "**Letter of Agreement**"). The Loans are as follows:

- (a) a \$93,000 operating loan (the "**Operating Loan**"); and
- (b) a fixed rate term loan in the amount of \$1,785,000 to finance the purchase of the Business (the "**Term Loan**").

10. A true copy of the Letter of Agreement is attached as **Exhibit "A"** to this affidavit.

11. The Operating Loan was made available under the terms of an Operating Loan Agreement (“**OLA**”) dated November 28, 2018, a true copy of which is attached as **Exhibit “B”** to this affidavit.

12. Under the terms of the OLA, the Operating Loan is payable on demand.

13. The Term Loan was made available under the terms of a Fixed Rate Term Loan Agreement (the “**Term Loan Agreement**”) dated November 28, 2018, a true copy of which is attached as **Exhibit “C”** to this affidavit. Under the terms of the Term Loan Agreement the Borrower agreed to repay the Term Loan in monthly installments of \$14,302.33 on the last day of each month from January 2019 until the maturity date on December 31, 2020 (the “**Maturity Date**”). On the Maturity Date, the balance of the Term Loan then outstanding was to become due and payable in full.

14. The amount outstanding on the Loans as at December 8, 2020 totals \$1,786,669.81, broken down as follows:

**Operating Loan**

Principal	\$ 86,926.69
Interest	\$ 134.16

**Term Loan**

Principal	\$1,683,028.55
Interest	\$ 16,610.41

15. In addition to the Loans, the Bank has made a \$40,000 loan to 833 Canada under the provisions of the Canada Emergency Business Account program.

**THE SECURITY**

16. As security for its obligations to the Bank, 833 Canada has provided the Bank with the following security in respect of the assets of the Business and the Premises:

- (a) a General Security Agreement dated November 28, 2018 (the “**GSA**”), a true copy of which is attached as **Exhibit “D”** to this affidavit;

- (b) a Charge/Mortgage registered against title to the Premises as instrument number WC557941 (the “**Mortgage**”), a true copy of which is attached as **Exhibit “E”** to this affidavit; and
- (c) an Assignment of Rents registered against title to the Premises as instrument number WC557943 (the “**Assignment of Rents**”), a true copy of which is attached as **Exhibit “F”** to this affidavit.

17. By virtue of the above security documents, the Bank holds security over all of the assets, properties and undertakings of the Respondent, including the Premises.

18. Financing statements have been registered in favour of the Bank, as secured party, under the *Personal Property Security Act* (“**PPSA**”) with respect to the GSA and Assignment of Rents. A search of a search of registrations against “8331707 Canada Inc.” under the *PPSA* as of December 8, 2020 is attached as **Exhibit “G”** to this affidavit.

19. As disclosed by the *PPSA* search, in addition to the registrations in favour of the Bank, there is one other registration outstanding against 833 Canada, being a registration in favour of Honda Finance Canada Inc. (“**Honda**”) in respect of a 2019 Honda CRV motor vehicle (the “**Honda Motor Vehicle**”).

20. It is my belief and understanding that, subject to any government priority claims and any purchase money security interest which Honda may have in the Honda Motor Vehicle, the Bank has a first ranking security interest over the personal property of the Respondent.

21. A true copy of the parcel register for the Premises is attached as **Exhibit “H”** to this affidavit.

22. It is my belief and understanding that, subject to unpaid realty taxes and other government priority claims, the Bank has a first ranking security over the Premises.

#### **THE EVENTS OF DEFAULT AND THE TRANSFER OF THE LOANS TO THE SAMU**

23. The SAMU is responsible for the management and administration of loans and accounts having a higher than acceptable level of risk. Responsibility for the oversight and administration of the Loans and 833 Canada’s account with the Bank was transferred to the SAMU in October 2020. The Bank had concerns regarding the financial performance of the Business and 833 Canada’s ability to service the Loans. 833 Canada’s fuel sales volume in 2019 was

approximately 50% of the projected fuel sales volume at the time the Loans were made. In 2020, the fuel sales volume has decreased to approximately 30% of the original projected volume.

24. Under the Letter of Agreement, 833 Canada was required to provide the Bank with accountant prepared financial statements along with copies of its corporate tax return and notice of assessment within 120 days of its fiscal year end. The Loans were advanced in November 2018. 833 Canada did not provide the required reporting to the Bank for its 2018 or 2019 fiscal years.

25. To assist the Respondent with its cash flow during the Covid-19 pandemic, the Bank did not require the Respondent to make the monthly payments on the Term Loan for the months of March to August, 2020. The monthly payments were to resume on September 30, 2020, but the Respondent failed to make the September payment when due. The interest portion of the September payment was received by the Bank on October 16, 2020 and the principal portion of the September payment was received by the Bank on November 11, 2020. The Borrower later failed to make the October payment.

26. Under the terms of the Letter Agreement, 833 Canada is required to pay all taxes when due and maintain its assets free of liens. As of October 26, 2020, 833 Canada had failed to pay realty taxes for the Premises in the amount of \$20,432.24 (including penalty charges). Attached as **Exhibit "I"** is a true copy of a certificate issued by the City of Guelph confirming the amount owed for the unpaid taxes.

#### **THE BANK DEMANDS PAYMENT**

27. On November 12, 2020 the Bank demanded payment of the Loans and gave notice to the Respondent under s. 244 of the *BIA* (the "**s. 244 Notice**") of the Bank's intention to enforce its security. A true copy of the demand for payment and s. 244 notice is attached as **Exhibit "J"** to this affidavit.

28. I note that even without the demand for payment, the Term Loan would have become due and payable in full on the Maturity Date (December 31, 2020) in any event.

## PROPOSED FORBEARANCE ARRANGEMENT

29. In my discussions with the principals of 833 Canada, Jigneshbhai Shah (“**Jignesh**”) and Tejash Kumar Shah (“**Tejash**”), prior to the Bank demanding payment, they advised me that 833 Canada was making efforts to sell the Business. I advised them that given the Bank’s concerns and the defaults, the Bank would be demanding payment of the Loans but was prepared to enter into a 90 day forbearance arrangement to allow the Respondent additional time to sell or refinance the Business. In the demand for payment, the Respondent was also advised that the Bank was prepared to discuss forbearance terms with the Respondent.

30. On November 17, 2020 a draft Forbearance Agreement was provided to the Respondent by the Bank’s lawyer, Tony Van Klink of Miller Thomson LLP. A true copy of the draft Forbearance Agreement is attached as **Exhibit K**” to this affidavit.

31. The email by which the draft Forbearance Agreement was sent to the Respondent required the Forbearance Agreement to be finalized and signed by November 24, 2020. A true copy of that email is attached as **Exhibit “L”** to this affidavit.

32. No response was received from the Respondent by the November 24, 2020 deadline. The Forbearance Agreement was not signed or implemented.

33. On November 30, 2020 Mr. Van Klink and Jignesh exchanged emails. A true copy of the email thread is attached as **Exhibit “M”** to this affidavit. In response to Mr. Van Klink asking Jignesh and Tejash to advise as to their intentions, Jignesh responded, in part, as follows:

*We are working on selling the property. Today our deal is going to be finalized. Once I have completed sign Sale & Purchase agreement I will send to you. ”*

34. In the concluding email to the thread attached as Exhibit “M”, Mr. Van Klink requested that a copy of the signed sale agreement be sent to him later that day (November 30).

35. I am advised by Mr. Van Klink that he did not receive a copy of a sale agreement on November 30, 2020.

36. On December 2, 2020 a pre-authorized debit in favour of Parkland Fuel Corporation (“**Parkland**”) for approximately \$83,000 was presented for payment on 833 Canada’s operating

account. Parkland is the fuel supplier to the Business. 833 Canada had insufficient funds available in its operating account and the payment was dishonoured.

37. On December 2, 2020, Mr. Van Klink sent an email to the Respondent with respect to the dishonoured payment to Parkland and the status of the sale agreement and requested a phone call with Jignesh to discuss those matters. A copy of that email is attached as **Exhibit “N”** to this affidavit.

38. I am advised by Mr. Van Klink that in the afternoon of December 2, 2020 he spoke with Jignesh by telephone and was advised as follows:

- (a) an agreement had been reached with a prospective purchaser for the sale of the Business;
- (b) the sale agreement was with the agent and Jignesh expected to get a copy of the sale agreement that day
- (c) he was not certain of the sale price but had been told by the agent that the price being asked by the Respondent had been accepted;
- (d) he was not aware of what conditions might be in the sale agreement;
- (e) the closing of the sale was to occur in February 2021;
- (f) he was unaware of the \$83,000 pre-authorized debit from Parkland but confirmed that it was a mistake and he would look into it; and
- (g) he would provide to Mr. Van Klink a copy of the sale agreement, the name of his lawyer and what he was able to ascertain regarding the \$83,000 debit by Parkland.

39. On December 2, 2020, Jignesh sent an email to Mr. Van Klink stating, in part, “I will send you sale & Purchase agreement once I have it.” A true copy of that email is attached as **Exhibit “O”**.

40. The information promised by Jignesh during the December 2 call was not provided. On December 3, 2020, Mr. Van Klink sent a follow up email to the Respondent, a true copy of which is attached as **Exhibit “P”** to this affidavit. In that email, Mr. Van Klink advised that the Bank required a copy of the sale agreement to be provided by 5:00 p.m. on December 3, 2020. The

email also advised that following receipt of the sale agreement, the Bank would then advise whether it was prepared to enter into a forbearance agreement and, if so, the terms of same.

41. In the evening of December 3, 2020 I received by email a copy of a sale agreement (the “**November 23 Sale Agreement**”) from Jignesh, a true copy of which is attached as **Exhibit “Q”** to this affidavit. The purchase price has been redacted to prevent any prejudice to future sale efforts.

42. The November 23 Sale Agreement is signed by Jignesh and appears to have been signed by him on November 23, 2020. I was surprised by this for a couple of reasons. First, in my discussions with Jignesh and Tejash around the time of the Bank demanding payment of the Loans they told me that 833 Canada was trying to sell the Business. I asked them to provide a copy of the sale agreement when one became available. I had not been provided with a copy of the November 23 Sale Agreement prior to receiving it on December 3. Second, Jignesh would have known of the November 23 Sale Agreement when he spoke with Mr. Van Klink on November 30, yet he made no mention of it to Mr. Van Klink.

43. In the evening of December 3, 2020 Mr. Van Klink sent an email to Jignesh seeking an explanation for why the November 23 Sale Agreement was not disclosed when Jignesh spoke with Mr. Van Klink on November 30. A copy of the email thread between Mr. Van Klink and Jignesh is attached as **Exhibit “R”**. References in that email thread to the purchase price have been redacted to prevent any prejudice to future sale efforts.

44. The explanation provided by Jignesh for not disclosing the November 23 Sale Agreement was that 833 Canada was trying to get the purchaser to increase the purchase price. As 833 Canada had already accepted the offer, I found that explanation to lack credibility.

45. The November 23 Sale Agreement also required 833 Canada to provide various information (described in the agreement as “seller’s information”) to the buyer within seven (7) days of the acceptance of the offer. Based on the dates in the November 23 Sale Agreement, the seller’s information was to be provided by November 30, 2020. The November 23 Sale Agreement provides that the delivery of the seller’s information is a condition precedent to the buyer’s obligations.

46. On December 4, 2020, Mr. Van Klink sent an email to the Respondent asking for information to be provided by 5:00 p.m. on December 4, 2020 to confirm that the November 23

Sale Agreement was binding and effective, a true copy of which is attached as **Exhibit “S”** to this affidavit.

47. I am advised by Mr. Van Klink that he did not received any response to the December 4, 2020 email by the requested time.

48. On December 7, 2020, Mr. Van Klink and I received an email from Jignesh with a copy of a \$25,000 bank draft. A true copy of that email and the bank draft are attached as **Exhibit “T”** to this affidavit.

49. I do not know whether the November 23 Sale Agreement remains binding and effective. Despite requests, 833 Canada has not provided confirmation of same.

#### **THE BANK SEEKS TO ENFORCE ITS SECURITY AND APPOINT A RECEIVER**

50. The Bank has lost confidence in the management of the Respondent and their willingness to work cooperatively with the Bank to sell the Business.

51. The Bank seeks to enforce its security through the appointment by the court of Spergel as receiver of all of the assets, undertakings and properties of the Respondent.

52. The security held by the Bank grants to the Bank the right to appoint a receiver on default.

53. Under the terms of a Motor Fuel Supply Agreement dated March 11, 2015 (the “**MFSA**”) made between the Respondent and Parkland Industries Ltd. (now Parkland), the Respondent granted to Parkland a right of first refusal in respect of the Premises. A true copy of the MFSA is attached as **Exhibit “U”** to this affidavit.

54. It is my understanding that a court appointed receiver would not be obligated to perform agreements to which the Respondent is a party (including the MFSA), which may assist in maximizing the realization from the assets of the Business for the benefit of the Applicant and other stakeholders. The availability of a vesting order in a court appointed receivership may also provide greater comfort to prospective purchasers and assist in the realization process.

55. A receivership conducted under the court’s supervision will facilitate the realization of the security held by the Bank and will ensure that the assets of the Respondent are realized upon and administered in accordance with the rights of the Applicant and other parties.



56. The Bank wishes to proceed with the enforcement of its security by the appointment of a receiver through the court without further delay. The Bank requests the assistance of this Honourable Court and proposes that Spergel be appointed as receiver by the court.

57. Spergel is a licensed trustee in bankruptcy and is prepared to act as receiver if so appointed by the court.

**SWORN BEFORE ME** via video-conference with the deponent in the City of Toronto, Ontario, and the Commissioner in the Municipality of Thames Centre, Ontario this 10th day of December, 2020.



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A Commissioner for taking affidavits in and for the Province of Ontario.  
(Tony Van Klink)

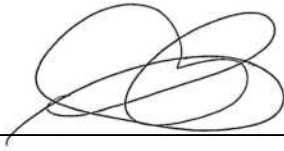


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Eugene Chow

Note: This affidavit was commissioned via simultaneous video-conference in accordance with the Commissioners for taking Affidavits Act, R.S.O. 1990, CHAPTER C.17, and Ontario Regulation 431/20 Administering Oath or Declaration Remotely, under which (i) the deponent is known to me, or the identity of the deponent was confirmed from government issued identification, (ii) the commissioner administered the oath or affirmation, (iii) the deponent affixed their electronic signature to the affidavit, (iv) the deponent confirmed their electronic signature to the commissioner, (v) the commissioner affixed their electronic signature to the affidavit including exhibits

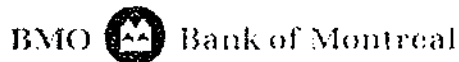
Attached are Exhibits "A" to "U" to the  
Affidavit of Eugene Chow sworn the 10th  
day of December, 2020.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left, positioned above a solid horizontal line.

*A Commissioner, Etc.*

# EXHIBIT “A”

# Letter of Agreement



6605 Hurontario Street Suite 200  
Mississauga, Ontario L5T 0A4  
Tel No: 905 670 2413  
Fax No: 905 670 3973  
Email: Balwinder.Jandu@bmo.com

October 15, 2018

8331707 Canada Inc.  
34 Dafoe Crescent  
Brampton, Ontario L6Y 2L2

Attention: Jigneshbhai Shah/Tejash Kumar Shah

## LETTER OF AGREEMENT

Bank of Montreal ("BMO") is pleased to advise that it has authorized the following new credit Facilities for **8331707 CANADA INC.** (each, a "Facility" and collectively, the "Facilities") on the terms and conditions outlined in this Letter of Agreement. The Schedules listed below and attached form part of this Letter of Agreement.

Notwithstanding any other provision of this Letter of Agreement or in any applicable agreements, any Advance under any Facility hereunder will be made at BMO's sole discretion. Any unutilized portion of any Facility hereunder may be cancelled by BMO at any time without prior notice.

<b>Borrower(s):</b>	8331707 CANADA INC. (the "Borrower")
<b>Guarantor(s):</b>	Jigneshbhai Shah, Tejash Kumar Shah, Nimisha Shah, Mittalben Shah (the "Guarantor(s)")
<b>Total Facility Limit:</b>	The total approved amount of all facilities shall not exceed \$1,878,000.00 at any time.

**Facility # 1**

**Facility Authorization:** \$1,785,000.00 CAD

**Type of Loan:** Demand Loan Non Revolving or Fixed Rate Term Loan

**Purpose:** To Assist in the Purchase of an existing gas station

**Maximum Amortization:** 180 months

<b>Advance Options</b> (each a "Loan" and collectively the "Loans")	<b>Cap Amount</b>	<b>Additional Details</b>
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**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of October 15, 2018 is 3.70%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Blended monthly payments comprising principal and interest to be paid in arrears, on the last day of each month. The amount of the payment will be initially determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance. Subject to review at BMO's sole discretion.

OR

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Other:**

**Fixed Rate  
Term Loan**

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of October 15 for a 5 year term is 5.80% per annum; and the rate is valid for 10 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan

shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, payment frequency, amortization, and term.

OR

Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

**Other:**

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

**Facility # 2**

<b>Facility Authorization:</b>	\$93,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Operating Financing
<b>Interest Rate:</b>	Prime Rate plus 2%. Interest is calculated monthly in arrears, and payable monthly on the last day of each month. The Prime Rate in effect as of October 15, 2018 is 3.7%.
<b>Repayments:</b>	Repayable on demand
<b>Facility Fee:</b>	\$93.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.
<b>Other Costs:</b>	<p>BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.</p> <p>In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.</p>

**Conditions Precedent to Advances:**

BMO will not be required to make any advance to the Borrower unless and until each of the conditions set out below and in Schedule C has been completed to BMO's satisfaction

1. Receipt of satisfactory legal opinions relating to all matters considered relevant by BMO including, without limitation, the due authorization, execution, delivery and enforceability of the Loan and Security documentation by and against the Borrower and each Guarantor, if any. Satisfactory legal opinion to be obtained relating to all matters considered relevant by the Bank, including the due authorization, execution, delivery and enforceability of the loan and Security documentation by the Borrower and all relevant parties. To opine on security position of 1st ranking GSA, 1st AIM collateral IAO \$1,878,000 with BMO having a good and valid charge, confirm all taxes of the borrower and guarantors are paid and UTD, zoning and by-laws (if title insurance not taken). TSSA Certification to be in place. Assignment of rents to be registered on title.
2. Receipt of satisfactory Phase II environmental audit report of 59 Woodlawn Road West, Guelph Ontario prepared by an Environmental Consultant satisfactory to BMO, together with a letter by the consultant addressed to BMO confirming that BMO may rely on the report for financing purposes.
3. Receipt of satisfactory Environmental Review, Compliance Certificate and Indemnity for Mortgaged Property executed by the Borrower in favour of BMO
4. Phase II Transmittal letter
5. Receipt of satisfactory appraisal of 59 Woodlawn Road West, Guelph Ontario from an appraiser or agrologist satisfactory to BMO confirming a minimum market value of \$2,930,000.00, together with a letter by the appraiser or agrologist addressed to BMO confirming that BMO may rely on the appraisal for financing purposes. Letter of engagement to be obtained.

6. Confirmation of assignment of Fuel Supply agreement to the borrower.
7. Postponement agreement TBO prior to funding from Honda confirmed by Solicitor and Solicitor to register BMO in first position over all business asset of borrower.
8. Purchase and Sale Agreement
9. Solicitor to confirm ownership of borrower includes both Jignesh and Tejash.
10. Copies of bank statements to support drafts which were used for downpayment to be obtained and reviewed prior to drawdown to ensure funds are not borrowed..

**Covenants:**

As long as any Advance remains outstanding under or in connection with this Letter of Agreement, or so long as this Letter of Agreement remains in effect, the Borrower and any Guarantor will perform and comply with the covenants set out in Schedule A.

**Financial Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following financial covenants, based on financial statements of the Borrower or applicable Guarantor:

**Maintain a Debt Service Coverage (DSC) ratio greater than or equal to 1.25:1**

$DSC = \frac{\text{Net Income} + \text{Interest} + \text{Depreciation} + \text{Amortization}}{\text{Current Portion of Long Term Debt} + \text{Interest} + \text{Non-Discretionary Dividend}}$

**Additional Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following covenants:

1. The Borrower will not, without BMO's prior written consent, participate in any retrofit project or energy or water efficiency project affecting the Mortgaged Property which would have the effect of creating a lien, hypothec or other interest (including, but without limitation, a local improvement charge or similar interest) in the Mortgaged Property ranking, or potentially ranking, in priority to or *pari passu* with the interest of BMO in the Mortgaged Property, whether or not such project is sponsored or endorsed by a municipal or other government, governmental organization or utility.

**Security:**

Each of the following documents, instruments, agreements and other assurances (collectively, the "Security") shall be delivered to BMO prior to any advance of funds, in form and substance acceptable to BMO and its solicitors, acting reasonably:

1. Registered first-ranking All Indebtedness in the amount of \$1,878,000.00 registered over 59 Woodlawn Road West, Guelph Ontario (the "Mortgaged Property") with appropriate enabling resolutions and documentation. To include applicable assignment of rents. To also include the following clauses:
  1. No secondary financing w/o Bank's prior written consent
  2. Provision of Reporting Requirements
  3. Acceleration clause with respect to maintenance of Debt Service Coverage of 1.25x
  4. Standard receiver/manager clause
  5. Standard due on sale clause including any change in ownership
2. Delivery of an Up to Date or Existing survey/certificate of location of Mortgaged Property(ies) and all buildings located on the Mortgaged Property(ies), prepared by a surveyor licensed in the jurisdiction in which the property(ies) is/are located, which:
  - bears the name, address and signature of the surveyor, his official seal and licence number (any, or both), the date of a survey, and
  - includes a Surveyor's Certificate in the form and content required by the jurisdiction(s) in which the property is located

OR

Title insurance from Approved Title Insurance Provider in respect of property located at 59 Woodlawn Road West, Guelph Ontario naming BMO as beneficiary

3. Insurance on a "Fire and Extended Coverage" or "All Risks" basis must be arranged (with satisfactory



evidence thereof delivered to the Bank's solicitor before advances are made) satisfactory to the Bank for the full insurable or replacement value of the subject property with loss payable to the Bank of Montreal. The policy is to contain the Standard Mortgage Clause General insurance – To cover Cost of replacement of building + equipment + lease holds etc. (all tangible and intangible assets excluding land) to be minimum at \$2,500M. Business interruption insurance (the amount of loss incurred on account of business interruption to be covered will be the greater of what is calculated by insurance company or one year EBITDA- profit before interest, tax, depreciation and amortization. Environmental insurance to cover both borrower and third party liability, Minimum amount required \$2,500M A copy of the policy is to be provided.

4. Registered General Security Agreement ("GSA")/Moveable Hypothec ("Hypothec") providing BMO with a security interest/hypothec over all present and after-acquired personal/movable property of the Borrower with a First ranking for CDN Accounts Receivable, Machinery and Equipment, Inventory/Warehouse Receipts
  5. Personal guarantees from Jigneshbhai Shah, Tejash Kumar Shah, Nimisha Shah, Mittalben Shah in the amount of \$1,878,000 with Independent Legal Advice for Nimisha Shah and Mittalben Shah.
  6. LF9B - Assignment Postponement and Subordination signed by Jigneshbhai Shah and Tejash Shah in the amount of \$965,000
  7. Letter of Undertaking acknowledging the reporting requirements set out below.
  8. Deficiency Agreement to be signed by guarantors agreeing upon written request of the Bank to inject funds to cover any shortfalls in debt servicing (as measured by Bank DSC covenant) within 15 business days of receiving a request for injection from the Bank.
  9. Commercial Loan Insurance to be offered to all guarantors in the amount of \$1,878,000 for FRTL/DLNR and \$93,000 ODL and if declined, waiver to be on file
- Any other documents, instruments or agreements as may be required by BMO, acting reasonably

#### Reporting Requirements:

<p><b>Annual</b></p>	<p>Within 120 days of the fiscal year end, the borrower shall provide:</p> <ol style="list-style-type: none"> <li>1. Municipal tax certificates showing all real estate taxes are paid up-to-date are to be provided annually</li> <li>2. Accountant prepared Notice to Reader financial statements of 8331707 Canada Inc. to be provided along with Corporate tax return and Notice of Assessment of 8331707 Canada Inc.</li> <li>3. Confirmation of fire insurance renewal with BMO being the 1st loss payee; over property located at 59 Woodlawn Rd W, Guelph, ON</li> <li>4. Personal Net worth Statements of the guarantors to be provided as semi-annually or as requested by the Bank</li> <li>5. Confirmation of fuel volumes via Supplier provided Annual Fuel Volumes Report</li> <li>6. Notice of Assessment for Jigneshbhai Shah, Nimisha Shah, Tejash Kumar Shah, &amp; Mittalben Shah, to confirm personal tax payments are up to date</li> <li>7. Confirmation of Environmental insurance; Coverage of min \$2,500,000 environmental coverage in aggregate with min. \$1,000,000 per occurrence to guard against accidental contamination with BMO being the 1st loss payee, over property located at 59 Woodlawn Rd W, Guelph, ON</li> </ol>
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	8. Any other information or documentation as requested by the bank
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A \$50 per month fee will be applied for non compliance with reporting requirements. The application of this fee does not waive the default condition.

Prompt notification of management letters, default notices, litigation, and any other material events

Satisfactory evidence that all taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date

#### **Representations and Warranties:**

The Borrower and each Guarantor, as applicable, makes the representations and warranties set out in Schedule B. All representations and warranties of the Borrower and any Guarantor, in addition to any representation or warranty provided in any document executed in connection with a Facility or any Security, shall be true and correct on the date of this Letter of Agreement and on the date of any Advance under a Facility.

#### **Noteless Advances:**

The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Facilities, and interest, fees and other amounts due in connection with the Facilities, in an account of the Borrower maintained by BMO, shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Facilities; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Facilities set out in this Letter of Agreement shall not be affected by the failure of BMO to make such recording. The Borrower also hereby acknowledges being indebted to BMO for principal amounts shown as outstanding from time to time in BMO's account records, and all accrued and unpaid interest in respect thereto, which principal and interest the Borrower hereby undertakes to pay to BMO in accordance with the terms and conditions applicable to the Facilities as set out in this Letter of Agreement.

#### **Fees:**

All costs and expense incurred by BMO in connection with this Letter of Agreement and the Facilities (including without limitation all legal, appraisal and consulting fees), and the enforcement of the Security are for the account of the Borrower.

A one-time fee ("Fee") of \$9,390 is payable by the Borrower to BMO upon acceptance of this Letter of Agreement. This fee is deemed to be earned by BMO upon acceptance of this Letter of Agreement, to compensate for time, effort and expense incurred by BMO in authorizing these Facilities.

Credit renewal fees will be payable as advised by BMO annually; at the date of this letter such fees are estimated to be \$ 1,500.

All fees payable under this Letter of Agreement shall be paid to BMO on the dates due, in immediately available funds. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

#### **Banking Services:**

The Borrower shall maintain its bank accounts, solely with BMO.

#### **Treasury & Payment Solutions:**

BMO will provide Non-Credit and treasury & payment solutions to the Borrower. A Treasury & Payment Specialist will contact the Borrower to implement BMO's On-Line Banking for Business platform (OLBB) and discuss additional treasury & payment features such as Electronic Funds Transfer (EFT), Wire Payments, BMO DepositEdge® and Moneris® Payment Processing Solutions. BMO's objective is to provide a package of services that are tailored to meet both the current and future needs of the Borrower in a cost efficient

operating environment.

**Commercial Loan Insurance Plan:**

You understand that unless you submit an Application for Commercial Loan Insurance Plan ("Application"), and it has been approved by Canada Life as the insurer, you will not be covered under the Commercial Loan Insurance Plan for any facilities under this Letter of Agreement and would be ineligible to submit a claim should you undergo an insurable event.

**Counterparts; Electronic Transmissions:**

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

**Governing Law:**

Ontario and the federal laws of Canada applicable therein.

**Schedules:**

The following Schedules are attached to and form part of this letter of agreement:

Schedule A – Covenants

Schedule B – Representations and Warranties

Schedule C – Conditions Precedent to Advances

**BMO's Legal Counsel: [ ]**

In accepting this Letter of Agreement you acknowledge that if, in the opinion of BMO, a material adverse change in risk occurs including, without limitation, any material adverse change in the financial condition, business, property or prospects of the Borrower or any Guarantor, the rights and remedies of BMO, or the ability of the Borrower or any Guarantor to perform its obligations to BMO, any obligation to advance some or all of the above Facilities may be withdrawn or cancelled.

Please indicate your acceptance of the terms and conditions hereof by signing and returning one copy of this Letter of Agreement (and making payment of the above noted fee, if applicable) to BMO no later than October 23, 2018. If your acceptance of this Letter of Agreement is not received by BMO by that date, BMO shall not be required to proceed with any of the Facilities.

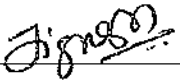
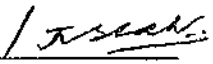
Yours truly,  
BANK OF MONTREAL

By:   
Name: BALWINDER JANDU  
Title: Senior Relationship Manager

Accepted and agreed to this 15 day of OCTOBER, 2018

**BORROWER(S)**

8331707 Canada Inc.

Signature:  / 

Name: JIGNESH BHAI SHAH / TEJASH KUMAR SHAH

Title: DIRECTOR; DIRECTOR

**GUARANTOR(S)**

Jigneshbhai Shah

Witness: [Signature]

Signature: [Signature]

Name: BAL JANDU

Name: JIGNESHBHAI SHAH

Tejash Kumar Shah

Witness: [Signature]

Signature: [Signature]

Name: BAL JANDU

Name: TEJASH KUMAR SHAH

Mittalben Shah

Witness: [Signature]

Signature: [Signature]

Name: TEJASH KUMAR SHAH

Name: MITTALBEN SHAH

Nimisha Shah

Witness: [Signature]

Signature: [Signature]

Name: JIGNESHBHAI SHAH

Name: NIMISHA SHAH

SCHEDULE A

COVENANTS

1. Payment of all indebtedness due to BMO in connection with this Letter of Agreement or any Facility
2. Maintenance of corporate existence and status, if applicable
3. Payment of all taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholdings)
4. Compliance with all material laws, regulations and applicable permits or approvals (including health, safety and employment standards, labour codes and environmental laws)
5. Compliance with all material agreements
6. Use of proceeds to be consistent with the approved purpose
7. Notices of death of Borrower or Guarantor, default, material litigation, and regulatory proceedings to be provided to BMO on a timely basis
8. Access by BMO to books and records; BMO to have right to inspect property to which its security applies
9. No assumption of additional indebtedness or guarantee obligations by Borrower without prior written consent of BMO
10. No liens or encumbrances on any assets except with the prior written consent of BMO
11. No change of control or ownership of the Borrower without the prior written consent of BMO
12. No disposition of property or assets (except in the ordinary course of business) without the prior written consent of BMO
13. No material acquisitions, hostile takeovers, mergers or amalgamations without BMO's prior written approval
14. [NTD – insert any additional covenants specific to the business/property of the Borrower/Guarantor]
15. [For multiple currencies]:

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Letter of Agreement, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Letter of Agreement in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which BMO is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its principal office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by BMO of the amount due, the Borrower will, on the date of receipt by BMO, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by BMO on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by BMO is the amount then due under this Letter of Agreement in the Currency Due. If the amount of the Currency Due which BMO is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower and each Guarantor jointly and severally (solidarily) agree to indemnify BMO from and against any and all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Letter of Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by BMO from time to time and shall continue in full force and effect notwithstanding any judgment or order in respect of an amount due under this Letter of Agreement or under any judgment or order.

SCHEDULE BREPRESENTATIONS AND WARRANTIES

1. It has the corporate status, power and authority to enter into this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party, and to perform its obligations hereunder and thereunder
2. It is in compliance with all applicable laws (including environmental laws) and its existing agreements
3. Except as otherwise disclosed to BMO in writing, no consent or approval of, registration or filing with, or any other action by, any governmental authority is required in connection with the execution, delivery and performance by it of this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party
4. All factual information that has been provided to BMO for purposes of or in connection with this Letter of Agreement or any transaction contemplated herein is true and complete in all material respects on the date as of which such information is dated or certified
5. No event, development or circumstance has occurred that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Borrower or any Guarantor
6. There is no material litigation pending against it or, to its knowledge, threatened against or affecting it
7. It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required taxes
8. It has good and marketable title to its properties and assets including ownership of and/or sufficient rights in any material intellectual property.
9. It has complied with all obligations in connection with any pension plan which it has sponsored, administered or contributed to, or is required to contribute to including, without limitation, registration in accordance with applicable laws, timely payment of all required contributions or premiums, and performance of all fiduciary and administration obligations
10. It maintains insurance policies and coverage that provides sufficient insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons in the same or a similar business
11. It is not in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default under any loan, credit or security agreement, or under any material instrument or agreement, to which it is a party.

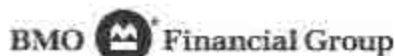
SCHEDULE C

CONDITIONS PRECEDENT TO ADVANCES

1. Evidence of corporate (or other) status and authority
2. Completion and registration (as applicable) of all Security (defined herein) and other supporting documents
3. Completion of all facility documentation and account agreements and authorities, as applicable
4. Compliance with all representations and warranties contained herein
5. Compliance with all covenants (financial and non-financial) contained herein
6. No Event of Default (defined herein) shall have occurred and be continuing
7. Compliance with all laws (including environmental)
8. Payment of all fees and expenses
9. Receipt of all necessary material governmental, regulatory and other third party approvals including environmental approvals and certificates
10. Satisfactory due diligence (including, without limitation, anti-money laundering, proceeds of crime and "know your customer" requirements and procedures, environmental and insurance due diligence)
11. Repayment of all existing indebtedness (excluding permitted indebtedness), as applicable.
12. Satisfactory review of material contracts, as applicable
13. Satisfactory review by BMO (or, at BMO's option and the Borrower's expense, an insurance consultant) of insurance policies issued to the Borrower(s) and/or the Guarantor(s) and compliance with any changes required to satisfy BMO's insurance requirements
14. Disclosure of all material contingent obligations
15. Confirmation that no shares of the Borrower held by the principal shareholders have been pledged as security for any financial or other indebtedness
16. Corporate taxes of the Borrower and corporate/personal taxes of the Guarantor(s) are to be confirmed current and up-to-date
17. Satisfactory evidence that all other taxes payable by the Borrower and Guarantor(s) (including, without limitation, GST, HST, sales tax, and withholdings) have been paid to date
18. No material judgments or material legal action initiated against the Borrower and/or any Guarantor(s)
19. Any other document or action which BMO may reasonably require

# EXHIBIT “B”





## Operating Loan Agreement with Availment in Canadian Dollars

To: Bank of Montreal

Date: NOVEMBER 28, 2018

The undersigned hereby requests Bank of Montreal (the "Bank") to provide a credit facility to the undersigned, subject to the following terms and conditions:

### 1. DEFINED TERMS

In this Agreement:

- 1.01 "Account" shall mean the Canadian Dollar Account No. 3858-1985-007 at the Bank
- 1.02 "Facility Fee" shall mean a fixed monthly fee of \$ 93.00.
- 1.03 "Loan" shall mean the credit facility (if any) provided pursuant to this Agreement and the amount of the Loan shall mean at any time the aggregate of all amounts debited to the Account (including without limitation cheques, transfers, withdrawals, interest, costs, charges and fees) less the aggregate of all amounts credited to the Account for which the Bank has given value.
- 1.04 "Loan Limit" shall mean Ninety Three Dollars (\$ 93,000.00 ) or such lesser amount as may be determined by the Bank from time to time including, without limitation, pursuant to a calculation under the Lending Margin Calculation, if any, set out in the Addendum hereto.
- 1.05 "Loan Rate" shall mean a rate equal to the Bank's Prime Rate plus Two per cent ( 2.00%) per annum.
- 1.06 "Prime Rate" shall mean the floating annual rate of interest established from time to time by the Bank as the reference rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is Three point Seven per cent (3.70 %) per annum.
- 1.07 "Overdraft Rate" shall mean the annual rate of interest established from time to time by the Bank as the interest rate it will use to calculate the interest payable on overdrawn accounts and designated by the Bank as the "Overdraft Rate". The Overdraft Rate on the date hereof is Twenty One per cent (21.0%) per annum.

### 2. ACCOUNT

- 2.01 Cheques drawn and debits of other kinds made on the Account (including, without limitation, transfers and withdrawals) shall be drawn in Canadian dollars.
- 2.02 The undersigned shall not at any time permit the Loan to exceed the Loan Limit and shall use the Account for business purposes only.
- 2.03 The Bank is authorized to debit the Account for all fees and interest required hereunder and for all costs, charges and expenses referred to in paragraph 6.01 and in any other agreement(s) the undersigned has entered into with the Bank.

### 3. FEES AND INTEREST

- 3.01 The undersigned shall pay the Facility Fee to the Bank, on the last day of each month in addition to all other fees applicable to the Account. Notwithstanding paragraph 1.02, the amount of the Facility Fee may be revised by the Bank from time to time and the revised fee will be effective once the Bank advises the undersigned by notice as herein provided. The Facility Fee shall be payable for the credit facility provided hereunder and for other standard reporting services provided by the Bank in connection with the Account.
- 3.02 The undersigned shall, both before and after demand or judgment, pay interest at the Loan Rate on the daily closing balance of the Loan up to the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.

- 3.03 The undersigned shall, both before and after demand or judgment, pay interest at the Overdraft Rate on the amount of any daily closing balance of the Loan in excess of the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.
- 3.04 Nothing herein shall oblige the Bank to permit the Loan to exceed the Loan Limit. In the event the Loan exceeds the Loan Limit, (i) the Bank may at any time terminate the Loan hereunder and immediately demand payment of the Loan by notice as herein provided and (ii) for each occurrence the undersigned will be charged a fee of 1% per annum calculated on the amount of excess over the Loan Limit or \$100, whichever is greater, and a \$5 overdraft handling charge per item that creates or increases the excess.

#### **4. DEMAND AND TERMINATION**

- 4.01 The undersigned shall pay the Loan to the Bank ON DEMAND, regardless of any covenants, conditions, obligations or events of default set out herein including, without limitation, any provisions set out in the Addendum hereto. The Bank may at any time terminate the Loan provided hereunder and demand payment of the Loan by notice as herein provided.
- 4.02 THE BANK MAY REFUSE TO HONOUR ANY CHEQUE OR PERMIT ANY TRANSFER OR WITHDRAWAL FROM THE ACCOUNT UPON (A) ANY DEFAULT BY THE UNDERSIGNED IN THE PERFORMANCE OF ANY OBLIGATION OF THE UNDERSIGNED TO THE BANK WHETHER CONTAINED HEREIN OR IN ANY OTHER AGREEMENT BETWEEN THE UNDERSIGNED AND THE BANK, (B) THE DEATH OF ANY GUARANTOR OF ANY INDEBTEDNESS OF THE UNDERSIGNED OR RECEIPT BY THE BANK OF NOTICE OF TERMINATION OF ANY GUARANTEE OF ANY INDEBTEDNESS OF THE UNDERSIGNED, (C) THE LOAN EXCEEDING THE LOAN LIMIT, OR (D) ANY DEMAND BEING MADE FOR PAYMENT OF THE LOAN, WHETHER OR NOT ANY TIME PERIOD HAS LAPSED AFTER THE TIME OF THE DEMAND.

#### **5. DOCUMENTATION**

- 5.01 The undersigned shall deliver to the Bank from time to time, promptly on request, in form and substance satisfactory to the Bank:
- (a) any security required by the Bank; and
  - (b) all other documents and information required by the Bank.
- 5.02 Any security document delivered hereunder shall be held as additional security for the indebtedness of the undersigned for the Loan, and not in substitution or in satisfaction thereof.

#### **6. COSTS**

- 6.01 The undersigned shall pay all reasonable costs, charges and expenses incurred by the Bank in the preparation or enforcement of this Agreement or any security required in connection with the Loan.

#### **7. NOTICES**

- 7.01 The Bank shall not be required to notify the undersigned of changes to the Prime Rate or the Overdraft Rate or in the Bank's calculations of the Lending Margin Calculation, if any.
- 7.02 Any request for any document or information, notice of termination, demand for payment or other notice to be sent in connection with this Agreement or either of the Accounts may be delivered, or mailed by prepaid ordinary mail or transmitted by facsimile if to the undersigned (or any one of them, if more than one) at the last known address or facsimile number for the undersigned (or any one of them, if more than one) in the Bank's records or if to the Bank at the Branch where the Account is maintained. The undersigned or the Bank, as applicable, shall be deemed to have received such request or notice on the date of delivery, if delivered, on the first business day following the date of transmission if transmitted by facsimile, and four (4) days after mailing, if mailed.

#### **8. AMENDED AND RESTATED AGREEMENT**

- ☐ 8.01 This Agreement hereby amends and restates the \_\_\_\_\_  
( Insert name of agreement )

Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as heretofore amended and supplemented from time to time (the "Existing Agreement"), between the undersigned and the Bank with effect as and from the date hereof (the "Effective Date"), the whole without any novation whatsoever.

- ☐ 8.02 The parties hereby expressly agree that as and from the Effective Date all of the undersigned's obligations, indebtedness and liabilities to the Bank under or pursuant to the Existing Agreement including, without limitation, the outstanding principal amount of the loan thereunder, all interest accrued thereon, all interest on overdue interest and all other amounts owing by the undersigned to the Bank under or pursuant to the Existing Agreement shall be governed by the terms hereof.
- ☐ 8.03 The undersigned hereby ratifies, confirms, acknowledges and agrees that it is and continues to be bound by all of the obligations, indebtedness and liabilities of and grants of security made by it under each of the security documents under, pursuant to or in connection with the Existing Agreement, including without limitation any agreement or instrument creating or granting a hypothec, security under the *Bank Act* (Canada), mortgage, pledge, fixed or floating charge, assignment by way of security or any other security interest securing payment or performance of an obligation under or pursuant to the Existing Agreement (herein, collectively, the "Security Documents") and each certificate or other document delivered pursuant to or in connection with the Existing Agreement or the Security Document (the Security Documents and such certificates or other documents are herein, collectively, the "Loan Documents"), and the undersigned acknowledges that the Bank is relying expressly upon the Loan Documents and such ratifications, confirmations, acknowledgements and agreements by the undersigned herein in entering into this Agreement and providing any accommodations hereunder, notwithstanding the amendment and restatement set forth herein.
- ☐ 8.04 As and from the Effective Date, all references to the Existing Agreement in any of the Loan Documents shall be construed as being a reference to the Existing Agreement as amended and restated by this Agreement.
- ☐ 8.05 This Article 8 is made under express reserve of all the terms and conditions of this Agreement and the Loan Documents and all rights in favour of the Bank hereunder and thereunder and without novation of any kind or derogation from the rank and priority of the Security Documents. Without derogating from or restricting in any way the Security Documents, all obligations under or pursuant to the Existing Agreement and hereunder shall continue to be secured by the Security Documents. All of the provisions of this Article 8 are without novation.

## 9. GENERAL

- 9.01 The provisions of the Addendum, if any, shall be incorporated into this Agreement and form part hereof.
- 9.02 The Bank's statements of the Account at any time shall constitute prima facie evidence of the Loan.
- 9.03 The undersigned will immediately notify the Bank if any guarantor of the indebtedness of the undersigned to the Bank dies.
- 9.04 This Agreement shall be binding upon the undersigned and the respective executors, administrators, successors and assigns of the undersigned, but the undersigned shall not assign any of the rights or obligations of the undersigned hereunder without the prior written consent of the Bank.
- 9.05 The failure of either the undersigned or the Bank to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce such provision; nor shall the waiver by either party of any breach of any covenant, condition or proviso of this Agreement or any other agreement between the Bank and the undersigned be taken or held to be a waiver of any further breach of the same covenant, condition or proviso.
- 9.06 Subject to Article 8 above (if applicable) this Agreement shall be in addition to and not in substitution for any other agreement between the undersigned and the Bank.
- 9.07 The undersigned agrees that the balance shown in any statement of the Account provided to the undersigned shall be deemed to be a correct and accurate statement of the Loan as at the date of the statement.
- 9.08 All payments relating to the Loan made by the undersigned pursuant to this Agreement shall be paid in Canadian dollars.

Any obligation of the undersigned under this Agreement to make payments in U.S. dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into Canadian dollars except to the extent that such tender or recovery shall result in the effective receipt by the Bank of the full equivalent amount of U.S. dollars so payable hereunder. Accordingly, the obligation of the

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undersigned shall be enforceable as an alternative or additional cause of action for the purpose of recovery in Canadian dollars of the amount (if any) by which such payment of a U.S. dollar obligation hereunder in a currency other than U.S. dollars shall fall short of the full amount of U.S. dollars so payable hereunder and shall not be affected by any judgment being obtained for any other sums due hereunder.

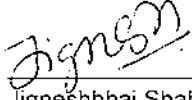
- 9.09 If any other provision of this Agreement would oblige the undersigned to pay or entitle the Bank to receive any amount that is prohibited by law, then, notwithstanding such provision, such amount shall be deemed to have been adjusted with retroactive effect to the maximum permitted amount by law. Notwithstanding the foregoing, if the Bank receives an amount in excess of the maximum permitted, then the undersigned shall be entitled, on providing written notice to the Bank, to obtain reimbursement of such excess. Pending reimbursement, such excess shall be deemed to be payable by the Bank. The Bank and the undersigned disavow any intent to receive or pay any amount in excess of that is permitted by law.
- 9.10 Time shall be of the essence of this Agreement.
- 9.11 If more than one party signs this Agreement, the obligations of the undersigned are joint and several.
- 9.12 It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

By executing this Agreement below the undersigned hereby agrees to the foregoing terms and conditions.

DATED as of the date set forth above.

*If signed by corporation or other entity (e.g. partnership).*

8331707 CANADA INC.

By:   
Name: Jigneshbhai Shah  
Title: Secretary

**ADDENDUM TO  
OPERATING LOAN AGREEMENT**

**Lending Margin Calculation and/or Additional Provisions**

The Bank may in its discretion reduce the Loan Limit by the amount of any other indebtedness or liability of the undersigned (or any one of them, if more than one) to the Bank including, without limitation, the amount of any bankers acceptances or letters of credit.

Without limiting the foregoing, the following Lending Margin Calculation is applicable to the attached Loan Agreement. The calculation and the amount of the Lending Margin Calculation is in the sole and complete discretion of the Bank, and in cases of dispute, the Lending Margin Calculation calculated by the Bank shall prevail.

The Lending Margin Calculation (if applicable) shall be an amount equal to: \_

# EXHIBIT “C”



This **LOAN AGREEMENT** is made as of the 28 day of November, 2018, between BANK OF MONTREAL (the "Bank")

AND 8331707 CANADA INC. (the "Borrower")

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Bank establishes in favour of the Borrower a Fixed Rate Term Loan allowing the Borrower to borrow from the Bank the principal amount of \$1,785,000.00, upon the following terms and conditions:

1. In this Agreement:

- (a) "Agreement" means this loan agreement, as it may be amended, supplemented, restated, replaced or otherwise modified from time to time;
- (b) "Business Day" means any day that is not a Saturday, Sunday or other day on which the Bank is authorized or required by applicable law in the jurisdiction listed in Section 15 of this Agreement to remain closed;
- (c) "Change in Control" means the occurrence of one or more sales, transfers or other dispositions of the beneficial ownership of the Borrower existing on the date of this Agreement in the aggregate of:
  - (i) shares, other securities or other equity interests issued by the Borrower which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Borrower; or
  - (ii) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity;
- (d) "Controlling Entity" means any corporation or other entity which on the date of this Agreement beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Borrower which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Borrower;
- (e) "Fixed Rate" has the meaning set out in clause 3 of this Agreement;
- (f) "Loan" means the total principal amount advanced and outstanding at any time under this Agreement, together with accrued and unpaid interest thereon, if any;
- (g) "Maturity Date" means the 31<sup>st</sup> day of December, 2020; and
- (h) "Prime Rate" means, on any day, the annual rate of interest established by the Bank and in effect on such day as the reference rate it will use to determine the rate of interest charged on Canadian dollar loans to customers in Canada, and designated by the Bank as its "Prime Rate".

Delete 2: if (i) the Borrower is an individual; (ii) the loan is not secured by a real property mortgage; and (iii) the loan amount is for \$100,000 or less, Borrower to initial change

2. Prepayment of the Loan in whole or in part is not permitted prior to the Maturity Date.

3. The Loan shall bear interest, from and including the date of this Agreement, at the rate of 5.20 % per annum, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance of the Loan (the "Fixed Rate").

4.

Check either (a) or (b), as appropriate

☐ (a) **Principal Payment Plus Interest:**

(i) The Loan principal shall be repaid by installments as follows:

\$ \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ and thereafter \$ \_\_\_\_\_ on the \_\_\_\_\_ of each and every \_\_\_\_\_ period until the Maturity

Date, on which date the balance of the Loan then outstanding and all accrued and unpaid interest shall become due and payable.

(ii) Interest shall be paid at the Fixed Rate on the last day of each and every month from the date of this Agreement on the balance of the Loan from time to time remaining unpaid up to and after the Maturity Date.

- ☒ (b) **Blended Payments:** The Loan shall be repaid by installments comprising principal and interest at the Fixed Rate as follows:  
 \$14,302.33 on the last day of January, 2019 and thereafter \$14,302.33 on the last day of each and every month until the Maturity Date, on which date the balance of the Loan then outstanding and all accrued and unpaid interest shall become due and payable.

(c) Any installments to be paid on a non-Business Day may, at the Bank's discretion, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.

(d) Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest on the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Bank's Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

5. Fees:

(a) The Borrower agrees to pay on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a booking fee of \_\_\_\_\_ % of the principal amount of the Loan.

(b) The Borrower agrees to pay on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, an application fee in the amount of \$\_\_\_\_\_.

(c) At the request of the Borrower, the Fixed Rate may be fixed up to 45 days before the first advance. If requested, the Borrower shall pay on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a refundable rate reservation fee of 1% of the principal amount of the Loan, which fee will be refunded to the Borrower on the day the Loan is advanced. In the event that the Loan is cancelled by the Borrower, such fee will not be refunded to the Borrower.

6. The Bank shall be under no obligation to make any advance until the Bank shall be satisfied that it has received:

- (a) a duly executed copy of this Agreement;
- (b) security for the amount of the Loan, duly registered and in form and substance satisfactory to the Bank and duly executed by the Borrower;
- (c) payment in full of all fees and other amounts due and payable on or prior thereto; and
- (d) any additional documents which the Bank may reasonably require.

7. The Borrower represents and warrants that:

- (a) it has been duly incorporated, organized and is properly constituted, exists in good standing and is entitled to conduct its business in all jurisdictions in which it carries on business or has assets or, if the Borrower is an individual, the Borrower has the requisite legal capacity to enter into and perform its obligations under this Agreement;
- (b) the entering into of this Agreement and the incurring of liability and indebtedness by the



Borrower hereunder do not and will not contravene or breach,

- (i) any law, regulation or judicial order applicable to the Borrower or (if applicable) the charter, by-laws or other organizational documents of the Borrower; or
  - (ii) any provision contained in any other loan or credit agreement, debenture, trust deed or other borrowing instrument or contract to which the Borrower is party;
- (c) this Agreement, when duly executed and delivered by the Borrower to the Bank, will constitute a valid and binding obligation of the Borrower, enforceable in accordance with its terms;
- (d) the Borrower's assets are legally and beneficially owned by the Borrower and, except as previously disclosed to the Bank in writing, all of the Borrower's assets pledged to secure the Loan are free and clear of all hypothecs, mortgages, claims, security interests, liens, charges or other encumbrances or rights in favour of third parties, whether perfected or otherwise, which are not in favour of the Bank; and
- (e) all necessary authorizations, approvals, consents or other orders from any authority, governmental or otherwise, have been obtained with respect to the obtaining of the Loan and the execution and delivery of this Agreement.

8. The Borrower covenants that it:

- (a) will deliver to the Bank:
  - (i) as soon as available and in any event within 90 days of the end of each fiscal year, copies of its financial statements (audited, where available) and, if applicable, the report of its auditor thereon; and
  - (ii) at any time and from time to time such other information as the Bank may reasonably request;
- (b) unconditionally promises to pay to the Bank on the Maturity Date the then unpaid principal amount of the Loan, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder;
- (c) will insure against all risks relevant to its business operations for amounts commensurate thereto, and assign the policies to the Bank and assign, hypothecate or otherwise ensure all amounts payable thereunder are payable to the Bank, all as required by and satisfactory to the Bank;
- (d) will furnish the Bank with additional security from time to time as the Bank may request;
- (e) will limit capital expenditures to a maximum of \$            in any fiscal year;
- (f) authorizes the Bank to record, file or register, at the Borrower's expense, any registrations or filings, including without limitation any financing statements, that are necessary or desirable to protect, perfect and maintain the protection and perfection of any hypothecs, mortgages, claims, security interests, liens, charges or other encumbrances or rights in favour of the Bank, and to obtain evidence satisfactory to the Bank of the rank and priority of such hypothecs, mortgages, claims, security interests, liens, charges or other encumbrances or rights;
- (g) will notify the Bank in writing immediately (i) upon receipt or notice of any law suits, claims, demands, governmental investigation or requirements to pay addressed to the Borrower or in which the Borrower is named as a party, and (ii) if any guarantor of all or any part of the Loan dies or terminates its guarantee;
- (h) will use the proceeds of the Loan solely for the purpose of:
 

To assist in the purchase of an existing gas station;
- (i) will, to the extent not in conflict or inconsistent with the provisions of this Agreement, comply with all of the provisions, covenants and agreements contained in any term sheet, commitment letter or similar document, as such document may be amended,

supplemented, restated, replaced or otherwise modified from time to time, given by the Borrower to the Bank which relates to the Loan hereunder, and such provisions, covenants and agreements are incorporated herein as if restated in their entirety; and

(j) will not, without the prior written consent of the Bank:

- (i) materially change the nature of its business from that now carried on;
- (ii) create, incur, assume or permit to exist any hypothec, mortgage, claim, security interest, lien, charge or other encumbrance or right, whether perfected or otherwise, in favour of a third party ranking ahead of or equally with any security given to or agreed to be given to the Bank;
- (iii) create, incur, assume or permit to exist any additional debt other than in the ordinary course of business;
- (iv) sell, lease, license, transfer, assign or otherwise dispose of any assets except in the ordinary course of business; or
- (v) change the ownership of the business.

9. If one or more of the following events shall occur:

(a) If:

- (i) the Borrower fails to pay any amount owing to the Bank pursuant to this Agreement or any other document given to the Bank, including without limitation the Loan, on the date same becomes due;
- (ii) the Borrower leases, licenses, transfers, assigns or otherwise disposes of any or all of the assets which the Bank holds as security for the Loan, other than in the ordinary course of business;
- (iii) the Borrower shall be in default in respect of any obligation to pay money whether or not it is in respect of the Loan;
- (iv) the Borrower shall fail to observe and comply with any term, condition or provision of this Agreement or in any other document given to the Bank, other than a default in the payment of money, and such default cannot be cured;
- (v) the Borrower shall fail to observe and comply with any term, condition or provision of this Agreement or in any other document given to the Bank, other than a default in the payment of money, and such default can be cured and the Borrower shall fail to do so within 30 days after the earlier of the Borrower acquiring knowledge of such default or receiving written notice thereof from the Bank;
- (vi) any of the Borrower's representations and warranties in this Agreement or in any other document given to the Bank shall prove to have been incorrect when made or deemed to be made;
- (vii) the holder (including the Bank) of any claim, hypothec, mortgage, security interest, lien, charge or other encumbrance or right on any of the Borrower's assets and undertaking does anything to enforce or realize on such claim, hypothec, mortgage, security interest, lien, charge or other encumbrance or right;
- (viii) the Bank determines that there has been a materially adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower;
- (ix) a guarantor of all or any part of the Loan dies or if a guarantee for the Loan terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of a guarantor;
- (x) the Borrower is not an individual and a Change in Control occurs without the prior written consent of the Bank;
- (xi) the Borrower is not an individual and the Borrower merges, consolidates or amalgamates with any other person or business; or

- (b) If an application for a bankruptcy order, notice of intention to make a proposal or proposal is filed, application made or other proceeding instituted against or in respect of the Borrower, or assignment of all the property of the Borrower is made under the terms of the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act*, the *Winding-Up and Restructuring Act*, any applicable corporations legislation or any other bankruptcy, insolvency or analogous laws, or if a receiver, receiver manager, custodian, trustee, liquidator, sequestrator or other similar official is appointed to take possession over any substantial portion of the assets of the Borrower, or if the Borrower permits any of its assets to be seized (including by way of execution, attachment, garnishment, levy or distraint) or if the Borrower makes an assignment for the benefit of its creditors or is adjudicated insolvent or bankrupt or applies to any tribunal for any receiver, receiver manager, custodian, trustee, liquidator, sequestrator or other similar official of or for the Borrower or the Borrower's assets, or any other proceeding is commenced in relation to any of the foregoing in respect of the Borrower,

then the Borrower shall be in default hereunder and the Bank may, at its option upon written notice to the Borrower, declare that the entire balance of the Loan, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall immediately become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

10. (a) Any request, notice, or demand made or given in connection with this Agreement may be made or given by mail by prepaid post or by delivery to the party for which it is intended and addressed as follows:

BORROWER:  
8331707 CANADA INC.  
34 Dafoe Crescent,  
Brampton, Ontario L6Y 2L2

BANK OF MONTREAL:  
6605 Hurontario Street  
Suite 200  
Mississauga, ON  
L5T 0A4

provided however that any party may change its address for purposes of receipt of such communication by giving 10 calendar days prior written notice of such change to the other party in the manner prescribed herein.

- (b) Any such request, notice, or demand shall be conclusively deemed to have been received by the party to which it is addressed on the third Business Day following the day of such mailing, if mailed, or on the day of delivery, if delivered.

11. All out-of-pocket expenses incurred by the Bank, including reasonable legal costs and all applicable taxes, in the preparation, administration or enforcement of this Agreement or any security or other documentation required hereunder or in connection herewith shall be for the account of the Borrower.
12. The Borrower acknowledges that the actual recording of the amount of any advance or repayment under the Loan and interest, fees and other amounts due in connection with the Loan in the accounts of the Borrower maintained by the Bank, shall constitute prima facie evidence of the Borrower's indebtedness and liability from time to time under this Agreement; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with this Agreement shall not be affected by the failure of the Bank to make such recording.
13. The Bank may from time to time and at any time waive in whole or in part:
- (a) the rights accruing to it by reason of any of the provisions of any clause of this Agreement, or
  - (b) any default under any clause in this Agreement which is to its benefit;
- but any such waiver by the Bank of any such right or of any such default on any occasion shall be deemed not to be a waiver of the provisions of any such clause thereafter or of any other clause or of any subsequent default, as the case may be.
14. If the Borrower comprises more than one person, all covenants and liabilities entered into, by or imposed upon the Borrower shall be joint and several (solidary in the Province of Quebec). Each Borrower, if more than one, is responsible both individually and together with the other Borrower(s) for all obligations of the Borrower to the Bank pursuant to this Agreement.
15. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province.
16. This Agreement shall be binding upon and enure to the benefit of the parties hereto, their successors, heirs, liquidators, administrators and assigns, except that the Borrower may not assign any of its rights or obligations hereunder without the Bank's prior written consent.
17. Any clause or part thereof which may be null or unenforceable shall not invalidate, affect or impair the remaining provisions of this Agreement.
18. Any schedules attached to this Agreement are incorporated herein in their entirety and form an integral part of this Agreement.
19. It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English.  
*Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.*

This clause applies  
only in the  
Province of  
Quebec

IN WITNESS WHEREOF this Agreement has been executed by the Borrower and the Bank as of the date set forth above.

**BANK OF MONTREAL**

By: 

Name:

**Ashton Fernandes**  
**Credit Funder**

Title:

*If signed by corporation or other entity (e.g. partnership):*

8331707 CANADA INC.

By: Jignesh  
Name: Jigneshbhai Shah  
Title: Secretary

By: Jignesh  
Name: Jigneshbhai Shah  
Title: President

**SCHEDULE A**  
**ADDITIONAL TERMS AND CONDITIONS**

Check 1 if Debt  
Service covenant is  
required. Borrower  
to initial.

- ☒ 1. The Borrower covenants that it will at all times maintain a debt service coverage ratio of not less than 1.25:1, and it will upon request by the Bank from time to time deliver to the Bank all such financial statements and records as are required by the Bank to determine the debt service coverage ratio; for the purpose of this Agreement, the term "debt service coverage ratio" at any date means the ratio of:
- (i) the amount of the net revenue of the Borrower for the period from the commencement of the then current fiscal year to such date, plus the amounts of depreciation and amortization expense of the Borrower for such period, all as determined by the Bank from financial statements and records provided by the Borrower, to
  - (ii) the aggregate amount of all payments required to be made by the Borrower during such period on account of (i) principal and interest on any indebtedness of the Borrower for borrowed money (from the Bank or otherwise) and (ii) rents or other amounts payable on leases treated by the Borrower as capital leases for accounting purposes.

Check 2 if the  
Borrower is a  
municipality.  
Borrower to initial.

- ☐ 2. In the event that the Borrower is a municipality, the provisions of Section 8 of the Agreement shall be deleted in its entirety and replaced with the following:

"8. The Borrower covenants that it:

- (a) will deliver to the Bank:
  - (i) as soon as available and in any event within 90 days of the end of each fiscal year, copies of its financial statements (audited, where available) and, if applicable, the report of its auditor thereon; and
  - (ii) at any time and from time to time such other information as the Bank may reasonably request;
- (b) unconditionally promises to pay to the Bank on the Maturity Date the then unpaid principal amount of the Loan, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder
- (c) will insure against all risks relevant to its operations for amounts commensurate thereto and satisfactory to the Bank;
- (d) will furnish the Bank with additional security from time to time as the Bank may deem fit at the request of the Bank;
- (e) authorizes the Bank to record, file or register, at the Borrower's expense, any registrations or filings, including without limitation any financing statements, that are necessary or desirable to protect, perfect and maintain the protection and perfection of any hypothecs, mortgages, claims, security interests, liens, charges or other encumbrances or rights in favour of the Bank, and to obtain evidence satisfactory to the Bank of the rank and priority of such hypothecs, mortgages, claims, security interests, liens, charges or other encumbrances or rights;
- (f) will use the proceeds of the Loan for the purpose of:  
To Assist in the purchase of an existing gas station; and
- (g) will, to the extent not in conflict or inconsistent with the provisions of this Agreement, comply with all of the provisions, covenants and agreements contained in any term sheet, commitment letter or similar document, as such document may be amended,

supplemented, restated, replaced or otherwise modified from time to time, given by the Borrower to the Bank which relates to the Loan hereunder, and such provisions, covenants and agreements are incorporated herein as if restated in their entirety."

# EXHIBIT “D”



**SECURITY AGREEMENT**

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the *Personal Property Security Act* (Ontario) insofar as it affects personal property located in Ontario.

List all  
premises  
and asset  
locations, by  
schedule, if  
necessary

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations in Ontario:  
34 Dafoe Crescent, Brampton, Ontario L6Y 2L2  
59 Woodlawn Road, Guelph, Ontario, N1H 1G8

Attach a  
schedule, if  
equipment is  
to be listed

2. The Debtor hereby:

- (a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in respect of which the Debtor has rights now or in the future and any equipment specifically listed or otherwise described in any Schedule hereto ;
- (b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service ;
- (c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future accounts, accounts receivable, client lists, client records, client files, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above ;
- (d) grants, mortgages, charges, transfers and assigns to the Bank a security interest in, all its present and future chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom ; and
- (e) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immovable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained). For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral". Without limiting the generality of the description of Collateral as set out in this clause 2, and for greater certainty, the Collateral shall include all present and future personal property of the Debtor of the type described in any schedule attached hereto. The Debtor agrees that it shall promptly advise the Bank in writing of any acquisition of personal property which is not of the type herein described. The Debtor agrees to execute and deliver from time to time, at its own expense, amendments to this Security Agreement or additional security agreements, which may be reasonably required by the Bank to ensure attachment of security interests in such personal property.

3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situate or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.

4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.

5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor of the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligation of the Debtor to the Bank.

6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.

7. The Debtor shall at all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and seasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.

8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts and accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.

9. The Debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:

- (a) the Debtor shall default under any of the Obligations;
- (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
- (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;
- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be *bona fide* opposed by the Debtor;
- (e) the Debtor shall cease to carry on business.

10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral

or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon the applicable premises and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral :

- (a) as a whole or in various lots;
- (b) by a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) by private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement, including all expenses incurred by the Bank and its agents to put into place and confirm the priority of any security interest in this Security Agreement and the payment of such expenses shall be secured hereby.

13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or the rights resulting therefrom.

14. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral and that the parties have not agreed to postpone the time for attachment of any security interest in this Security Agreement.

15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.

16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Bank.

17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.

18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.

19. The Debtor Acknowledges receipt of a copy of this agreement.

20. In construing this Security Agreement, terms herein shall have the same meaning as defined in the *Personal Property Security Act* (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally.

The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership<sup>92</sup> resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

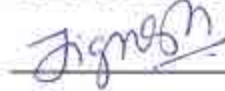
insert date  
of execution

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor on the 28 day of

NOVEMBER, 2018  
(year)

To be signed by  
Debtor:  
if Debtor is a  
corporation ensure  
signatures are  
authorized and if  
Debtor is a  
corporation with a  
corporate seal, affix  
Corporate Seal;  
Debtor's name  
should be typed

8331707 CANADA INC



Name: Jigneshbhai Shah Title: President

### CORPORATE AUTHORIZING RESOLUTION

Required only  
for a  
corporation

"WHEREAS it is in the interests of the Company to enter into a security agreement with the Bank of Montreal as security for its present and future obligations to the Bank of Montreal and therein mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future property and assets;

#### NOW THEREFORE BE IT RESOLVED THAT:

1. the Company do enter into, execute and deliver to the Bank of Montreal a security agreement substantially in the form of the draft security agreement presented to the directors, subject to such alterations, amendments or additions to which the President or a Vice-President of the Company may agree;
2. the Company do mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future equipment, inventory, intangibles, undertaking and other property and assets as security for its present and future obligations to the Bank of Montreal, all as provided in the said draft security agreement;
3. the execution by the President or a Vice-President of the Company of the said security agreement shall be conclusive proof of his agreement to any amendments, alterations or additions incorporated therein;
4. the President and the Vice-President of the Company be and they are each alone hereby authorized to execute and deliver the security agreement aforesaid on behalf of the Company and each of the officers of the Company are hereby authorized to execute all such other documents and writings and to do such other acts and things as may be necessary for fulfilling the Company's obligations under the said security agreement."

#### CERTIFICATE

To be completed  
by Secretary or  
other authorized  
officer;  
insert name  
of corporation

I am the \_\_\_\_\_ Secretary \_\_\_\_\_ of 8331707 CANADA INC.  
\_\_\_\_\_ and I hereby certify that:

Insert  
appropriate  
date

1. the foregoing is a true copy of a resolution duly and properly passed or consented to by the board of directors of the said Company on the 28 day of NOVEMBER, 2018;  
(year)
2. the attached Security Agreement is in the form of the draft security agreement referred to in the resolution and has been duly and properly executed by the proper officers of the Company under its corporate seal; and
3. the resolution was passed at a meeting duly called and held on the date aforesaid and at which a quorum of the directors was present throughout the meeting, all the directors having received proper notice of the meeting or waiving such notice in accordance with the by-laws of the Company

Use applicable  
clause

(or where applicable - the Company is subject to the *Business Corporations Act of Ontario* and the resolution was consented to by the signatures of all the directors of the Company on the date aforesaid in accordance with the *Business Corporations Act*.)

To be signed by  
Secretary or other  
authorized officer;  
affix corporate seal

  
Secretary

C. S.

# EXHIBIT “E”

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

PIN 71359 - 0141 LT Interest/Estate Fee Simple  
 Description PART LOT 4 PLAN 169 AS IN RO803884; GUELPH  
 Address 59 WOODLAWN ROAD WEST  
 GUELPH

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 8331707 CANADA INC.

Address for Service 34 DAFOE CRES

BRAMPTON ON L6Y 2L2

I, JIGNESHBHAI SHAH, PRESIDENT, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

Capacity

Share

Name BANK OF MONTREAL

Address for Service 6605 Hurontario Street Suite 200 Mississauga, Ontario L5T  
OA4**Statements**

Schedule: See Schedules

**Provisions**

Principal \$1,878,000.00 Currency CDN  
 Calculation Period  
 Balance Due Date  
 Interest Rate PRIME + 5%  
 Payments  
 Interest Adjustment Date  
 Payment Date ON DEMAND  
 First Payment Date  
 Last Payment Date  
 Standard Charge Terms 201607  
 Insurance Amount Full insurable value  
 Guarantor Jigneshbhai Shah, Tejash Kumar Shah, Nimisha Shah, Mittalben Shah

**Signed By**

Rhea Reshma Nanan 920 Derry Road East acting for Signed 2018 12 27  
 Mississauga Chargor(s)  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

MANN LAW OFFICE 920 Derry Road East 2018 12 27  
 Mississauga  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

**Fees/Taxes/Payment**

Statutory Registration Fee \$64.40

Total Paid \$64.40

## ACKNOWLEDGEMENT AND DIRECTION

95

TO: Rhea Reshma Nanan  
(Insert lawyer's name)

AND TO: MANN LAW OFFICE  
(Insert firm name)

RE: Your mortgage to BMO ("the transaction")  
(Insert brief description of transaction)

**This will confirm that:**

- I/We have reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the "Documents"), and that this information is accurate;
- You, your agent or employee are authorized and directed to sign, deliver, and/or register electronically, on my/our behalf the Documents in the form attached.
- You are hereby authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto being a copy of the version of the Document Registration Agreement, which appears on the website of the Law Society of Upper Canada as the date of the Agreement of Purchase and sale herein. I/We hereby acknowledge the said Agreement has been reviewed by me/us and that I/We shall be bound by its terms.
- The effect of the Documents has been fully explained to me/us, and I/we understand that I/we are parties to and bound by the terms and provisions of the Documents to the same extent as if I/we had signed them; and
- I/we are in fact the parties named in the Documents and I/we have not misrepresented our identities to you.
- I, [Signature], am the spouse of [Signature], the (Transferor/Chargor), and hereby consent to the transaction described in the Acknowledgment and Direction. I authorize you to indicate my consent on all the Documents for which it is required.

**DESCRIPTION OF ELECTRONIC DOCUMENTS**

The Document(s) described in the Acknowledgement and Direction are the document(s) selected below which are attached hereto as "Document in Preparation" and are

- ☐ A Transfer of the land described above.
- ☒ A Charge of the land described above.
- ☐ Other documents set out in Schedule "B" attached hereto.

Dated at MISSISSAUGA, this 28 day of November, 2018.

**WITNESS**

(As to all signatures, if required)

[Signature]

[Signature]  
8331707 CANADA INC.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Properties**

PIN 71359 - 0141 LT Interest/Estate Fee Simple  
 Description PART LOT 4 PLAN 169 AS IN RO803884; GUELPH  
 Address 59 WOODLAWN ROAD WEST  
 GUELPH

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 8331707 CANADA INC.

Acting as a company

Address for Service 34 DAFOE CRES  
 BRAMPTON ON L6Y 2L2

I, JIGNESHBHAI SHAH, PRESIDENT, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

Capacity

Share

Name BANK OF MONTREAL

Acting as a company

Address for Service 6605 Hurontario Street Suite 200 Mississauga, Ontario L5T  
 OA4

**Statements**

Schedule: See Schedules

**Provisions**

Principal \$1,878,000.00 Currency CDN  
 Calculation Period  
 Balance Due Date  
 Interest Rate PRIME + 5%  
 Payments  
 Interest Adjustment Date  
 Payment Date ON DEMAND  
 First Payment Date  
 Last Payment Date  
 Standard Charge Terms 201607  
 Insurance Amount Full insurable value  
 Guarantor Jigneshbhai Shah, Tejash Kumar Shah, Nimisha Shah, Mittalben Shah



**Mortgage Clauses- Supplement to Solicitor**

**Receiver /Manager Clause:**

In the event the real property produces rental income and such rental income is paid to the Chargor or paid to any other party pursuant to the direction of the Chargor, the Chargor hereby as further security, assigns and pledges all such rental income to the Chargee, such pledge to become operative upon any default being made by the Chargor under any term of the within Charge and to remain in full force and effect as long as such default continues. The Chargor further authorizes the Chargee after default to enter upon the mortgaged premises and to collect in the name of the Chargor or in its own name as assignee, the rents accrued but unpaid and in arrears as of the date of default, as well as all rents accruing and becoming payable thereafter, until such default is remedied. The Chargor agrees to execute written notice to each tenant directing the tenant to pay rent to the Chargee and the Chargor further agrees to pay 10% of the gross amount of all rentals due or accruing, to the Chargee as a collection fee for such period of time when the Chargee is collecting rents or is entitled to collect rents. The Chargor further authorizes the Chargee during default, at its option and at the expense and risk of the Chargor, to enter into the full management of the property with the right to manage the property in the same manner as an owner of the property, and the Chargor hereby releases all claims against the Chargee arising out of such management, except the liability of the Chargee to account for all funds received. It is not the intention of the parties that if the Chargee manages the property as aforesaid, the Chargee shall be a "mortgagee in possession", except if the Chargee so elects in writing. In addition to the collection fee for the collection of rentals as aforesaid, the Chargee shall also be entitled to all other out-of-pocket costs and compensation for its own time of any employees expended for the management of the property in the event the Chargee enters into the management of the property

**Acceleration Clause/Due of Sale Clause:**

In the event the Mortgagor sells, conveys, transfers or enters into an agreement for sale or of transfer of the title of the mortgaged property or charge to a purchaser or transferee not approved in writing by the Bank, which approval will not be unreasonably withheld, the principal amount of the mortgage loan and all other indebtedness secured by the mortgage with accrued interest thereon and interest rate penalty shall, at the option of the Mortgagee, become due and payable.

**Restriction of Secondary Financing Clause:**

Notwithstanding any other provision hereof, the Chargor shall not obtain or register any secondary mortgage financing against the Lands described herein and in default thereof the Chargee may at its option immediately declare the balance of all principal and interest to become immediately due and payable and all remedies of the Chargee shall immediately.

**Assignment of Rents Clause:**

Assignment of Rents / Leases over property located at 59 Woodlawn Road West, Guelph, Ontario, is to be registered on title and under PPSA.

**Provision of Financial Information Clause:**

Financial Statements and/or any additional financial information about the Borrower is to be provided annually within 120 days of fiscal year-end.

**BANK OF MONTREAL  
ONTARIO  
STANDARD CHARGE TERMS  
ALL INDEBTEDNESS MORTGAGE  
(COMMERCIAL/FARM)**

Filing Number: 201607

The following set of standard charge terms (together with the schedule attached hereto, the “**Standard Charge Terms**”) shall be deemed to be included in each mortgage or charge in which it is referred to by its filing number as provided in section 9 of the *Land Registration Reform Act*, R.S.O. 1990, except to the extent that the provisions of the Standard Charge Terms are excluded or varied by such mortgage or charge.

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## B. DEFINITIONS

In this set of Standard Charge Terms and in each Mortgage, the following terms shall have the following meanings:

1. **“Applicable Rate”** means:
  - (a) the applicable interest rate specified by the applicable note or agreement delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee; or
  - (b) if the interest rate referred to in subsection (a) is not so specified, the applicable interest rate specified by the Mortgage.
2. **“Controlling Entity”** means any corporation or other entity which on the date of the Mortgage beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Mortgagor or a Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor.
3. **“Default”** means a default referred to in section I.
4. **“Guarantor”** means a person who guaranteed payment of all or any Indebtedness.
5. **“Indebtedness”** means all present and future indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee whether direct or indirect, absolute or contingent, or revolving or non-revolving, whether incurred by the Mortgagor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the Mortgage or otherwise including all principal, interest, guarantee liabilities, letter of credit indemnity liabilities, bankers’ acceptance indemnity liabilities, fees and expenses now or hereafter owing by the Mortgagor to the Mortgagee.
6. **“Insolvency Proceeding”** means a proceeding commenced under the *Companies’ Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any other similar statute.
7. **“Lease”** means a lease, offer to lease or other similar agreement of or with respect to the Mortgaged Land in favour of, or held by the Mortgagor as tenant and referred to in the Mortgage, as such lease, offer to lease or other similar agreement is amended or replaced from time to time.
8. **“Mortgage”** means the applicable registered mortgage or charge (as amended from time to time) in which this set of Standard Charge Terms is incorporated by reference to its filing number (including all Schedules thereto), includes any such mortgage or charge registered electronically or otherwise and includes such mortgage or charge whether or not any provision of the Standard Charge Terms is excluded or varied.
9. **“Mortgaged Land”** means the real property described in the Mortgage, all appurtenances thereto and all estates and interests therein, and includes all buildings, plant, machinery, crops, erections and improvements, fixed or otherwise, present or future, built, grown, placed or put thereon including all fences, heating equipment, plumbing equipment, antennae, radiators, mirrors, air-conditioning equipment, ventilating equipment, fire alarm and protective systems, lighting and lighting fixtures, hay racks, barn fixtures, milking machine equipment, water tanks, pumps and windmills, water bowls and pipes, feed boxes, litter carriers and tracks, mobile homes affixed to the real property, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows, storm doors, window screens, door screens, shutters and awnings, all apparatus and equipment appurtenant thereto, and all other fixtures and accessions of any kind or nature.
10. **“Mortgagee”** means the mortgagee or chargee referred to in the Mortgage and its successors and assigns.

11. **“Mortgagee’s Prime Rate”** means the fluctuating annual rate of interest determined by Bank of Montreal from time to time as the reference rate it will use to determine rates of interest payable by borrowers from Bank of Montreal of Canadian dollar loans made in Canada and designated by Bank of Montreal as its prime rate.
12. **“Mortgagor”** means the person or persons identified as the mortgagor or chargor in the Mortgage and his, her, its or their respective heirs, executors, administrators, personal representatives, successors and assigns.
13. **“Other Encumbrances”** means all statutory liens, construction liens, mechanics’ liens, builders’ liens, other liens, executions, mortgages, charges, and other encumbrances which charge or otherwise affect or could affect the Mortgaged Land but excludes the Mortgage.
14. **“Permitted Prior Mortgage”** means a mortgage or charge of the Mortgaged Land which ranks in priority to the Mortgage and which the Mortgagee has approved in writing.
15. **“Receiver”** means a receiver, receiver and manager or other similar person.
16. **“Schedule”** means a schedule to the Mortgage.
17. **“Taxes”** means all taxes, rates and assessments, municipal, provincial, federal or otherwise, with respect to the Mortgaged Land.

### **C. OPERATION OF THE MORTGAGE**

1. *Charge of Mortgaged Land.* In consideration of other valuable consideration and a loan advance made or other credit extended by the Mortgagee to the Mortgagor (the receipt and sufficiency of which are acknowledged by the Mortgagor), the Mortgagor hereby mortgages and charges the Mortgaged Land to and in favour of the Mortgagee as security for payment to the Mortgagee of all Indebtedness and as security for the observance and performance by the Mortgagor of all other obligations of the Mortgagor pursuant to or in respect of the Mortgage or the Standard Charge Terms. Subject to the provisions of the Mortgage, the Mortgagor releases to the Mortgagee, all the Mortgagor’s claims upon the Mortgaged Land.
2. *Repayment of Principal on Demand.* The Mortgagor shall pay all Indebtedness to the Mortgagee on demand by the Mortgagee for payment.
3. *Restriction on Voluntary Prepayments.* The Mortgagor shall not be entitled to prepay voluntarily any principal amount (including any principal amount owing with respect to a revolving line of credit or a demand loan) except to the extent agreed to by the Mortgagee in writing.
4. *Calculation and Payment of Interest.* The Mortgagor shall pay to the Mortgagee when due interest payable by the Mortgagor on each part of the Indebtedness (including interest on overdue interest) at the Applicable Rate which applies to such part of the Indebtedness. Interest shall accrue on each part of the Indebtedness from the date such part is incurred to the date such part is paid to the Mortgagee in full. Interest shall, both before and after Default, be calculated and payable monthly not in advance on the first day of each month unless otherwise agreed by the Mortgagor and the Mortgagee in writing. Whenever there is more than one Applicable Rate, the Applicable Rate referred to in sections D, E, G, J and K shall, unless otherwise agreed by the Mortgagee in writing, be the higher or highest of such Applicable Rates.

5. *Continuing Security.* The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:

- (a) any change in the nature, state or form of any account between the Mortgagor and the Mortgagee;
- (b) any new advance by the Mortgagee to the Mortgagor, whether by way of loan, discount, the drawing of a cheque against an account of the Mortgagor or otherwise;
- (c) any discount or acceptance by the Mortgagee from or for the Mortgagor of any note, bill of exchange or other negotiable instrument or commercial paper;
- (d) any credit of any amount to any account of the Mortgagor by reason of deposit of moneys or otherwise; or
- (e) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Mortgagee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

Nothing herein shall prejudice any of the Mortgagee's rights pursuant to or in respect of any note, bill of exchange, other agreement or other security now or hereafter held by the Mortgagee.

6. *Divided Parts of Mortgaged Land.* Every part of the Mortgaged Land into which the Mortgaged Land may hereafter be divided by a plan of subdivision or otherwise shall continue to be charged with payment of all Indebtedness but the Mortgagee may discharge any part or parts of the Mortgaged Land with or without sufficient consideration and without releasing the Mortgagor from the Mortgage and no person shall have any right to require the Indebtedness to be apportioned between or among such parts.

7. *Application of Amounts Paid.* Any and all amounts received by the Mortgagee with respect to Indebtedness before a Default shall, unless otherwise specified by the Mortgagee in writing, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. Any and all amounts received by the Mortgagee after a Default (including any and all amounts received from any security held by the Mortgagee) shall be applied by the Mortgagee in the manner determined by the Mortgagee in its sole discretion.

8. *Discharge of Mortgage.* If the Mortgagor shall duly pay to the Mortgagee all Indebtedness and the Mortgagee is not then obligated to extend any credit to the Mortgagor, the Mortgagor may request from the Mortgagee a discharge of the Mortgage and, upon delivery by the Mortgagee to the Mortgagor of a discharge of the Mortgage, the Mortgage shall terminate and cease to operate; provided that the Mortgage shall not terminate or cease to operate while any Indebtedness remains unpaid or while the Mortgagee is obligated to extend any credit to the Mortgagor only because, at any prior time or times, all Indebtedness had been paid in full. The Mortgagee shall not be obligated to deliver any partial discharge of the Mortgage.

9. *Consolidation of Mortgages.* To the extent permitted by law, the doctrine of consolidation shall apply with respect to *inter alia* the Mortgage.

#### **D. COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR**

1. *Payment of Principal and Interest.* The Mortgagor shall pay to the Mortgagee when due all Indebtedness without deduction or set-off of any kind. The Mortgagor expressly agrees not to fail to pay any Indebtedness when due and not to reduce the amount of any due payment of any Indebtedness as a result, or in respect of any existing or future claim by the Mortgagor against the Mortgagee or against any other person whether such claim relates to any or all Indebtedness, the Mortgage, any other agreement between the Mortgagor and the Mortgagee, any other transaction or any other agreement or matter whatsoever.

2. *Observance and Performance of Other Obligations.* The Mortgagor shall duly and punctually observe and perform all the Mortgagor's existing and future obligations pursuant to

the Mortgage and all the Mortgagor's existing and future obligations pursuant to any and all other existing and future agreements delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee.

3. *Payment of Taxes.* The Mortgagor shall promptly pay all Taxes as they become due and, within one month after the date fixed for the payment of the last installment of Taxes in each year, shall deliver to the Mortgagee a receipted tax bill showing payment in full of all such Taxes payable during such year. If the Mortgagor fails to pay any Taxes as they become due, the Mortgagee may, at its option, pay the whole or any part of such Taxes. The amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

4. *Good Title and Free From Encumbrances.* The Mortgagor represents and warrants to the Mortgagee that the Mortgagor is the legal and beneficial owner of, and has good, absolute and indefeasible title and estate in fee simple to the Mortgaged Land (or the leasehold interest therein if section E applies), free of any Other Encumbrances except any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears, public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land or other encumbrances consented to by the Mortgagee in writing, and free of any reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof, if any, from the Crown; the Mortgagor has good right, full power and lawful and absolute authority to mortgage and charge the Mortgaged Land (or, if section E applies, its leasehold interest therein) to the Mortgagee in accordance with the provisions of the Mortgage.

5. *Insurance.* The Mortgagor shall maintain, in form, substance and amount and with insurers satisfactory to the Mortgagee, all insurance required by the Mortgagee from time to time with respect to the Mortgaged Land (including boiler, property, public liability, rental, environmental and business interruption insurance and insurance covering all crops grown on the Mortgaged Land insuring such crops against damage by hail and against perils covered by all-risk crop insurance). The Mortgagor shall deliver to the Mortgagee, from time to time at the Mortgagee's request, certificates of insurance and certified copies of such insurance policies showing all loss payable to the Mortgagee as first mortgagee (subject to the interests of the holder of any Permitted Prior Mortgage) and loss payee and containing a mortgage clause satisfactory to the Mortgagee. As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns to the Mortgagee all the Mortgagor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. The Mortgagor shall not repair any damage using proceeds of any insurance without the Mortgagee's prior written consent and the Mortgagee may, at its discretion, apply any and all insurance proceeds to reduce Indebtedness. If the Mortgagor fails to maintain insurance required by the Mortgagee, the Mortgagee may arrange insurance with respect to the Mortgaged Land, the Mortgagor shall pay to the Mortgagee, on demand by the Mortgagee, all amounts paid by the Mortgagee to effect such insurance and the Mortgagor shall pay interest thereon at the Applicable Rate; and all such amounts owing by the Mortgagor shall be part of the Indebtedness and secured by the Mortgage. The Mortgagor shall, forthwith on the occurrence of any loss or damage, furnish at the Mortgagor's own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. Any insurance monies received may, at the option of the Mortgagee, to the extent permitted by law, be applied to rebuild or repair the premises on the Mortgaged Land or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Land, or be applied to pay Indebtedness whether or not then due, despite any law, equity or statute to the contrary. The Mortgagor, to the extent permitted by law, hereby waives any statutory or other right it may have to require any insurance proceeds to be applied in any particular manner.

6. *Payment of Other Encumbrances.* The Mortgagor shall promptly pay when due all amounts now or hereafter owing pursuant to or with respect to any Other Encumbrances and shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any Other Encumbrances when due, the Mortgagee may, at its option, pay the whole or any part of any present or future Other Encumbrances. The amounts so paid shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. In the event the Mortgagee pays any Other Encumbrance, it shall be entitled to all the equities, rights and securities of the person or persons so paid and to obtain an assignment of

such Other Encumbrance so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit to do so.

7. *Payment of Expenses.* The Mortgagor shall, on demand by the Mortgagee, pay all costs, charges, expenses (including legal fees as between a solicitor and his or her own client), commissions and fees which may be incurred by the Mortgagee in negotiating any credit or credits secured by the Mortgage, investigating the title to the Mortgaged Land, preparing and registering the Mortgage and other documents, administering any credit or credits extended by the Mortgagee to the Mortgagor, inspecting the Mortgaged Land, collecting any Indebtedness, taking any proceeding in connection with or to collect any Indebtedness, taking and maintaining possession of the Mortgaged Land, maintaining and repairing the Mortgaged Land, and taking any other enforcement proceedings. The Mortgagor shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any such amounts as they become due, the Mortgagee may, at its option, pay any such amounts and the amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

8. *Compliance with Laws.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, the Mortgagor has complied with, and the Mortgagor agrees that it shall comply with all laws, by-laws and regulations affecting the Mortgaged Land and all orders and decisions of any governmental authority, governmental agency or court having jurisdiction affecting the Mortgaged Land (including all such laws, by-laws, regulations, orders and decisions relating to the environment or to residential or other property, including those relating to the amount of rent charged by the Mortgagor with respect to any part of the Mortgaged Land). The Mortgagor shall, at the Mortgagor's expense, promptly and in good and workmanlike manner make all improvements, alterations, clean-ups and repairs and effect any change in use that may be required from time to time to so comply.

9. *Maintain in Good Repair and Avoid Waste.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, all buildings, erections, equipment, machinery and improvements on the Mortgaged Land are in good condition and repair and that all noxious weeds have been eradicated from the Mortgaged Land. The Mortgagor shall maintain all buildings, erections, equipment, machinery and improvements on the Mortgaged Land in good condition and repair to the satisfaction of the Mortgagee, shall eradicate all noxious weeds from the Mortgaged Land and shall not permit waste to be committed or suffered on the Mortgaged Land or any part thereof. The Mortgagee or its agent shall be entitled, from time to time, to enter on the Mortgaged Land to inspect the Mortgaged Land and to undertake any tests (including intrusive environmental tests) required by the Mortgagee. If the Mortgagor neglects to keep the Mortgaged Land or any buildings, erections, equipment, machinery or improvements on the Mortgaged Land in good condition and repair, fails to eradicate noxious weeds from the Mortgaged Land or commits or permits any act of waste on the Mortgaged Land (as to which the Mortgagee shall be the sole judge), or fails to comply with section D.8., the Mortgagee or its agent may enter upon the Mortgaged Land and make such repairs and undertake such work and take such action as the Mortgagee deems necessary. All costs of such inspection, testing, repairs, work and action shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

10. *Environmental Representation and Indemnity.* The Mortgagor represents and warrants to the Mortgagee that there has not occurred, after the date the Mortgagor acquired an interest in the Mortgaged Land, any spill, leak, contamination or other material environmental problem affecting the Mortgaged Land or any part thereof (other than any such spill, leak, contamination or other environmental problem which has been remedied). The Mortgagor shall indemnify and save harmless the Mortgagee and any Receiver of the Mortgaged Land from any and all expenses and damages incurred or suffered by the Mortgagee or such Receiver as a result, or in respect of any spill, leak, contamination or other environmental problem affecting the Mortgaged Land or any part thereof. This indemnity shall survive the payment of all Indebtedness and the satisfaction, discharge or enforcement of the Mortgage or any other security.

11. *No Alterations or Change in Use.* The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or permit to be made, any alterations or additions to the Mortgaged Land or any building thereon or change the Mortgagor's use of the Mortgaged Land



or any building thereon and the Mortgagor shall not allow the Mortgaged Land to be unoccupied or unused.

12. *No Unapproved Charge or Encumbrance by Mortgagor.* The Mortgagor shall not, without the Mortgagee's prior written consent, mortgage, charge, lien or encumber the Mortgaged Land or any part thereof or any interest therein or permit any Other Encumbrance to remain thereon except for any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears and public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land.

13. *Change in Ownership or Spousal Status.* Upon any change or event affecting any of the following, namely:

- (a) the spousal status of the Mortgagor, if the Mortgagor is an individual;
- (b) the qualification of the Mortgaged Land as a matrimonial home; or
- (c) the ownership of the Mortgaged Land,

the Mortgagor shall forthwith advise the Mortgagee accordingly in writing and furnish the Mortgagee with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners of the Mortgaged Land and of any spouse who is not an owner but who may have a legal right of possession of or interest in the Mortgaged Land. The Mortgagor shall furnish the Mortgagee with such evidence in connection with any of subsections (a), (b) and (c) of this provision as the Mortgagee may from time to time request.

14. *Expropriation.* If the Mortgaged Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects the Mortgagee's security, all Indebtedness shall, at the option of the Mortgagee, be deemed to have become due and payable on the day before such condemnation or expropriation, and interest shall continue to accrue thereon, at the Applicable Rate, until the Mortgagee has been paid all Indebtedness. The Mortgagor shall pay to the Mortgagee from any condemnation or expropriation proceeds the full amount thereof, to be applied by the Mortgagee to reduce Indebtedness.

15. *Power of Attorney.* The Mortgagor hereby irrevocably appoints the Mortgagee or any Receiver appointed by the Mortgagee under or pursuant to the Mortgage or by any order of a court of competent jurisdiction, as the Mortgagor's attorney for all purposes to take any and all action deemed appropriate by the Mortgagee or such Receiver after the occurrence of a Default.

16. *Further Assurances.* The Mortgagor shall (and shall cause each person having or claiming to have an estate, right, title or interest in or to the Mortgaged Land to) at any time and from time to time, at the Mortgagee's request, do, execute and deliver or cause to be made, executed and delivered to the Mortgagee such further and other reasonable acts, deeds, conveyances, charges and assurances as may be required by the Mortgagee to fully and effectually carry out the intention and meaning of the Mortgage and the provisions included in the Mortgage and the reasonable cost of such further assurances shall be part of the Indebtedness and secured by the Mortgage.

17. *Business Purposes Only.* The Mortgagor shall use only for business purposes any amounts loaned by the Mortgagee to the Mortgagor and secured by the Mortgage.

18. *No Registration of Condominiums or Strata Title Developments.* The Mortgagor shall not, without the Mortgagee's prior written consent, register any condominium or strata title development with respect to all or part of the Mortgaged Land or any declaration or description with respect thereto and the Mortgagee shall not have any obligation to provide such consent.

19. *Delivery of Information.* The Mortgagor shall deliver to the Mortgagee, promptly at the Mortgagee's request, all financial statements and other information as the Mortgagee may request from time to time with respect to the Mortgagor, a Guarantor or the Mortgaged Land.

20. *No Litigation or Other Proceedings.* The Mortgagor represents and warrants that, as at the date of the Mortgage, there is no application, litigation, proceeding or investigation outstanding or, to the Mortgagor's knowledge, pending or threatened, against the Mortgagor or any Guarantor or with respect to the Mortgaged Land or any part thereof including any application,

litigation, proceeding or investigation in respect of residential or other property by-laws or regulations. The Mortgagor shall notify the Mortgagee in writing of any such application, litigation, proceeding or investigation commenced after the date of the Mortgage, promptly after such commencement.

21. *Mortgagor a Canadian Resident.* The Mortgagor represents and warrants that, as at the date of the Mortgage, it is not a non-resident of Canada for purposes of the Income Tax Act and agrees that the Mortgagor shall not, without the Mortgagee's prior written consent, become a non-resident of Canada.

22. *Good Management of Mortgaged Land.* The Mortgagor shall at all times cause the Mortgaged Land to be managed in a commercially reasonable manner by the Mortgagor or by a property manager satisfactory to the Mortgagee, acting reasonably.

23. *Abutting Real Property.* The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any real property which abuts the Mortgaged Land. If the Mortgagee gives such consent, the Mortgagor shall, at the Mortgagee's request, deliver to the Mortgagee a mortgage or charge of such abutting real property and of the Mortgaged Land in form and substance satisfactory to the Mortgagee.

24. *Deemed Covenants Excluded.* In accordance with subsection 7(3) of the *Land Registration Reform Act*, the covenants deemed to be included in a mortgage or charge by subsection 7(1) of such statute are expressly excluded from the Mortgage.

25. *Defeasance Provisions Excluded.* The provisions relating to defeasance in subsection 6(2) of the *Land Registration Reform Act* are expressly excluded from the Mortgage.

#### **E. MORTGAGE OF LEASEHOLD INTEREST**

If the Mortgagor is not the owner of the Mortgaged Land in fee simple but is the owner of a leasehold interest in the Mortgaged Land as tenant, or as an assignee or successor of a tenant, pursuant to a Lease, the following provisions shall apply:

1. *Representations and Warranties.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage:

- (a) the Lease is a good, valid and subsisting lease and has not been surrendered, forfeited or terminated or, except as specified in the Mortgage, amended, and the rents, covenants and provisions therein reserved and contained have been duly paid, performed and observed by the Mortgagor up to the date of the Mortgage; and
- (b) the Mortgagor has good right and full, lawful and absolute authority to charge, mortgage, demise and sublet the Mortgaged Land in accordance with the Mortgage and any consent thereto required of the applicable landlord has been obtained.

2. *Covenants Relating to Lease.* The Mortgagor agrees with the Mortgagee as follows:

- (a) The Mortgagor shall at all times fully perform and comply with all the obligations of the Mortgagor under or with respect to the Lease, or imposed on, assumed by or agreed to by the Mortgagor pursuant to any Other Encumbrances and, if the Mortgagor fails to do so, the Mortgagee may (but shall not be obliged to) take any action the Mortgagee deems necessary or desirable to prevent or to cure any default by the Mortgagor in the performance of or compliance with any such obligations. The Mortgagor shall promptly provide to the Mortgagee a copy of any notice the Mortgagor receives from the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person under or relating to the Lease of the Mortgaged Land. Upon receipt by the Mortgagee from the Mortgagor, the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person of any notice, including a notice of default, the Mortgagee may rely thereon and take any action with respect to such notice as may be required in the Mortgagee's sole discretion, including to cure a default even though the existence

of such default or the nature thereof may be questioned or denied by or on behalf of the Mortgagor and the Mortgagee shall have the absolute and immediate right to enter in and upon the Mortgaged Land or any part thereof to such extent and as often as the Mortgagee, in its sole discretion deems necessary or desirable, in order to prevent or to cure any such default. The Mortgagee may pay and expend such amounts as the Mortgagee in its sole discretion deems necessary for any such purpose, and the amounts so paid shall be payable by the Mortgagor to the Mortgagee on demand by the Mortgagee with interest thereon at the Applicable Rate, and shall be a part of the Indebtedness and be secured by the Mortgage.

- (b) If the Mortgage is outstanding at the expiration of the term of the Lease and the Mortgagor refuses or neglects to exercise the Mortgagor's right, if any, to renew or extend the term of the Lease or refuses to pay any fees, costs, charges or expenses payable upon any such renewal or extension, the Mortgagee may effect such renewal or extension in the name of the Mortgagor or otherwise, and every such renewed or extended Lease shall remain and be mortgaged and charged pursuant to the Mortgage in accordance with the Mortgage.
- (c) From and after the execution and delivery of the Mortgage, the Mortgagor shall stand possessed of the Mortgaged Land for the remainder of the Lease in trust for the Mortgagee, and shall exercise any right to renew or extend the term of the Lease or to assign the Lease as the Mortgagee may direct, but subject to the Mortgagor's right of redemption under the Mortgage. The Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor's attorney for and on behalf of the Mortgagor to exercise any such renewal or extension right and to assign the Lease and convey the leasehold interest in the Mortgaged Land and the reversion thereof as the Mortgagee shall at any time direct after the occurrence of a Default and, in particular, upon any sale made by the Mortgagee under any power of sale contained in the Mortgage or granted by statute to assign the Lease and convey the Mortgagor's leasehold interest in the Mortgaged Land and the reversion to a purchaser. The Mortgagee may at any time remove the Mortgagor or any other person from being a trustee of the Lease under the above declaration of trust and appoint a new trustee or trustees.
- (d) The Mortgagor shall not surrender, terminate, amend or modify the Lease or agree to do so without the prior written consent of the Mortgagee, which the Mortgagee may withhold in its absolute discretion. No release or forbearance of any of the Mortgagor's obligations under the Lease or under any Other Encumbrance shall release the Mortgagor from any of the Mortgagor's obligations under the Mortgage.
- (e) Unless the Mortgagee expressly consents in writing, the title in fee simple to the Mortgaged Land and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates by purchase or otherwise.

3. *Last Day of Term Excepted.* Despite any other provision of the Mortgage, the last day of the term of the Lease and of any renewal or extension thereof and of any agreement therefor now held or hereafter acquired by the Mortgagor shall be excepted out of the mortgage, charge and demise contained in the Mortgage.

4. *Charge by way of Sublease.* Despite section C.1. and any other provision of the Mortgage (except section E.3.), the Mortgagor mortgages and charges, by way of sublease, the Mortgagor's leasehold interest in the Mortgaged Land pursuant to the Lease, the mortgages and charges contained in the Mortgage shall be by way of sublease and the Mortgagee shall not have any obligation or liability to the landlord or any other person pursuant to or in respect of the Lease.

5. *Leasehold Interests.* Wherever any reference is made in the Mortgage to any right of the Mortgagee to sell, transfer, assign, lease, sublease, alienate or otherwise deal with the Mortgaged Land, such reference shall be deemed, subject to section E.3., to relate to the existing and future rights and interests of the Mortgagor in the Mortgaged Land pursuant to the Lease.

#### **F. ASSIGNMENT OF LEASES AND RENTS**

If the Mortgagor or any predecessor of the Mortgagor grants or has granted any lease, offer to lease, tenancy agreement or other similar agreement of all or any part of the Mortgaged Land as landlord, the following provisions shall apply:

1. *Assignment.* As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee, all the Mortgagor's rights and interests as landlord in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Mortgaged Land, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Mortgaged Land or any building, improvement, fixture or part thereof forming part of the Mortgaged Land.

2. *Separate Assignments.* The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Mortgagor to the Mortgagee pursuant to section F.1. shall be deemed to be a separate assignment so that the Mortgagee in its discretion may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

3. *Collection by Mortgagor before Default.* Until there occurs a Default, the Mortgagor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time in accordance with sound business practice.

4. *No Liability of Mortgagee and Indemnity by Mortgagor.* Nothing herein shall obligate the Mortgagee to assume or perform (and nothing herein shall impose on the Mortgagee) any liability or obligation of the Mortgagor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise and the Mortgagor hereby indemnifies and saves harmless the Mortgagee from any and all claims with respect thereto, provided that the Mortgagee may, at its sole option, assume or perform any such obligations as it considers necessary or desirable.

5. *Re-assignment.* The Mortgagee may, at any time without further request or agreement by the Mortgagor, reassign to the Mortgagor, or the Mortgagor's heirs, administrators, successors or assigns, any or all of the collateral referred to in section F.1.

6. *Application by Mortgagee.* The Mortgagee's obligations with respect to any amount collected by the Mortgagee shall be discharged by the application of such amount to reduce Indebtedness.

7. *Not Mortgagee in Possession.* Nothing contained herein shall have the effect of making the Mortgagee a mortgagee in possession of the Mortgaged Land.

#### **G. CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS**

If the Mortgaged Land is or includes one or more condominium units or strata title units, the following provisions shall apply:

1. *Compliance with Requirements.* The Mortgagor shall observe and perform each of the covenants and provisions required to be observed and performed pursuant to the Mortgage, all applicable statutes governing or affecting condominiums or strata title developments, and the declaration, description, by-laws and rules, as amended from time to time, of the applicable condominium corporation or strata corporation.

2. *Common Expense Payments.* The Mortgagor shall pay promptly when due any and all unpaid condominium or strata development fees, common expenses, common element expenses, assessments, levies, instalments, payments or any other amounts due to the applicable

condominium corporation or strata corporation or any agent thereof by the Mortgagor and, at the Mortgagee's request, deliver to the Mortgagee evidence of the payment thereof.

3. *Right of Mortgagee to Pay.* If the Mortgagor does not pay when due any condominium or strata development fees, common expenses or other amounts referred to in section G.2., the Mortgagee may (but shall not be obliged to) pay such amounts, the Mortgagor shall forthwith pay such amounts to the Mortgagee with interest thereon at the Applicable Rate, and all such amounts owing by the Mortgagor to the Mortgagee shall be a part of the Indebtedness and secured by the Mortgage.

4. *Voting by Mortgagee.* The Mortgagor hereby irrevocably authorizes the Mortgagee to exercise the rights of the Mortgagor as an owner of the Mortgaged Land to vote or to consent in all matters relating to the affairs of the condominium corporation or strata corporation or arising under applicable law or the declaration or by-laws of the condominium or strata corporation, provided that:

- (a) in any case where the Mortgagee is entitled to receive and does receive notice of a meeting of owners, the Mortgagee may notify the condominium or strata corporation and the Mortgagor of its intention to exercise the right of the owner to vote or to consent at such meeting at least two days before the date specified in the notice for the meeting, failing which the Mortgagor may exercise such right to vote or consent at such meeting;
- (b) the Mortgagee shall not, by virtue of the giving to the Mortgagee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests of the Mortgagor, and the Mortgagee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and
- (c) nothing herein contained, including the exercise by the Mortgagee of the right to vote or consent, shall constitute the Mortgagee a mortgagee in possession.

## **H. MORTGAGE AS SECURITY FOR A GUARANTEE**

If the Mortgagor has delivered to the Mortgagee or now or hereafter delivers to the Mortgagee a guarantee or guarantees of payment to the Mortgagee of indebtedness or liability of another or others, the Indebtedness shall include all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee or guarantees, whether direct or indirect, absolute or contingent, and the Mortgage shall secure payment of all such indebtedness and liability of the Mortgagor pursuant to such guarantee or guarantees in addition to all other Indebtedness. If any such guarantee is increased or otherwise amended, the Mortgage shall also secure payment of all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee as increased or otherwise amended.

## **I. DEFAULT**

The Mortgagor shall be in default of the Mortgage and a Default shall occur pursuant to the Mortgage if:

- 1. the Mortgagor fails to pay any Indebtedness when due;
- 2. the Mortgagor or a Guarantor fails to comply with any obligation of the Mortgagor or the Guarantor pursuant to or in respect of the Mortgage or any existing or future note, instrument or agreement delivered by the Mortgagor and the Guarantors (or any of them) to the Mortgagee or between the Mortgagor and the Guarantors (or any of them) and the Mortgagee;
- 3. the Mortgagor fails to comply with any obligation of the Mortgagor pursuant to or in respect of any Permitted Prior Mortgage or any Other Encumbrance;
- 4. any representation or warranty made by the Mortgagor or a Guarantor in the Mortgage, any agreement between the Mortgagor and the Guarantors (or any of them) and the Mortgagee, or any loan or credit application made in connection with any Indebtedness was untrue when made;

5. a Receiver is appointed of any asset of the Mortgagor or of a Guarantor;
6. any construction lien, mechanics' lien or builders' lien is registered against all or any part of the Mortgaged Land and is not discharged within seven days after a request by the Mortgagee that such lien be discharged;
7. all or any part of the Mortgaged Land is condemned or expropriated;
8. the Mortgagor or a Guarantor becomes bankrupt or insolvent;
9. a petition in bankruptcy is filed against the Mortgagor or a Guarantor;
10. the Mortgagor or a Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
11. the Mortgagor or a Guarantor makes an application as a debtor in any Insolvency Proceeding or any other person makes an application against the Mortgagor or a Guarantor in any Insolvency Proceeding;
12. the Mortgagor sells, transfers or disposes of in any other manner the Mortgaged Land, any part thereof or any interest therein (unless the Mortgagee has approved in writing such sale, transfer or other disposition);
13. an execution, judgment or order of execution is filed or made against the Mortgaged Land or any part thereof and remains unsatisfied for a period of ten days;
14. the Mortgagor fails to pay when due any amount owing by the Mortgagor to the applicable condominium corporation or strata corporation or any agent thereof referred to in section G.2.; or
15. the Mortgagor or a Guarantor is not an individual and a change in control of the Mortgagor or such Guarantor occurs without the prior written consent of the Mortgagee; for the purposes hereof, a change in control of the Mortgagor or a Guarantor shall be deemed to occur if there occurs one or more sales, transfers or other dispositions of the beneficial ownership existing on the date of the Mortgage in the aggregate of:
  - (a) shares, other securities or other equity interests issued by the Mortgagor or such Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor; or
  - (b) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity.

## **J. REMEDIES OF MORTGAGEE**

1. *Acceleration and Termination of Obligation to Extend Credit.* Without prejudice to any right of the Mortgagee to demand at any time payment by the Mortgagor of any and all Indebtedness, upon the occurrence of a Default all Indebtedness (or any part thereof determined by the Mortgagee) shall, at the Mortgagee's option, forthwith become due and payable, the Mortgage shall become enforceable and the Mortgagee shall not be obligated to extend any further credit to the Mortgagor.

2. *Right of Entry.* Upon the occurrence of a Default, the Mortgagee may, at any time or times without the concurrence of any person, enter upon, take and maintain possession of the Mortgaged Land, inspect, complete the construction of, repair or maintain any buildings or other improvements thereon, lease, collect the rents, profits and other amounts derived from the Mortgaged Land and manage the Mortgaged Land as the Mortgagee may deem fit without hindrance or interruption by the Mortgagor or any other person, and all reasonable costs, charges and expenses, including legal fees on a solicitor and his or her own client basis, and disbursements, commissions and allowances for the time and services of any employees of the Mortgagee or any agent of the Mortgagee or other persons appointed for any such purpose shall be forthwith payable by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. Upon the

occurrence of a Default, the Mortgagee may also enforce its security against all crops growing on the Mortgaged Land, the Mortgagee may, at any time or times without the concurrence of any person, enter upon the Mortgaged Land for the purpose of cutting, harvesting and removing such crops and for otherwise farming and working the Mortgaged Land, the Mortgagee may bring on the Mortgaged Land all machines, equipment and instruments necessary for such purposes, and the Mortgagee may use all yards, barns, granaries, grain bins or all other improvements and equipment located on the Mortgaged Land to carry out any of such activities.

3. *Sale.* Upon the occurrence of a Default which continues for at least fifteen days, the Mortgagee may, on at least thirty-five days' notice, sell the Mortgaged Land or any part or parts thereof, in accordance with the following provisions:

- (a) notice shall be given to such persons and in such manner and form and within such time as provided by law; provided that, in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the Mortgaged Land, if occupied, or by placing the same on some portion thereof, if unoccupied or, at the option of the Mortgagee, by mailing it by registered mail in a notice or letter addressed to the Mortgagor at the Mortgagor's last known address, or by publishing it once in a newspaper published in the area or region in which the Mortgaged Land is situated;
- (b) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under any disability;
- (c) sale of the Mortgaged Land may be by public auction or private sale or partly by one and partly by the other, for such price or prices as can reasonably be obtained therefor and on such terms as to credit or otherwise and with such conditions of sale and stipulations as to title or evidence of title or otherwise as the Mortgagee in its sole discretion shall deem appropriate;
- (d) in the event of any sale on credit or for part cash and part credit, the Mortgagee shall not be accountable for or charged with any moneys until actually received;
- (e) the Mortgagee may rescind or vary any contract of sale and may buy in and re-sell the Mortgaged Land or any part thereof without being answerable for any loss occasioned thereby;
- (f) the Mortgagee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees separately from the Mortgaged Land and the purchaser shall have all necessary access to the Mortgaged Land for the purposes of severing, cutting and removal; and
- (g) subject to compliance with law, sales may be made from time to time of any part or parts of the Mortgaged Land to satisfy any part or parts of the Indebtedness then owing to the Mortgagee leaving the remaining outstanding Indebtedness secured by the Mortgage as a charge of the remainder of the Mortgaged Land.

4. *Sale or Lease.* The following shall apply with respect to any sale or lease by the Mortgagee, its agent or any Receiver of all or part of the Mortgaged Land after the occurrence of a Default:

- (a) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or lack of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease;
- (b) the Mortgagee may sell or lease all or part of the Mortgaged Land without entering into actual possession of the Mortgaged Land and, when it desires to take possession, it may break locks and bolts and while in possession shall only be accountable for moneys actually received by it;

- (c) the Mortgagor hereby appoints the Mortgagee as the Mortgagor's true and lawful attorney and agent to make application under any statute for consent to sever, sell or lease part or parts of the Mortgaged Land and to do all things and execute all documents to effectually complete any such severance, sale or lease;
- (d) the Mortgagee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;
- (e) the Mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale of the Mortgaged Land unless such loss is caused by the Mortgagee's willful misconduct; and
- (f) no sale, leasing or other dealing by the Mortgagee with the Mortgaged Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of any Indebtedness.

5. *Attornment.* To the extent the Mortgaged Land or any part thereof is not a residential premises so as to be subject to the provisions of the applicable statute governing residential tenancies, the Mortgagor hereby attorns to and becomes a tenant of such Mortgaged Land to the Mortgagee from year to year from the date of the execution of the Mortgage until the Mortgage is discharged at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Mortgagee and the Mortgagor in regard to the Mortgaged Land. The Mortgagor agrees that neither the existence of this provision nor anything done by virtue hereof shall impose any obligation on the Mortgagee or render the Mortgagee a mortgagee in possession or accountable for any moneys except moneys actually received by the Mortgagee and the Mortgagee may, upon the occurrence of any Default, enter on the Mortgaged Land and terminate the tenancy hereby created without notice.

6. *Right to Distrain.* Upon the occurrence of a Default, to the extent permitted by law, the Mortgagee may distrain for payment of any and all Indebtedness upon the Mortgaged Land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Mortgaged Land, such moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Mortgagee with respect to or in connection therewith as in like cases of distress for rent. The Mortgagor waives the right to claim exceptions and agrees that the Mortgagee shall not be limited in the amount for which it may distrain.

7. *Judgments and Non-Merger.* The taking of a judgment or judgments with respect to any of the covenants contained herein, in the Mortgage or otherwise shall not operate as a merger of any such covenants or affect the Mortgagee's right to receive interest under the Mortgage and each such judgment may provide, at the option of the Mortgagee, that interest thereon shall be computed and payable until such judgment has been fully paid and satisfied.

8. *Separate Remedies.* All remedies of the Mortgagee may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Mortgagee however created.

9. *Application of Proceeds and Mortgagor's Liability for Deficiency.* All amounts received by the Mortgagee or any Receiver pursuant to any enforcement of the Mortgage may be held by the Mortgagee as security for the Indebtedness or applied to reduce Indebtedness in such manner as may be determined by the Mortgagee and the Mortgagee may at any time apply or change any such appropriation of such payments to such part or parts of the Indebtedness as the Mortgagee may determine in its sole discretion. The Mortgagor shall be and remain liable to the Mortgagee for any deficiency. Any surplus amounts realized after payment of all Indebtedness shall be paid in accordance with applicable law.

10. *Mortgagor's Insolvency Proceedings.* The Mortgagor acknowledges that the Mortgaged Land is of such a unique nature that, if the Mortgagor seeks to reorganize or restructure its affairs pursuant to any Insolvency Proceeding, the Mortgagee would not have a sufficient commonality of interest with any other creditor or creditors of the Mortgagor such that the Mortgagee would be required to vote on any plan, reorganization, arrangement, compromise or other transaction in a class with any other creditor or creditors of the Mortgagor and, in that regard, the Mortgagor



agrees that the Mortgagee shall be placed in its own exclusive class of creditors for voting purposes. The Mortgagor further agrees that:

- (a) it will give the Mortgagee not less than 10 days written notice prior to the commencement of any Insolvency Proceeding with respect to the Mortgagor;
- (b) in no circumstance will the Mortgagor seek an order which stays any right of the Mortgagee or, to the extent permitted by law, permit any right of the Mortgagee to be stayed, in any Insolvency Proceeding and, if any court-ordered or automatic stay is imposed on the Mortgagee, the Mortgagor hereby consents to an order lifting such stay as against the Mortgagee;
- (c) if an Insolvency Proceeding is commenced with respect to the Mortgagor, the Mortgagor will consent to an order directing that all rents or other revenues generated or received from or in respect of the Mortgaged Land be deposited to a segregated trust account under the sole control of the Mortgagee and that same shall not result in the Mortgagee's being a mortgagee in possession of, or in control or management of the Mortgaged Land or result in the acceleration of payment of any Indebtedness unless such acceleration is required by the Mortgagee in writing; and
- (d) it shall not, without the Mortgagee's prior written consent, propose or permit the sale or transfer of the Mortgaged Land or any part thereof, in or as part of any Insolvency Proceeding, for a net sale price less than the amount required to pay in full all Indebtedness outstanding as at the date of payment of such net sale proceeds to the Mortgagee.

#### **K. APPOINTMENT OF A RECEIVER**

1. *Appointment.* Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

2. *Powers of Receiver.* Any Receiver appointed by the Mortgagee shall, to the extent permitted by law, have the following powers:

- (a) to enter upon, take possession of, use, and occupy the Mortgaged Land or any part thereof;
- (b) to collect all rents, incomes, profits and other amounts in respect of the Mortgaged Land and to carry on the business of the Mortgagor on the Mortgaged Land;
- (c) to borrow money required for the maintenance, preservation or protection of the Mortgaged Land or for carrying on the business of the Mortgagor and, in the discretion of the Receiver, to charge the Mortgaged Land in priority to the Mortgage as security for the principal amounts so borrowed, interest thereon and costs related thereto;
- (d) to sell, lease, or otherwise dispose of the Mortgaged Land or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its sole discretion, and to effect such sale by conveying in the name and on behalf of the Mortgagor or otherwise;
- (e) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession of the Mortgaged Land, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the rents, accounts receivable or any other obligation of any person to the Mortgagor;

- (f) to exercise any rights or remedies which could have been exercised by the Mortgagee against the Mortgagor or the Mortgaged Land or with respect thereto; and
- (g) to execute all documents required to effect any of the foregoing.

3. *Identity of Receiver and Removal.* Any Receiver so appointed by the Mortgagee may be any person or persons satisfactory to the Mortgagee, and the Mortgagee may remove any Receiver so appointed and appoint another or others instead.

4. *Receiver as Agent of Mortgagor.* Any Receiver appointed by the Mortgagee shall be deemed to be agent of the Mortgagor unless the Mortgagee expressly specifies in writing that the Receiver shall be agent of the Mortgagee. The Mortgagor agrees to ratify and confirm all actions of the Receiver acting as agent for the Mortgagor and to release and indemnify the Receiver in respect of all such actions.

5. *Receivership Expenses.* The Mortgagor shall pay to the Receiver, forthwith on demand by the Mortgagee or the Receiver, the amount of all reasonable fees, disbursements and other expenses incurred by the Receiver in the exercise of its powers hereunder, with interest thereon at the Applicable Rate from the date on which such sums are incurred. All such sums, together with interest thereon at the Applicable Rate, shall be part of the Indebtedness and secured by the Mortgage.

6. *No Enquiries Required.* No persons dealing with the Receiver or its agents, upon any sale or other dealing with the Mortgaged Land, shall be concerned to inquire as to their powers or as to the application of any money paid to them, such sale or dealing shall be deemed as regards such person to be within the powers hereby conferred and to be valid and effectual.

## L. MISCELLANEOUS

1. *Records of Mortgagee.* The records of the Mortgagee disclosing the amount of an extension of credit by the Mortgagee to the Mortgagor, the repayment of any principal amount of Indebtedness, the amount of accrued and unpaid interest owing by the Mortgagor and the amount of other Indebtedness (or any part thereof) at any time outstanding, shall constitute conclusive evidence thereof in the absence of mathematical error.

2. *Revolving Line of Credit.* The Mortgagee may wish to make loan advances and re-advances or otherwise extend credit to the Mortgagor from time to time up to a total outstanding principal amount not exceeding the principal amount referred to in the Mortgage. The Mortgage is and shall be continuing security to the Mortgagee for the payment of all Indebtedness. Any portion of the Indebtedness may be advanced or re-advanced by the Mortgagee or other credit may be extended by the Mortgagee in one or more sums at any future time or times and the amount of all such advances, re-advances or other credits when so made or extended shall be secured by the Mortgage and be payable by the Mortgagor with interest thereon at the Applicable Rate and the Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, provided that none of the execution or registration of the Mortgage or the advance in part of any monies or extension of any other credit by the Mortgagee shall obligate the Mortgagee to advance any unadvanced portion thereof or to extend any other credit. The Mortgage shall not be void or cease to operate because the Indebtedness secured hereby has at any time or times been paid in full.

3. *Assignment and Syndication.* The Mortgagee shall be entitled from time to time, both before and after a Default, without notice to, or the consent of the Mortgagor or any Guarantor:

- (a) to sell or assign all or part of the Indebtedness and the Mortgagee's interests in the Mortgage and any other security and agreements held by the Mortgagee; and
- (b) to syndicate all or part of the Indebtedness, the Mortgage and any other security and agreements held by the Mortgagee and to grant participations therein.

To facilitate the foregoing, the Mortgagee may provide each prospective purchaser, assignee, syndicated lender or participant and their respective advisers with financial and other information concerning the Indebtedness, the Mortgagor, the Mortgaged Land, any Guarantor, any other collateral or any other matter.

4. *General Indemnity by Mortgagor.* The Mortgagor hereby agrees, on demand by the Mortgagee, to indemnify and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any and all claims, expenses, liabilities, losses and damages that may be asserted against or incurred by any of such indemnified persons arising out of, or in connection with the Mortgage, any Indebtedness or any claim, investigation, proceeding or litigation relating to any of the foregoing, regardless of whether any such indemnified person is a party thereto (including any and all breakage costs reasonably incurred by the Mortgagee in respect of any breach by the Mortgagor of any of its obligations under the Mortgage) and to reimburse each such indemnified person, on demand by the Mortgagee, for any and all reasonable legal and other expenses incurred in investigating, pursuing or defending any of the foregoing or otherwise in connection with any of the foregoing; provided that the foregoing indemnity shall not, as to any indemnified person, apply to any claim, expense, liability, loss or damage or related expense to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence of such indemnified person.

5. *Effect of Sale.* No sale, conveyance, transfer or other dealing by the Mortgagor with the Mortgaged Land or any part thereof or any approval of the Mortgagee relating thereto shall in any way change or affect the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person or persons liable for payment of the Indebtedness or any part thereof.

6. *Dealings with the Mortgagor and Others.* The Mortgagee may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and give the same and any and all existing security up to, may abstain from taking security from or from perfecting security of, may accept compositions from, may amend the Mortgage, and may otherwise deal

with the Mortgagor and all other persons (including any principal debtor, any Guarantor or any owner of the Mortgaged Land) and security as the Mortgagee may see fit without prejudicing any rights of the Mortgagee under the Mortgage.

7. *Amendments to Mortgage.* The Mortgagor and the Mortgagee may from time to time amend the Mortgage (including to increase the interest rate specified by the Mortgage) by an amendment agreement between the Mortgagor and the Mortgagee, whether or not such amendment agreement (or notice thereof) is registered. This provision shall constitute notice of such amendments and the Mortgage shall secure payment of all Indebtedness (including all interest and other Indebtedness arising or resulting from such amendments) and retain its priority with respect thereto over any mortgage, charge or other instrument registered subsequent to the Mortgage.

8. *Waiver.* No waiver, condonation or excusing by the Mortgagee of any default, breach or other non-performance by the Mortgagor at any time or times in respect of any provision of the Mortgage (including any Default) shall operate as a waiver by the Mortgagee of any subsequent or other default, breach or non-performance or prejudice or affect in any way the rights of the Mortgagee in respect of any such subsequent or other default, breach or non-performance.

9. *Discharge or Assignment.* The Mortgagee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the Mortgage and any other documents necessary to discharge or assign any other security held by the Mortgagee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. All reasonable costs, fees and disbursements of the Mortgagee and the Mortgagee's counsel in connection with the preparation, review, execution and delivery of the discharge, assignment or any other documents necessary to discharge or assign the Mortgage or any other security shall, to the extent permitted by law, be paid by the Mortgagor to the Mortgagee and be secured by the Mortgage.

10. *No Obligation to Advance.* Nothing herein and nothing contained in the Mortgage shall obligate the Mortgagee to loan any amount to the Mortgagor or to extend any other credit to the Mortgagor.

11. *Appointment of Attorney Irrevocable.* Each appointment by the Mortgagor of an attorney in the Mortgage or the Standard Charge Terms is coupled with an interest and may not be revoked.

12. *Other Security.* The Mortgage is in addition to and not in substitution for any other security at any time held by the Mortgagee as security for payment of all or any part of the Indebtedness, and the Mortgagee may, at its option, pursue its remedies thereunder or under the Mortgage concurrently or successively. Any judgment or recovery under the Mortgage or under any other security held by the Mortgagee as security for payment of Indebtedness shall not affect the right of the Mortgagee to enforce or realize on the Mortgage or any other such security.

13. *Financing Statement.* To the extent permitted by law, the Mortgagor hereby waives its right to receive from the Mortgagee a copy of any financing statement, financing change statement, verification statement or other similar statement filed by or received by the Mortgagee or any agent of the Mortgagee.

14. *Notice.* Except as otherwise herein provided, any notice, demand or other communication to the Mortgagor referred to herein or in the Mortgage may be forwarded to the Mortgagor by personal delivery or mailed by prepaid ordinary or registered mail to the Mortgagor at the Mortgagor's last known address as shown on the Mortgagee's records. The Mortgagor shall be deemed to have received the same on the date of delivery, if personally delivered, or on the fourth day after the same is mailed by prepaid ordinary mail or registered mail, if mailed, even if the Mortgagor does not actually receive it.

15. *Different Currencies.* The payment of any part of the Indebtedness shall be made by the Mortgagor in the same currency as the currency in which such part of the Indebtedness is then denominated and all interest and fees shall be paid by the Mortgagor in the same currency as the currency in which that part of the Indebtedness to which they relate is denominated.

16. *Judgment Currency.* If in the recovery by the Mortgagee of any Indebtedness in any currency, judgment can only be obtained in another currency and, because of changes in the

exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the recovery under the judgment differs from the receipt by the Mortgagee of the full amount of such Indebtedness, the Mortgagor shall pay any such deficiency to the Mortgagee, such deficiency may be claimed by the Mortgagee against the Mortgagor as an alternative or additional cause of action and any surplus received by the Mortgagee shall be repaid to the Mortgagor.

17. *Foreign Exchange Rate Determinations.* Whenever any provision of the Mortgage requires or permits the determination of the rate of exchange between any currencies, such rate of exchange shall be determined by the Mortgagee based on its normal practice as at the date of such determination.

18. *Governing Law.* The Standard Charge Terms and the Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Land is located.

19. *Time of Essence.* Time shall be of the essence of the Mortgage.

20. *Severability.* If any provision of the Mortgage is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the Mortgage shall remain in full force and effect without such provision.

21. *Interpretation.* Whenever the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing any gender shall include the other genders. Whenever used in the Standard Charge Terms, the Mortgage or any Schedule, the words “including” and “includes” shall mean “including, without limitation” and “includes, without limitation”, respectively, and the word “person” shall include an individual, corporation, partnership, government, government agency and any other entity.

22. *Titles.* Titles used in the Standard Charge Terms, the Mortgage or any Schedule are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of any provision of the Standard Charge Terms, the Mortgage or any Schedule.

23. *Joint and Several Obligations.* If there is more than one Mortgagor, all Mortgagors shall be jointly and severally liable for all obligations of the Mortgagors pursuant to the Mortgage.

24. *Schedule.* Schedule “A” shall form part of the Standard Charge Terms.

25. *Equivalent Rate Information.* Schedule “A” is a summary of various annual rates of interest calculated half-yearly not in advance equivalent to the corresponding annual rates calculated monthly not in advance or calculated quarter-annually not in advance. The rate of interest chargeable, calculated half-yearly not in advance, equivalent to each Applicable Rate, is shown by Schedule “A”.

26. *Successors and Assigns.* All rights and powers of the Mortgagee shall enure to the benefit of and be exercisable by the Mortgagee and the Mortgagee’s successors and assigns. All covenants, obligations and liabilities entered into or imposed on the Mortgagor shall be binding on the Mortgagor and the Mortgagor’s heirs, executors, administrators, personal representatives, successors and assigns.

SCHEDULE "A"

The interest rates set out in Column C are the annual interest rates calculated half-yearly not in advance which are equivalent to the corresponding annual interest rates calculated monthly not in advance set out in Column A and quarter-annually not in advance set out in Column B.

COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C
Interest rate calculated monthly not in advance	Interest rate calculated quarter- annually not in advance	Interest rate calculated half-yearly not in advance	Interest rate calculated monthly not in advance	Interest rate calculated quarter- annually not in advance	Interest rate calculated half-yearly not in advance
1.0000%	1.0008%	1.0021%	9.5000%	9.5754%	9.6900%
1.1250%	1.1261%	1.1276%	9.6250%	9.7024%	9.8201%
1.2500%	1.2513%	1.2533%	9.7500%	9.8294%	9.9502%
1.3750%	1.3766%	1.3789%	9.8750%	9.9565%	10.0804%
1.5000%	1.5019%	1.5047%	10.0000%	10.0836%	10.2107%
1.6250%	1.6272%	1.6305%	10.1250%	10.2107%	10.3410%
1.7500%	1.7526%	1.7564%	10.2500%	10.3378%	10.4714%
1.8750%	1.8779%	1.8823%	10.3750%	10.4650%	10.6019%
2.0000%	2.0033%	2.0084%	10.5000%	10.5921%	10.7324%
2.1250%	2.1288%	2.1344%	10.6250%	10.7194%	10.8630%
2.2500%	2.2542%	2.2606%	10.7500%	10.8466%	10.9937%
2.3750%	2.3797%	2.3868%	10.8750%	10.9739%	11.1244%
2.5000%	2.5052%	2.5131%	11.0000%	11.1011%	11.2552%
2.6250%	2.6307%	2.6394%	11.1250%	11.2285%	11.3861%
2.7500%	2.7563%	2.7658%	11.2500%	11.3558%	11.5170%
2.8750%	2.8819%	2.8923%	11.3750%	11.4832%	11.6480%
3.0000%	3.0075%	3.0188%	11.5000%	11.6106%	11.7791%
3.1250%	3.1331%	3.1454%	11.6250%	11.7380%	11.9102%
3.2500%	3.2588%	3.2721%	11.7500%	11.8654%	12.0414%
3.3750%	3.3845%	3.3988%	11.8750%	11.9929%	12.1727%
3.5000%	3.5102%	3.5256%	12.0000%	12.1204%	12.3040%
3.6250%	3.6360%	3.6525%	12.1250%	12.2479%	12.4354%
3.7500%	3.7617%	3.7794%	12.2500%	12.3755%	12.5669%
3.8750%	3.8875%	3.9064%	12.3750%	12.5031%	12.6985%
4.0000%	4.0133%	4.0335%	12.5000%	12.6307%	12.8301%
4.1250%	4.1392%	4.1606%	12.6250%	12.7583%	12.9618%
4.2500%	4.2651%	4.2878%	12.7500%	12.8859%	13.0935%
4.3750%	4.3910%	4.4151%	12.8750%	13.0136%	13.2253%
4.5000%	4.5169%	4.5424%	13.0000%	13.1413%	13.3572%
4.6250%	4.6428%	4.6698%	13.1250%	13.2691%	13.4892%
4.7500%	4.7688%	4.7973%	13.2500%	13.3968%	13.6212%
4.8750%	4.8948%	4.9248%	13.3750%	13.5246%	13.7533%
5.0000%	5.0209%	5.0524%	13.5000%	13.6524%	13.8854%
5.1250%	5.1469%	5.1800%	13.6250%	13.7803%	14.0177%
5.2500%	5.2730%	5.3078%	13.7500%	13.9082%	14.1499%
5.3750%	5.3991%	5.4355%	13.8750%	14.0360%	14.2823%
5.5000%	5.5252%	5.5634%	14.0000%	14.1640%	14.4147%
5.6250%	5.6514%	5.6913%	14.1250%	14.2919%	14.5472%
5.7500%	5.7776%	5.8193%	14.2500%	14.4199%	14.6798%
5.8750%	5.9038%	5.9474%	14.3750%	14.5479%	14.8124%
6.0000%	6.0300%	6.0755%	14.5000%	14.6759%	14.9451%
6.1250%	6.1563%	6.2037%	14.6250%	14.8040%	15.0779%
6.2500%	6.2826%	6.3319%	14.7500%	14.9320%	15.2108%
6.3750%	6.4089%	6.4603%	14.8750%	15.0601%	15.3437%
6.5000%	6.5353%	6.5887%	15.0000%	15.1883%	15.4766%
6.6250%	6.6616%	6.7171%	15.1250%	15.3164%	15.6097%
6.7500%	6.7880%	6.8456%	15.2500%	15.4446%	15.7428%
6.8750%	6.9145%	6.9742%	15.3750%	15.5728%	15.8760%
7.0000%	7.0409%	7.1029%	15.5000%	15.7011%	16.0092%
7.1250%	7.1674%	7.2316%	15.6250%	15.8293%	16.1425%
7.2500%	7.2939%	7.3604%	15.7500%	15.9576%	16.2759%
7.3750%	7.4204%	7.4892%	15.8750%	16.0859%	16.4094%
7.5000%	7.5470%	7.6182%	16.0000%	16.2143%	16.5429%
7.6250%	7.6736%	7.7472%	16.1250%	16.3427%	16.6765%
7.7500%	7.8002%	7.8762%	16.2500%	16.4710%	16.8102%
7.8750%	7.9268%	8.0053%	16.3750%	16.5995%	16.9439%
8.0000%	8.0535%	8.1345%	16.5000%	16.7279%	17.0777%
8.1250%	8.1801%	8.2638%	16.6250%	16.8564%	17.2116%
8.2500%	8.3068%	8.3931%	16.7500%	16.9849%	17.3455%
8.3750%	8.4336%	8.5225%	16.8750%	17.1134%	17.4795%
8.5000%	8.5604%	8.6519%	17.0000%	17.2420%	17.6136%
8.6250%	8.6871%	8.7815%	17.1250%	17.3706%	17.7477%
8.7500%	8.8140%	8.9111%	17.2500%	17.4992%	17.8819%
8.8750%	8.9408%	9.0407%	17.3750%	17.6278%	18.0162%
9.0000%	9.0677%	9.1704%	17.5000%	17.7564%	18.1506%
9.1250%	9.1946%	9.3002%	17.6250%	17.8851%	18.2850%
9.2500%	9.3215%	9.4301%	17.7500%	18.0138%	18.4195%
9.3750%	9.4484%	9.5600%	17.8750%	18.1426%	18.5540%

# EXHIBIT “F”

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 4

**Properties**

PIN 71359 - 0141 LT  
 Description PART LOT 4 PLAN 169 AS IN R0803884; GUELPH  
 Address 59 WOODLAWN ROAD WEST  
 GUELPH

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name 8331707 CANADA INC.  
 Address for Service 34 DAFOE CRES  
 BRAMPTON ON L6Y 2L2

I, Jigneshbhai Shah, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Party To(s)**

Capacity

Share

Name BANK OF MONTREAL  
 Address for Service 6605 Hurontario Street Suite 200 Mississauga, Ontario L5T  
 OA4

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, WC557941 registered on 2018/12/27 to which this notice relates is deleted

Schedule: See Schedules

**Signed By**

Rhea Reshma Nanan 920 Derry Road East acting for Signed 2018 12 27  
 Mississauga Applicant(s)  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

I have the authority to sign and register the document on behalf of all parties to the document.

Rhea Reshma Nanan 920 Derry Road East acting for Signed 2018 12 27  
 Mississauga Party To(s)  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

MANN LAW OFFICE 920 Derry Road East 2018 12 27  
 Mississauga  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

**Fees/Taxes/Payment**

Statutory Registration Fee \$64.40  
 Total Paid \$64.40



## ACKNOWLEDGEMENT AND DIRECTION

121

TO: Rhea Reshma Nanan  
(Insert lawyer's name)

AND TO: MANN LAW OFFICE  
(Insert firm name)

RE: NOARG ("the transaction")  
(Insert brief description of transaction)

### This will confirm that:

- I/We have reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the "Documents"), and that this information is accurate;
- You, your agent or employee are authorized and directed to sign, deliver, and/or register electronically, on my/our behalf the Documents in the form attached.
- You are hereby authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto being a copy of the version of the Document Registration Agreement, which appears on the website of the Law Society of Upper Canada as the date of the Agreement of Purchase and sale herein. I/We hereby acknowledge the said Agreement has been reviewed by me/us and that I/We shall be bound by its terms.
- The effect of the Documents has been fully explained to me/us, and I/we understand that I/we are parties to and bound by the terms and provisions of the Documents to the same extent as if I/we had signed them; and
- I/we are in fact the parties named in the Documents and I/we have not misrepresented our identities to you.
- I am the spouse of the (Transferor/Chargor), and hereby consent to the transaction described in the Acknowledgment and Direction. I authorize you to indicate my consent on all the Documents for which it is required.

### DESCRIPTION OF ELECTRONIC DOCUMENTS

The Document(s) described in the Acknowledgement and Direction are the document(s) selected below which are attached hereto as "Document in Preparation" and are:

- ☐ A Transfer of the land described above.
- ☐ A Charge of the land described above.
- ☒ Other documents set out in Schedule "B" attached hereto: NOARG

Dated at Mississauga, this 28 day of November, 2018.

### WITNESS

(As to all signatures, if required)

Rhea Reshma Nanan  
8331707 CANADA INC.

Jignesh

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 4

**Properties**

**PIN** 71359 - 0141 LT  
**Description** PART LOT 4 PLAN 169 AS IN RO803884; GUELPH  
**Address** 59 WOODLAWN ROAD WEST  
GUELPH

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

**Name** 8331707 CANADA INC.  
Acting as a company  
**Address for Service** 34 DAFOE CRES  
BRAMPTON ON L6Y 2L2

I, Jigneshbhai Shah, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Party To(s)****Capacity****Share**

**Name** BANK OF MONTREAL  
Acting as a company  
**Address for Service** 6605 Hurontario Street Suite 200 Mississauga, Ontario L5T  
0A4

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, to which this notice relates is deleted

Schedule: See Schedules

# ASSIGNMENT OF RENTS

---

THIS ASSIGNMENT dated November 28, 2018.

BETWEEN:

**8331707 CANADA INC.**

(the "Assignor")

AND:

**BMO Bank of Montreal**

(the "Bank")

WHEREAS:

- A. By a Mortgage made between the Assignor and the Bank, which Mortgage is dated November 28, 2018 and was registered in the \_\_\_\_\_ Land Registry Office on the \_\_\_\_ day of \_\_\_\_\_, 2018 as No. \_\_\_\_\_, (hereinafter called the "Mortgage") the Assignor did grant and mortgage unto the Bank the lands and premises in the City of \_\_\_\_\_, in the Province of Ontario, and legally described as follows:

PART LOT 4 PLAN 169 AS IN RO803884; GUELPH

(the "Lands and Premises")

to secure payment of \$1,878,000.00 and interest thereon as therein set forth;

- B. The Assignor has agreed to assign to the Bank all rents and other monies now due and payable or hereafter to become due and payable under every existing and future lease of and Agreement to Lease the whole or any portion of the Lands and Premises as a further security for the payment of the principal sum and interest secured by the Mortgage and for the performance of the covenants in the Mortgage contained;

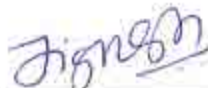
**NOW THEREFORE** in consideration of the premises, the sum of One Dollar (\$1.00) now paid by the Bank to the Assignor, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Assignor), the parties hereto covenant and agree as follows:

1. The Assignor does hereby assign and set over unto the Bank as security for the said principal and interest secured by the Mortgage and for the performance of the covenants in the Mortgage contained all rents and other monies now due and payable or hereafter to become due and payable under every existing and future Lease of and Agreement to Lease the whole or any portion of the Lands and Premises (hereinafter called the "Leases"), together with the benefit of all covenants, agreements and provisoes contained in the Leases with full power and authority to demand, collect, sue for, recover, receive and give receipts for the rents and to enforce payment thereof in the name of the Assignor, its successors and assigns.

2. Nothing herein contained shall be deemed to have the effect of making the Bank responsible for the collection of any rents and other monies now due and payable or to become due and payable, or for the performance of any covenants, terms and conditions either by the lessor or by the lessee contained or to be contained in the Leases and the Bank shall not, by virtue of this Assignment, be deemed a Mortgagee in possession of the Lands and Premises or any part thereof.
3. The Bank shall be liable to account for only such monies as shall actually come into its hands by virtue of this Assignment, less collection charges, exigible taxes and costs (including solicitor and client costs). Such monies when so received by the Bank shall be applied on account of the monies from time to time due under the Mortgage and any renewal or extension thereof, or under any agreement collateral thereto.
4. The said rents and other monies now due and payable or hereafter to become due and payable hereunder and other benefits hereby assigned or to be assigned to the Bank are being taken as collateral security only for the due payment of any sum due under the Mortgage or any renewal or extension thereof or of any Mortgage taken in substitution therefor, either wholly or in part, and none of the rights or remedies of the Bank under the Mortgage shall be delayed or in any way prejudiced by these presents.
5. Notwithstanding any variation of the terms of the Mortgage or any agreement or arrangement with the Assignor or any extension of time for payment or any release of part or parts of the Lands and Premises, or of any collateral security, the said rents and monies now due and payable or hereafter to become due and payable hereunder and other benefits hereby assigned or to be assigned shall continue as collateral security until the whole of the monies secured by the Mortgage shall be fully paid and satisfied.
6. The Assignor covenants and agrees from time to time and at all times hereafter, at the request of the Bank, to execute and deliver at the expense of the Assignor such further assurances for the better and more perfectly assigning to the Bank all rents and monies now due and payable or hereafter to become payable hereunder, as the Bank shall reasonably advise.
7. Until default shall have been made in the payment of any installment of principal or of interest as provided in the Mortgage or any renewal or extension thereof or until the breach of any covenants contained in the Mortgage, the Assignor shall be entitled to receive all rents or monies payable under the Leases and shall not be liable to account therefor to the Bank, but immediately upon default in payment of either the principal or interest under the Mortgage, or upon a breach on the part of the Assignor of any of the covenants contained in the Mortgage, and so often as either may occur, the Bank upon notice to the lessee or to any person or persons liable for payment of any rents or monies under the Leases, shall be entitled to all such rents or monies falling due subsequent to the date of service of such notice.
8. Notwithstanding this Assignment, the Assignor shall be solely responsible for performing and complying with all the lessor's covenants and other obligations under the terms of the Leases and shall perform, according to the true intent and meaning thereof, all such the covenants and obligations contained in the Leases so that the rights and remedies of the Bank shall not be in any way delayed or prejudiced.
9. The Bank may, but shall not be bound to, institute proceedings for the purpose of enforcing any Leases or collecting the rents or for the purpose of preserving any rights of the Bank, the Assignor or any other person, firm or corporation in respect of the same.
10. The Bank may waive any default or breach of covenant and shall not be bound to serve any notice as hereinbefore set forth upon the happening of any default or breach of covenant, but any such waiver shall not extend to any subsequent default or breach of covenant.
11. This Agreement shall enure to and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Assignor has hereunto set his hand and seal or has affixed its corporate seal duly attested by the hand(s) of its proper officer(s) in that behalf, on the day and year first above written.

8331707 CANADA INC.



Per: Jigneshbhai Shah, President  
I have the authority to bind the corporation

# EXHIBIT “G”

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 12/9/2020  
File Currency Date: 12/08/2020  
Family(ies): 3  
Page(s): 3

SEARCH : Business Debtor : 8331707 CANADA INC.

The attached report has been created based on the data received by Cyberbahn from the Province of Ontario, Ministry of Government Services.  
No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report.  
Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 12/9/2020  
File Currency Date: 12/08/2020  
Family(ies): 3  
Page(s): 3

SEARCH : Business Debtor : 8331707 CANADA INC.

FAMILY : 1 OF 3 ENQUIRY PAGE : 1 OF 3  
SEARCH : BD : 8331707 CANADA INC.

00 FILE NUMBER : 747020277 EXPIRY DATE : 20DEC 2024 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :  
REG NUM : 20181220 1402 1862 9353 REG TYP: P PPSA REG PERIOD: 6  
02 IND DOB : IND NAME:  
03 BUS NAME: 8331707 CANADA INC.

OCN : 8331707

04 ADDRESS : 34 DAFOE CRES  
CITY : BRAMPTON PROV: ON POSTAL CODE: L6Y 2L2  
05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
BANK OF MONTREAL

09 ADDRESS : 6605 HURONTARIO STREET SUITE 200  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5T 0A4  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X X X X  
YEAR MAKE MODEL V.I.N.

11  
12

GENERAL COLLATERAL DESCRIPTION

13 GENERAL SECURITY AGREEMENT OVER ALL PRESENT AND AFTER-ACQUIRED  
14 PERSONAL PROPERTY.

15

16 AGENT: MANN LAW, BARRISTERS & SOLICITORS

17 ADDRESS : 920 DERRY ROAD EAST  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5T 2X6



FAMILY : 2 OF 3  
 SEARCH : BD : 8331707 CANADA INC.

ENQUIRY PAGE : 2 OF 3

00 FILE NUMBER : 747020592 EXPIRY DATE : 20DEC 2024 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :  
 REG NUM : 20181220 1408 1862 9356 REG TYP: P PPSA REG PERIOD: 6  
 02 IND DOB : IND NAME:  
 03 BUS NAME: 8331707 CANADA INC.

OCN : 8331707

04 ADDRESS : 34 DAFOE CRES  
 CITY : BRAMPTON PROV: ON POSTAL CODE: L6Y 2L2  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

OCN :

07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

BANK OF MONTREAL

09 ADDRESS : 6605 HURONTARIO STREET SUITE 200

CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5T 0A4

CONS. MV DATE OF OR NO FIXED

GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X X  
 YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13 ASSIGNMENT OF RENTS ON FILE.

14

15

16 AGENT: MANN LAW, BARRISTERS & SOLICITORS

17 ADDRESS : 920 DERRY ROAD EAST

CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5T 2X6

FAMILY : 3 OF 3  
 SEARCH : BD : 8331707 CANADA INC.

ENQUIRY PAGE : 3 OF 3

00 FILE NUMBER : 757484595 EXPIRY DATE : 12NOV 2024 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
 REG NUM : 20191112 1048 1532 4597 REG TYP: P PPSA REG PERIOD: 05  
 02 IND DOB : IND NAME:  
 03 BUS NAME: 8331707 CANADA INC.

OCN :

04 ADDRESS : 34 DAFOE CRES  
 CITY : BRAMPTON PROV: ON POSTAL CODE: L6Y2L2  
 05 IND DOB : 24JUN1971 IND NAME: JIGNESHBHAI SHAH  
 06 BUS NAME:

OCN :

07 ADDRESS : 567 COLLEGE AVE WEST  
 CITY : GUELPH PROV: ON POSTAL CODE: N1G2Z6

08 SECURED PARTY/LIEN CLAIMANT :  
 HONDA CANADA FINANCE INC.

09 ADDRESS : 180 HONDA BLVD  
 CITY : MARKHAM PROV: ON POSTAL CODE: L6C0H9  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X 34578 05NOV2024  
 YEAR MAKE MODEL V.I.N.  
 11 2019 HONDA CRV 2HKRW2H90KH130564  
 12

GENERAL COLLATERAL DESCRIPTION

13  
 14  
 15

16 AGENT: D + H LIMITED PARTNERSHIP  
 17 ADDRESS : 2 ROBERT SPECK PARKWAY, 15TH FLOOR  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4Z 1H8

# EXHIBIT “H”

PROPERTY DESCRIPTION: PART LOT 4 PLAN 169 AS IN R0803884; GUELPH

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

RE-ENTRY FROM 71359-0077

PIN CREATION DATE:

2009/01/22

OWNERS' NAMES

8331707 CANADA INC.

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT	INCLUDES ALL	DOCUMENT TYPES AND	DELETED INSTRUMENTS	SINCE 2009/01/22 **		
**SUBJECT,	ON FIRST REGISTRATION	UNDER THE LAND TITLES ACT,	TO:			
**	SUBSECTION 44(1) OF THE LAND TITLES ACT,	EXCEPT PARAGRAPH 11,	PARAGRAPH 14,	PROVINCIAL SUCCESSION DUTIES *		
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD,	BUT FOR THE LAND TITLES ACT,	BE ENTITLED TO THE LAND OR ANY PART OF			
**	IT THROUGH LENGTH OF ADVERSE POSSESSION,	PRESCRIPTION,	MISDESCRIPTION OR BOUNDARIES SETTLED BY			
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES:	2009/01/22 **				
MS5863	1959/02/02	LEASE		*** DELETED AGAINST THIS PROPERTY ***	SUN OIL COMPANY LIMITED	
ROS263642	1983/02/24	AGREEMENT			THE CORPORATION OF THE CITY OF GUELPH	C
RO803844	1999/03/01	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** LATIF, FAYYAZ MAHMOOD LATIF, SELMA	1295712 ONTARIO LTD.	
REMARKS: PLANNING ACT STATEMENT						
RO803845	1999/03/01	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 1295712 ONTARIO LTD.	BANK OF MONTREAL	
RO806231	1999/06/03	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY *** 1295712 ONTARIO LTD.	PETRO-CANADA	
RO806596	1999/06/17	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY *** 1295712 ONTARIO LTD.	THE TDL GROUP LTD.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #61

71359-0141 (LT)

PAGE 2 OF 4  
PREPARED FOR Rebecca01  
ON 2020/10/22 AT 16:09:54

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
RO817533	2000/11/30	AGREEMENT		THE CORPORATION OF THE CITY OF GUELPH	1295712 ONTARIO LTD. BANK OF MONTREAL	C
		REMARKS: SITE PLAN CONTROL				
RO818298	2001/04/09	AGREEMENT		*** DELETED AGAINST THIS PROPERTY *** THE TDL GROUP LTD.	1295712 ONTARIO INC.	
		REMARKS: RO806596				
RO818652	2002/03/08	AGREEMENT		*** DELETED AGAINST THIS PROPERTY *** THE TDL GROUP LTD.	BANK OF MONTREAL	
		REMARKS: RO806596, RO803845 & RO818298 DELETED EXPIRED		INTEREST AS PER BULLETIN 89004 2018/07/13 PB		
RO818882	2002/12/20	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** 1295712 ONTARIO LTD.	2011263 ONTARIO INC.	
RO818883	2002/12/20	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2011263 ONTARIO INC.	HSBC BANK CANADA	
RO818884	2002/12/20	ASSIGNMENT GENERAL		*** DELETED AGAINST THIS PROPERTY *** 2011263 ONTARIO INC.	HSBC BANK CANADA	
		REMARKS: RO818883 - RENTS				
WC236560	2009/02/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
		REMARKS: RE: RO803845				
WC236605	2009/02/05	APL (GENERAL)		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.		
		REMARKS: MS5863-DELETED EXPIRED INTEREST AS PER BULLETIN 89004 2018/07/13 PB				
WC236772	2009/02/09	CHARGE		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.	HSBC BANK CANADA	
WC236773	2009/02/09	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.	HSBC BANK CANADA	
		REMARKS: WC236772				
WC236828	2009/02/09	DISCH OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA		
		REMARKS: RE: RO818883				
WC244370	2009/05/13	NOTICE OF LEASE		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.	1749612 ONTARIO INC.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #61

71359-0141 (LT)

PAGE 3 OF 4  
PREPARED FOR Rebecca01  
ON 2020/10/22 AT 16:09:54

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WC439238	2015/07/06	APL (GENERAL)		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.		
	REMARKS: TO DELETE RO806231					
WC444864	2015/08/28	NOTICE	\$2	PARKLAND INDUSTRIES LTD.		C
	REMARKS: RIGHT OF FIRST REFUSAL					
WC444865	2015/08/28	CHARGE	\$53,000	2011263 ONTARIO INC.	PARKLAND INDUSTRIES LTD.	C
WC515830	2017/09/01	APL (GENERAL)		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.		
	REMARKS: DELETE RO806596					
WC515831	2017/09/01	APL (GENERAL)		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.		
	REMARKS: DELETE WC244370					
WC515855	2017/09/01	TRANSFER		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.	2368632 ONTARIO INC.	
WC515856	2017/09/01	CHARGE		*** COMPLETELY DELETED *** 2368632 ONTARIO INC.	2011263 ONTARIO INC.	
WC516695	2017/09/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA		
	REMARKS: WC236772.					
WC540290	2018/06/14	APL CH NAME INST		PARKLAND INDUSTRIES LTD.	PARKLAND FUEL CORPORATION	C
	REMARKS: WC444864, WC444865					
WC540607	2018/06/15	CHARGE		*** COMPLETELY DELETED *** 2368632 ONTARIO INC.	CREEMORE FINANCIAL LTD.	
WC540608	2018/06/15	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2368632 ONTARIO INC.	CREEMORE FINANCIAL LTD.	
	REMARKS: WC540607					
WC540609	2018/06/15	POSTPONEMENT		*** COMPLETELY DELETED *** PARKLAND FUEL CORPORATION	CREEMORE FINANCIAL LTD.	
	REMARKS: WC444865 TO WC540607					
WC540610	2018/06/15	POSTPONEMENT		*** COMPLETELY DELETED ***		

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71359-0141 (LT)

PAGE 4 OF 4  
PREPARED FOR Rebecca01  
ON 2020/10/22 AT 16:09:54

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: WC444864 TO WC540607		PARKLAND FUEL CORPORATION	CREEMORE FINANCIAL LTD.	
WC540619	2018/06/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2011263 ONTARIO INC.		
		REMARKS: WC515856.				
WC557939	2018/12/27	TRANSFER	\$2,750,000	2368632 ONTARIO INC.	8331707 CANADA INC.	C
WC557941	2018/12/27	CHARGE	\$1,878,000	8331707 CANADA INC.	BANK OF MONTREAL	C
WC557943	2018/12/27	NO ASSGN RENT GEN		8331707 CANADA INC.	BANK OF MONTREAL	C
		REMARKS: TO BE DELETED UPON THE DELETION OF WC557941				
WC557946	2018/12/27	POSTPONEMENT		PARKLAND FUEL CORPORATION	BANK OF MONTREAL	C
		REMARKS: WC444865, WC540290 TO WC557941				
WC557959	2018/12/27	DISCH OF CHARGE		*** COMPLETELY DELETED *** CREEMORE FINANCIAL LTD.		
		REMARKS: WC540607.				

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# EXHIBIT “I”



# CERTIFICATE OF THE TREASURER

137



CORPORATE SERVICES TAXATION AND REVENUE  
City Hall, 1 Carden Street  
Guelph, Ontario, Canada N1H 3A1  
Telephone: (519) 837-5605 Fax: (519) 837-5647  
tax@guelph.ca

CERTIFIED AS AT: October 26, 2020

COST: \$60.00

RUSH: \$75.00

CERTIFICATE NO 46355

REFERENCE 0082754.0718

ROLL NUMBER

23.08.040.007.25600.0000

ASSESSED OWNER:

8331707 CANADA INC

ISSUED TO:

MILLER THOMSON  
ONTARIO AGRICENTRE  
100 STONE RD W  
SUITE 301  
GUELPH ON N1G 5L3

## PROPERTY DESCRIPTION

PENALTY/INTEREST RATE 1.250 %

59 WOODLAWN RD W  
PLAN 169 PT LOT 4  
REG  
22144.00SF 170.00FR 130.26D

## TAX ARREARS

Statement showing arrears of taxes on the above lands. (Reference Section 352 of the Municipal Act R.S.O. 2001, c.25 as amended.)

YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST	ARREARS OUTSTANDING
2019	20,585.03	0.00	0.00	0.00
2018	20,823.14	0.00	0.00	0.00
2017+	21,188.01	0.00	0.00	0.00

## STATEMENT OF CURRENT TAXES

(Issued pursuant to the provisions of Section 352 of the Municipal Act R.S.O. 2001, c.25 as amended.)

CURRENT LEVY	INSTALMENT DUE DATES AND AMOUNTS				CURRENT OUTSTANDING
INTERIM 10,292.51	2020/02/28	5,146.00	2020/04/30	5,146.51	TAX 19,941.13
FINAL 10,147.88	2020/06/30	5,074.00	2020/09/30	5,073.88	OTHER CHARGES 55.00
SUPP/ADJ. 0.00					PENALTY 436.11
TOTAL 20,440.39					TOTAL CURRENT 20,432.24
ACCUMULATED DEFERRAL WITH INTEREST @ PRIME + 2%					0.00
TOTAL OUTSTANDING					20,432.24

I hereby certify that the above statement shows all arrears of taxes against the above lands.

- 1.This Certificate does not include any Arrears of Water or Hydro services to the property not added to the tax roll at this date. Contact Guelph Hydro for such information at 395 Southgate Drive, Guelph, Ontario N1G 4Y1, telephone 822-3010.
- 2.Nor does it include any direct services to the property not added to the Tax Roll at this date, such as work orders involving weed cutting charges, demolition, clean-ups, etc. Contact Building Services, telephone 519-837-5615 for more information.
- 3.Tax levy to date does not include subsequent Supplementary Taxes that may be levied and added under Sections 33 and 34 of the Assessment Act, R.S.O. 1990, Chapter A31, as amended nor does it include adjustments that may be made under the Municipal Act and The Assessment Act.
- 4.Any Credit Balance appearing on this Certificate is not verified. No adjustment should be made unless the Credit Balance is a known and acknowledged overpayment. Contact tax office at 837-5605 for any further information as to disposition.
- 5.Application of tax payments if in arrears - where part payments of taxes due for any year are received, after crediting the payment first on account of interest and penalty and other charges, the remainder is to be credited against those instalments longest overdue. The unpaid balance shown on the Certificate is the amount due, only if paid on or before the last working day of the month of issue.
- 6.These charges do not include Local Improvements which are proposed for which construction has not commenced or Local Improvements which have been constructed but not levied.
- 7.The information on this Certificate is based on payments being correctly applied to the account and clearing at their Financial Institution.

FOR THE CITY TREASURER

## LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE:

CODE	DESCRIPTION	AMOUNT	EXPIRY



CORPORATE SERVICES  
TAXATION AND REVENUE

City Hall, 1 Carden Street  
Guelph, Ontario, Canada N1H 3A1  
Telephone: (519) 837-5605 Fax: (519) 837-5647  
tax@guelph.ca

## COMPLETE AND RETURN THIS SECTION

PROVIDING YOUR REQUEST FOR A CLEARANCE CERTIFICATE INVOLVES A PROPERTY SALE, WOULD YOU PLEASE CONFIRM THAT THE SALE HAS BEEN COMPLETED IN ORDER THAT WE MAY ENSURE THAT THE NEW OWNER(S) RECEIVE FUTURE TAX NOTICES.

ROLL NUMBER

23.08.040.007.25600.0000

PROPERTY DESCRIPTION  
59 WOODLAWN RD W  
PLAN 169 PT LOT 4  
REG  
22144.00SF 170.00FR 130.26D

NEW OWNER(S)

MAILING ADDRESS

POSTAL CODE

CLOSING DATE

FIRM

YES NO

RETURN POST-DATED CHEQUES ON FILE?

☐ YES ☐ NO

CANCEL PRE-AUTHORIZED PAYMENT PLAN?

☐ YES ☐ NO



0 4 0 0 0 7 2 5 6 0 0 0 0 0 0

# EXHIBIT “J”



November 12, 2020

**Delivered via Registered Mail and  
Email (8331707canadainc@gmail.com)**

**Tony Van Klink**  
Direct Line: 519.931.3509  
tvanklink@millerthomson.com

File: 0082754.0718

8331707 Canada Inc.  
34 Dafoe Crescent  
Brampton, ON L6Y 2L2

Attention: Jigneshbhai Shah, President

Dear Sir:

**Re: Loans made to 8331707 Canada Inc. (the “Borrower”) by Bank of Montreal  
 (“BMO”)**

We are the lawyers for BMO.

We refer to the loans (the “**Loans**”) made by BMO to the Borrower pursuant to a letter of agreement dated October 15, 2018 and the loan made by the Bank to the Borrower pursuant to the Canada Emergency Business Account program (the “**CEBA Loan**”), the particulars of which are on schedule “A” to this letter.

As of November 9, 2020, the Borrower is indebted to BMO under the Loans and the CEBA Loan in the amount of \$1,829,963.64, the breakdown of which is on schedule “B” to this letter, together with accruing interest and accrued and accruing costs.

The Borrower is in default of the terms of the Loans, including,

- (a) failing to make required payments on the Fixed Rate Term Loan (as defined on schedule “A”);
- (b) failing to pay the property taxes for the gas station property located at 59 Woodlawn Road West, Guelph (the “**Gas Station Property**”); and
- (c) failing to provide required financial reporting.

In addition, the Bank has other concerns including discrepancies in the fuel volume reports.

The Operating Loan (as defined on schedule “A”) is payable on demand. By reason of the defaults which have occurred, BMO is entitled to declare the entire balance on the Fixed Rate Term Loan to be immediately due and payable.

On behalf of BMO, we hereby give notice to the Borrower that BMO is exercising its right to declare the entire balance on the Fixed Rate Term Loan to be immediately due and payable and to demand payment of the Loans.

The Loans must be made repaid in full by 4:30 p.m. on November 23, 2020 (the **"Repayment Date"**).

Unless otherwise advised by BMO in writing, the Operating Loan will remain available to the Borrower (subject to the maximum limit) until 4:30 p.m. on the Repayment Date.

Interest continues to accrue on the outstanding balance on the Loans at the rates set out on schedule "B". This letter constitutes a demand for payment of the outstanding balance on the Loans, further interest which accrues thereon to the date of payment plus all costs incurred by BMO. As the amounts shown on schedule "B" are subject to change, schedule "B" may not be used for payout purposes. A formal payout statement will be required and will be provided to you upon request.

Unless the Loans are repaid as demanded, BMO intends to proceed to enforce the security which it holds for the Loans, including seeking the appointment of a receiver and manager in respect of the Gas Station Property.

Enclosed is a notice pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the **"BIA Notice"**) which is hereby being served upon the Borrower.

Without prejudice to BMO's rights under this demand and the *BIA Notice*, BMO is prepared to discuss with the Borrower terms of a forbearance agreement to allow the Borrower time to pursue the refinancing or sale of the Gas Station Property, subject to terms to be agreed. Failing such an agreement, the Loans must be repaid as demanded herein. Any discussions or negotiations after the date of this letter regarding the terms of a forbearance agreement shall not operate as a waiver of this demand or the *BIA Notice* or an extension of the time period provided for in this demand or the *BIA Notice* unless otherwise confirmed by BMO in writing.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tony Van Klink', with a large, stylized flourish extending from the end of the signature.

Tony Van Klink  
TVK/jf

Enclosure  
c. Eugene Chow

**SCHEDULE "A"**

(Loans and CEBA Loan)

Loans

1. A \$93,000 operating loan under account number 3858 1985-007 (the "**Operating Loan**"); and
2. A fixed rate term loan under account number 3858 6988-637 (the "**Fixed Rate Term Loan**").

CEBA Loan

1. A \$40,000 loan under account number 5112-4200 0046-2600 pursuant to the Canada Emergency Business Account program (the "**CEBA Loan**").

Note: The Operating Loan and Demand Loan are referred to together as the "**Loans**".

**SCHEDULE "B"**

(Outstanding balances as of November 9, 2020)

Operating Loan

- Principal \$ 82,532.46
- Interest \$ 93.78
- Interest Rate Prime + 2%

Fixed Rate Term Loan

- Principal \$ 1,683,284.03
- Interest \$ 2,170.68
- Prepayment Amount \$ 21,882.69
- Interest Rate 5.2%

CEBA Loan

- Principal \$ 40,000.00
- Interest \$ NIL
- Interest Rate 0%

**NOTICE OF INTENTION TO ENFORCE SECURITY  
(SUBSECTION 244(1) OF THE BANKRUPTCY AND INSOLVENCY ACT)**

**TO:** 8331707 Canada Inc.,  
an Insolvent Person

**TAKE NOTICE THAT:**

1. **Bank of Montreal**, a secured creditor, intends to enforce its security on the property of the insolvent person, being:
  - (a) all present and future personal property, whether tangible or intangible and including, without limitation, all inventory, equipment, machinery, fixtures, accounts receivable, monies, choses in action, documents of title, securities and any and all proceeds derived from any dealing therewith; and
  - (b) the real property legally described as PART LOT 4 PLAN 169 AS IN RO803884; GUELPH (PIN: 71359-0141 in the Wellington (Guelph) Land Registry office – # 61), and municipally known as 59 Woodlawn Road West, Guelph, Ontario.
2. The security that is to be enforced is in the form of:
  - (a) General Security Agreement dated November 28, 2018;
  - (b) Charge/mortgage registered in the Wellington (Guelph) Land Registry Office as number WC557941; and
  - (c) Assignment of Rents registered in the Wellington (Guelph) Land Registry Office as number WC557943.
3. The total amount of indebtedness secured by the security as at the present time is \$1,789,963.64 on account of principal and interest as at November 9, 2020, together with accruing interest and costs.
4. The secured creditor will not have the right to enforce the security until after the expiry of the ten day period following the sending of this Notice, unless the insolvent person consents to an earlier enforcement.

**DATED** at London, Ontario this 12th day of November, 2020.

BANK OF MONTREAL  
By its Solicitors  
Miller Thomson LLP  
2010 – 255 Queens Avenue  
London, ON N6A 5R8

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

Tony Van Klink

# EXHIBIT “K”



## **FORBEARANCE AGREEMENT**

**THIS AGREEMENT** made as of November \_\_\_\_, 2020.

**AMONG:**

**BANK OF MONTREAL**, a Canadian chartered bank having an office at 150 King Street West, 11<sup>th</sup> Floor, Toronto, Ontario

(hereinafter called the “**Bank**”)

**OF THE FIRST PART**

- AND –

**8331707 CANADA INC.**, a corporation formed under the laws of Canada and carrying on a motor vehicle fuelling station business in Guelph, Ontario

(hereinafter called the “**Borrower**”)

**OF THE SECOND PART**

- AND –

**JIGNESHBHAI SHAH** and **TEJASH KUMAR SHAH**, the principals of the Borrower and residing in Brampton, Ontario and **NIMISHA SHAH** and **MITTALBEN SHAH**, the spouses of the principals of the Borrower and residing in Brampton, Ontario

(hereinafter called “**Jigneshbhai**”, “**Tejash**”, “**Nimisha**” and “**Mittalben**” respectively and collectively, the “**Personal Guarantors**”)

**OF THE THIRD PART**

**RECITALS**

1. The Borrower owns and operates a motor vehicle fuelling station business (the “**Business**”) from the real property located at 59 Woodlawn Road West, Guelph, Ontario (the “**Property**”);
2. To assist in the financing of the Business, the Bank has made available to the Borrower the Operating Loan, Fixed Rate Term Loan and CEBA Loan (collectively, the “**Loans**”), each as defined on schedule “A”;

3. The Borrower has provided to the Bank the documents described on schedule “B” (the “**Loan Documents**”) with respect to the Operating Loan and Fixed Rate Term Loan;
4. The Personal Guarantors have guaranteed payment to the Bank of the Operating Loan and Fixed Rate Term Loan up to the aggregate principal amount of \$1,878,000, plus interest and costs, under the guarantees described on schedule “C” (the “**Personal Guarantees**”);
5. The amounts set forth on schedule “D” were outstanding on the Loans as of November 16, 2020;
6. As security for the Operating Loan and Fixed Rate Term Loan, the Borrower has provided to the Bank the security documents described on schedule “E” (the “**Security**”);
7. Events of Default have occurred under the Loan Documents and the Security, including (a) the Borrower failing to make required payments on the Fixed Rate Term Loan, (b) the Borrower failing to pay the property taxes for the Property, and (c) the Borrower failing to provide required reporting (the “**Events of Default**”);
8. Responsibility for the management of the Loans was transferred to the Bank’s special accounts management unit because of the Events of Default, among other reasons;
9. On November 12, 2020 the Bank demanded payment of the Operating Loan and Fixed Rate Term Loan from the Borrower and Personal Guarantors and gave notice to the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (“*BIA*”) of the Bank’s intention to enforce the Security;
10. The Borrower is pursuing efforts to sell or refinance the Business and the Property (the “**Sale and Refinancing Efforts**”) to allow it to fully repay the Loans; and
11. The Borrower and the Personal Guarantors have requested that the Bank forbear from exercising its rights and remedies against them and under the Security to allow them to continue to pursue the Sale and Refinancing Efforts and repay the Loans in an orderly fashion.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in consideration of the mutual terms herein set forth, the parties hereto agree as follows:

**1.0 Acknowledgment of Amounts Outstanding on the Loans and Liability to Pay**

1.1 The Borrower acknowledges and confirms to the Bank as follows:

- (a) that as of November 16, 2020, it was indebted to the Bank on the Loans for the amounts set forth on schedule "D" and that such amounts were unconditionally owing to the Bank without set off or counterclaim;
- (b) that it has received the demand for payment dated November 12, 2020 (the **"Borrower Demand for Payment"**) sent to it on behalf of the Bank for repayment of the Operating Loan and Fixed Rate Term Loan;
- (c) that it does not dispute on any grounds whatsoever its liability to pay to the Bank the amounts outstanding on the Loans as set forth on schedule "D" and in the event of an Enforcement Action (as defined in Section 5.1) by the Bank, will not dispute its liability to pay the amounts outstanding on the Loans (together with further interest which accrues thereon);
- (d) that it has received the Notice of Intention to Enforce Security dated November 12, 2020 pursuant to section 244(1) of the *BIA*, (the **"Enforcement Notice"**) issued to the Borrower on behalf of the Bank;
- (e) the Operating Loan and Fixed Rate Term Loan are presently due and payable in full and, but for this Agreement, the Bank is entitled to enforce the Security; and
- (f) its liability to the Bank shall not be reduced, released, diminished or in any manner affected by the terms of this Agreement or any actual forbearance by the Bank in taking any Enforcement Action.

1.2 The Personal Guarantors acknowledge and confirm to the Bank as follows:

- (a) that as of November 16, 2020, the Borrower was indebted to the Bank on the Loans for the amounts set forth on schedule "D" and that such amounts were

unconditionally owing to the Bank by the Borrower without set off or counterclaim;

- (b) that they have each received a demand for payment dated November 12, 2020 (such demands for payment together with the Borrower Demand for Payment being hereafter referred to collectively as the “**Demands for Payment**”) issued to each of them on behalf of the Bank for payment of the amount outstanding under the Operating Loan and Fixed Rate Term Loan pursuant to the Personal Guarantees;
- (c) that they do not dispute on any grounds whatsoever their liability to pay to the Bank, as guarantors under the Personal Guarantees, the amounts outstanding on the Operating Loan and Fixed Rate Term Loan as set forth on schedule “D” and in the event of an Enforcement Action by the Bank, will not dispute their liability to pay the amounts outstanding on the Operating Loan and Fixed Rate Term Loan (together with further interest which accrues thereon); and
- (d) their liability to the Bank pursuant to the Personal Guarantees shall not be reduced, released, diminished or in any manner affected by the terms of this Agreement or any actual forbearance by the Bank in taking any Enforcement Action.

## **2.0 Release**

- 2.1 The Borrower and Personal Guarantors acknowledge and agree that they have no causes of action, disputes or claims for damages, set off or counterclaim (collectively, the “Claims”) against the Bank, its officers, directors, employees and agents on any basis whatsoever including, without limitation, any Claims related to or in any manner connected with the Credit Facilities, the administration of the Borrower’s account with the Bank, or the Security and if there are any Claims, they are hereby forever released and discharged.

## **3.0 Confirmation of Loan Documents, Personal Guarantees and Security**

- 3.1 The Borrower acknowledges and confirms that (a) the Bank holds the Loan Documents and Security, (b) the Loan Documents and the Security have not been released, discharged, waived or varied, and (b) it does not and will not in the event of an

Enforcement Action by the Bank, dispute that the Loan Documents and the Security are binding and enforceable in accordance with their written terms.

- 3.2 The Personal Guarantors acknowledge and confirm that (a) the Bank holds the Personal Guarantees, (b) the Personal Guarantees have not been released, discharged, waived or varied, and (c) that they do not and will not in the event of an Enforcement Action by the Bank, dispute that the Personal Guarantees are binding and enforceable in accordance with their written terms.

#### **4.0 Accuracy of Recitals**

- 4.1 The parties acknowledge and confirm that the recitals to this Agreement are true and accurate in all respects.

#### **5.0 Forbearance**

- 5.1 Subject to and on the terms and conditions in this Agreement, the Bank agrees to forbear from any Enforcement Action until the earlier of (a) 5:00 p.m. on February 12, 2021, and (b) the occurrence of one or more Forbearance Termination Events (such period, including any extension of such period which may be given by the Bank pursuant to Section 6.5 below, being hereafter referred to as the “**Forbearance Period**”). “**Enforcement Action**” means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager, or other person having similar powers, the taking possession or control of any property or undertaking, commencing any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to the Bank under the Security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.
- 5.2 The Borrower and Personal Guarantors acknowledge that notwithstanding the grant of forbearance by the Bank,
- (a) the Demands for Payment and the Enforcement Notice have not been withdrawn;

- (b) nothing contained in this Agreement shall have the effect of or shall be construed as extending the time period for satisfaction of the Demands for Payment or extending the notice period provided for in the Enforcement Notice; and
- (c) the time period to satisfy the Demands for Payment and notice period provided for in the Enforcement Notice has expired.

## **6.0 Repayment of Loans**

- 6.1 The Borrower agrees to repay the Loans in full by the conclusion of the Forbearance Period.
- 6.2 During the Forbearance Period the Borrower shall make the payments on the Loans as set forth on schedule "F". The receipt by the Bank of such payments is not a waiver of the Demands for Payment and shall not bring the Loans into good standing. The Borrower and Personal Guarantors understand and agree that notwithstanding such payments, the Loans remain due and payable in full in accordance with the Demands for Payment and must be repaid in full by the conclusion of the Forbearance Period as provided for in section 6.1 above.
- 6.3 It is contemplated that the Loans will be repaid by the Borrower selling or refinancing the Business and the Property. During the Forbearance Period, the Borrower will diligently pursue the Sale and Refinancing Efforts. The Borrower agrees to keep the Bank updated on the status of the Sale and Refinancing Efforts, including bi-weekly written updates commencing December 1, 2020, providing the Bank with copies of all commitment letters/term sheets and discussion papers as and when received from prospective lenders and copies of the listing agreement and all offers received for the Property.
- 6.4 Provided the Forbearance Period has not concluded as a result of the occurrence of a Forbearance Termination Event, if by 5:00 p.m. on February 12, 2020 the Borrower has been unable to fully repay the Loans but has obtained a financing commitment (the "**Financing Commitment**") or a sale agreement for the Property (the "**Sale Agreement**") satisfactory to the Bank and which, when completed, will enable the Borrower to fully repay the Loans, the Bank agrees to extend the Forbearance Period for up to 30 days to allow the Borrower the opportunity to complete the Financing

Commitment/Sale Agreement, the length of any such extension to be communicated by the Bank in writing.

## **7.0 Operating Loan**

- 7.1 The Borrower acknowledges that the Operating Loan (as defined on schedule "A") has been cancelled and is no longer available for use. During the Forbearance Period the Borrower may continue to use its account no. 3858 1985-007 (the "**Account**") as a regular business operating account without borrowing or overdraft privileges. Regular account fees and service charges will apply to the Account. Any cheques or other items presented on the Account without sufficient funds available to cover same at the time of presentation will be returned "NSF" without further or prior notice to the Borrower. The Borrower agrees to monitor its cash flow accordingly and to only issue cheques on the Account having regard to the funds available in the Account.

## **8.0 Interest Rates on the Loans**

- 8.1 During the Forbearance Period the interest rates on the Operating Loan and Fixed Rate Term Loan shall be increased by 300 basis points and shall be as set forth on schedule "G".

## **9.0 Acknowledgment Regarding Future Credit**

- 9.1 The Borrower acknowledges and agrees that other than the continued availability of the Operating Loan up to the Limit, the Bank is not obligated to extend any further or additional credit to the Borrower, whether during or after the conclusion of the Forbearance Period.

## **10.0 Use of Account after Repayment of Loans**

- 10.1 Following the repayment of the Loans, the Account shall be closed and no longer available for use by the Borrower.

## **11.0 Events of Default**

- 11.1 The Borrower acknowledges the Events of Default and agrees that the Bank has not waived the Events of Default or any and all rights that flow from or arise by virtue of such Events of Default and nothing in this Agreement constitutes or shall be deemed or

implied to be a waiver by the Bank of the Events of Default or any and all rights which flow from same.

## **12.0 Covenants**

12.1 In addition to all other covenants in the Loan Documents, the Borrower covenants with the Bank that during the Forbearance Period it will:

- (a) insure and keep insured the Property (including insurance for environmental liability) in an amount satisfactory to the Bank with the loss payable under such insurance being payable to the Bank and provide to the Bank a copy of the most recent insurance policy or policies evidencing such insurance upon request;
- (b) pay on a current basis all salaries, wages, vacation pay, realty taxes, utilities, withholding taxes and source deductions for income tax, employment insurance and Canada Pension Plan, as applicable, and any other amounts which if left unpaid may give rise to an encumbrance against the Property or other collateral subject to the Security in priority to the Security and provide to the Bank evidence of the payment of same upon request;
- (c) carry on the Business in a commercially reasonable and prudent manner;
- (d) maintain and preserve the Property and all other collateral subject to the Security in good condition and repair, reasonable wear and tear excepted;
- (e) perform in all material respects all of its obligations under any leases, licenses or other agreements to which the Borrower is a party in order to preserve and protect the assets and the income therefrom;
- (f) keep proper books of accounts and records with respect to the Business;
- (g) permit the Bank, and its agents, to inspect the Property and other collateral subject to the Security and the books and records of the Borrower upon no less than three (3) business days advance written notice;
- (h) provide to the Bank such financial information as it is presently required to provide to the Bank together with such other financial information as the Bank may from time to time reasonably request;



- (i) promptly give written notice to the Bank of,
  - (i) any material loss of or damage to the Property or other collateral subject to the Security; and
  - (ii) any material adverse change (financial or otherwise) in the Business.
- (j) promptly advise the Bank, in writing, in the event that it reasonably believes that it will be unable to fully repay the Loans by the conclusion of the Forbearance Period, including the reasons therefor and the date by which it anticipates being able to fully repay the Loans.

### **13.0 Conclusion of Forbearance Period**

- 13.1 Upon the conclusion of the Forbearance Period, the Bank shall be under no obligation to continue to forbear from any Enforcement Action. Upon the conclusion of the Forbearance Period, the Bank shall be entitled, in its sole discretion, to immediately and without further notice exercise its rights and remedies against the Borrower, the Personal Guarantors and under the Security for repayment of the Loans, including any Enforcement Action. The Borrower and Personal Guarantors agree that they will not oppose any Enforcement Action by the Bank, including, without limitation, any application (a **"Receivership Application"**) by the Bank to the Ontario Superior Court of Justice for the appointment of a receiver or receiver and manager in respect of the Business or the Borrower's property and assets, including the Property. The Borrower and Personal Guarantors irrevocably consent to an order appointing a receiver and manager upon the conclusion of the Forbearance Period in the form of the model receivership order established by the Commercial Court users committee.
- 13.2 The Borrower and Personal Guarantors irrevocably waive any requirement for service of the Receivership Application.
- 13.3 In the event of the taking of any Enforcement Action by the Bank following the conclusion of the Forbearance Period, the Borrower and Personal Guarantors agree to co-operate with and fully assist the Bank, or any receiver or receiver and manager appointed at the instance of the Bank, in the enforcement of the Security and the realization of the assets subject to the Security.

- 13.4 In the event that the Bank does not take any Enforcement Action immediately upon the conclusion of the Forbearance Period, by continuing to forbear the Bank shall not be deemed to have (a) waived the Bank's rights to take Enforcement Action at any time after the conclusion of the Forbearance Period, or (b) waived any Forbearance Termination Event which gave rise to the conclusion of the Forbearance Period.

#### **14.0 Forbearance Termination Events**

- 14.1 The following shall be Forbearance Termination Events hereunder:

- (a) if the Borrower defaults in the performance of any obligation or covenant in this Agreement or any other agreement between the Borrower and the Bank, other than any existing defaults as at the date of this Agreement of which the Bank has knowledge;
- (b) there occurs an event of default under the Loan Documents or Security, other than any existing default as at the date of this Agreement of which the Bank has knowledge; and
- (c) a material adverse change in the Business or the assets, liabilities or condition (financial or otherwise) of the Borrower has occurred.

#### **15.0 Forbearance Fee**

- 15.1 In consideration of the Bank's agreement to forbear on the terms and conditions provided for in this Agreement and in recognition of and to help offset the additional costs associated with the administration of the Loans and the management of the Borrower's account following the transfer to the Bank's Special Account Management Unit, the Borrower shall pay to the Bank an administration/forbearance fee in the amount of \$5,000 (the "**Fee**"). The Fee shall be fully earned on the signing of this Agreement and shall be paid on the earlier of (a) the full repayment of the Loans, and (b) the conclusion of the Forbearance Period.

#### **16.0 Environmental Compliance**

- 16.1 The Borrower agrees that it will at all times carry on the Business in compliance with all environmental statutes, rules and regulations and shall obtain or maintain all required or

desirable permits and insurance in connection with same. Any correspondence received by the Borrower from the Ministry of the Environment and Climate Change or any other regulatory authority in connection with environmental matters shall be provided to the Bank immediately upon receipt thereof.

**17.0 Waiver of Right to Seek Creditor Protection**

17.1 The Borrower and Personal Guarantors acknowledge and agree that the purpose and intent of this Agreement is to provide the Borrower with an opportunity to repay the Loans in an orderly fashion on the terms and conditions provided for in this Agreement. The Borrower and Personal Guarantors acknowledge and agree that if the Loans have not been repaid in full by the conclusion of the Forbearance Period, unless otherwise hereafter agreed by the Bank in writing, the Bank should not be further delayed in the exercise of the rights and remedies available to it under the Security (including the taking of any Enforcement Action) by the Borrower making a filing or seeking any protection (including a stay of proceedings) pursuant to the *BIA* or otherwise at law or in equity (a "Filing"). For so long as they are indebted to the Bank for any amount, the Borrower agrees that in the event of a Filing:

- (a) the Bank shall be an unaffected creditor in such Filing;
- (b) it shall not seek a stay of proceedings as against the Bank and the Bank will not be affected by any stay or any other order made in such proceedings unless otherwise expressly agreed by the Bank in writing;
- (c) this Agreement will continue to bind the Borrower;
- (d) it irrevocably consents to the variation of any stay or order in the Filing which would purport to affect the Bank; and
- (e) it will not make or support any application which would have the effect of altering the terms of this Agreement or the Security or creating any charge ranking in priority to the Security or in priority to any other rights of the Bank.

## **18.0 Tolling of Limitation Period**

- 18.1 Continuing until the conclusion of the Forbearance Period, the Bank, the Borrower and the Personal Guarantors hereby agree to toll and suspend the running of the applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Loans, the Security, and any entitlements arising from the Loans or the Security and any other related matters, and each of the parties confirm that this Agreement is intended to be an agreement to suspend or extend the basic limitation period provided by s. 4 of the *Limitations Act, 2002 (Ontario)* as well as the ultimate limitation period provided by s. 15 of the *Limitations Act, 2002 (Ontario)* in accordance with the provisions of s. 22(3) of the *Limitations Act, 2002 (Ontario)* and is a business agreement in accordance with the provisions of s. 22(5) of the *Limitations Act, 2002 (Ontario)* and any contractual time limitations on the commencement of proceedings, any claims or defences based upon the application of any statute of limitations, contractual limitations, or any time related doctrine including waiver, estoppel or laches are hereby suspended.
- 18.2 The tolling provisions of this Forbearance Agreement will terminate upon either party providing the other with 60 days written notice of an intention to terminate the tolling provisions hereof, or upon the delivery by the Bank to the Borrower and Personal Guarantors of a fresh demand for payment of the Loans following the expiry of the Forbearance Period (and for greater certainty the tolling provisions shall not automatically expire upon the expiry or termination of the Forbearance Period) and upon termination of the tolling provisions, and the time provided for under any statutes of limitations, laches, or any other doctrines related to the passage of time in relation to the Loans, the Security or any entitlements arising from the Loans or the Security and any other related matters, will recommence running as of the effective date of the termination of these tolling provisions, and for greater certainty the time during which the limitation period is suspended pursuant to the tolling provisions of this Forbearance Agreement shall not be included in the computation of any limitation period.

## **19.0 Operation of Accounts at Other Financial Institutions**

- 19.1 During the Forbearance Period the Borrower shall not operate any account(s) at another financial institution without the Bank's prior written consent and shall deposit all monies, cheques and other receipts from the Business to its operating account at the Bank.

**20.0 Independent Legal Advice**

- 20.1 The Borrower and the Personal Guarantors acknowledge that they have obtained, or had the opportunity to obtain, independent legal advice with respect to entering into this Agreement and have read this Agreement in its entirety, understand its contents and are signing this Agreement freely and voluntarily, without duress or undue influence from any party.

**21.0 Miscellaneous**

- 21.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The Borrower and Personal Guarantors acknowledge and agree that except as herein expressly stated, no representation, statement, understanding, promise, warranty or collateral agreement, either oral or in writing, has been made or exists relating to this Agreement or to induce the Borrower and Personal Guarantors to enter into this Agreement.
- 21.2 No modification or amendment of this Agreement shall be effective unless in writing and signed by all parties to this Agreement.
- 21.3 The Borrower and Personal Guarantors agree that they will from time to time upon every reasonable request of the Bank do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, documents and assurances whatsoever for the better effecting of the provisions of this Agreement in accordance with its true intent.
- 21.4 If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any court of competent jurisdiction, that provision will be severed from this Agreement, and the remaining provisions will remain in full force and effect.
- 21.5 This Agreement shall be binding upon the parties and each of their respective successors and assigns.
- 21.6 Time will, in all respects, be of the essence in this Agreement, and no extension of time or variation of any term of this Agreement will operate as a waiver of this provision.
- 21.7 Save and except as amended hereby, all terms and conditions of the Loan Documents, Security and Loans remain in full force and effect.

- 21.8 The Borrower agrees that the Bank shall have no obligation to discharge the Security or any part thereof until (a) all liabilities and obligations secured by the Security have been indefeasibly paid and satisfied in full, (b) the Borrower shall have delivered to the Bank a Release in the form attached as schedule "H", signed and dated as of a date after the date on which the Loans are fully repaid, and (c) the Borrower has paid to the Bank a discharge fee of \$1,000.
- 21.9 All references in this Agreement to dollars or to "\$" are references to Canadian currency unless otherwise specifically indicated.
- 21.10 The Borrower agrees to pay all reasonable legal, consultant, appraisal and other professional fees and disbursements (collectively, "**Professional Fees**") incurred and to be incurred by the Bank with respect to the Loans and the Borrower's account, including the legal costs incurred by the Bank in the preparation of this Agreement and completing the discharge of the Security upon full payment and satisfaction of the liabilities secured thereby. The Professional Fees shall be paid by the Borrower on the earlier of (a) the conclusion of the Forbearance Period, and (b) the full repayment of the Loans, and shall be secured by the Security until paid.
- 21.11 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Transmission by facsimile or electronic transmission in PDF format of an executed copy of this Agreement shall be deemed to and constitute due and sufficient delivery of such counterpart.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the date first above written.

**BANK OF MONTREAL**

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

Name: Eugene Chow

Title: Account Manager

I have authority to bind the Bank

**8331707 CANADA INC.**

Per:

---

Name: Jigneshbhai Shah

Title: President

I have authority to bind the Company

---

JIGNESHBHAI SHAH, in his personal capacity

---

TEJASH KUMAR SHAH, in his personal capacity

---

NIMISHA SHAH, in her personal capacity

---

MITTALBEN SHAH, in his personal capacity

## **SCHEDULE "A"**

(Loans)

### Loans

1. An operating loan under account number 3858 1985-007 with a maximum limit of \$93,000 (the "**Operating Loan**"); and
2. A fixed rate term loan under account number 3858 6988-637 (the "**Fixed Rate Term Loan**").
3. A \$40,000 loan under account number 5112-4200-0142-6570 pursuant to the Canada Emergency Business Account program (the "**CEBA Loan**").



**SCHEDULE "B"**

(Loan Documents)

1. Letter of Agreement dated October 15, 2015;
2. Operating Loan Agreement dated November 28, 2018; and
3. Fixed Rate Term Loan Agreement dated November 28, 2018.

**SCHEDULE “C”**

(Personal Guarantees)

1. Guarantee dated November 28, 2018 in the principal sum of \$1,878,000 signed by Jigneshbhai and Tejash; and
2. Guarantee dated November 24, 2018 in the principal sum of \$1,878,000 signed by Nimisha and Mittalben.

# **SCHEDULE "D"**

(Amounts outstanding on the Loans as of November 16, 2020)

## Operating Loan

• Principal	\$	91,395.46
• Interest	\$	169.39

## Fixed Rate Term Loan

• Principal	\$	1,690,487.85
• Interest	\$	3,858.99
• Early payment charge*		21,882.69

## CEBA Loan

• Principal	\$	40,000.00
• Interest	\$	0

\* The early payment charge is based on a maturity date of December 31, 2020. The amount shown for the early payment charge is as of November 16, 2020 and will vary based on the actual date of repayment. If the Loans are repaid after December 31, 2020, no early payment charge will apply.

**SCHEDULE “E”**

(Security)

1. General Security Agreement dated November 28, 2018;
2. Collateral Mortgage in the principal sum of \$1,878,000 registered in the Wellington (Guelph) Land Registry Office as number WC557941 over the Property (PIN 71359-0141); and
3. General Assignment of Rents with respect to the Property registered in the Wellington (Guelph) Land Registry Office as number WC557943.

**SCHEDULE "F"**

(Summary of Required Payments on Loans)

**Operating Loan**

- interest only on the last day of each month

**Fixed Rate Term Loan**

- blended principal and interest payment of \$14,302.33 on the last day of each month

**CEBA Loan**

- no payments required

# **SCHEDULE "G"**

(Interest Rates)

## Operating Loan

- Interest Rate Prime Rate + 5%

## Fixed Rate Term Loan

- Interest Rate 8.2%

## CEBA Loan

- Interest Rate 0%

Note: "Prime Rate" is the floating rate of interest established from time to time by the Bank as the base rate it will use to determined rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

**SCHEDULE "H"**

(Release)

**RELEASE**

This Release witnesses that **8331707 CANADA INC.** (the "**Company**"), **JIGNESHBHAI SHAH, TEJASH KUMAR SHAH, NIMISHA SHAH** and **MITTALBEN SHAH** for themselves and each of their heirs, executors, administrators and assigns (collectively, the "**Releasors**"), for the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, do hereby irrevocably and forever release and discharge Bank of Montreal ("**BMO**") and each of BMO's affiliates, subsidiaries, successors, agents, assigns, employees, officers, directors and shareholders and, as applicable, each of their heirs, executors, administrators and assigns (collectively, the "**Releasees**") from all claims, suits, debts, contracts, complaints, demands, rights, actions, and causes of action (collectively, the "**Claims**") of any kind or nature whatsoever existing up to the present time, whether or not known or anticipated at the present time or discovered in the future, which the Releasors, or any of them, ever had, presently have or may in the future have against the Releasees, or any of them, based on facts in existence as of the date of this Release including, without limitation, all Claims relating to or in any manner connected with the operation of the accounts and Loans of the Company with BMO;

**AND FOR THE SAID CONSIDERATION** the Releasors, and each of them, agree not to make any claim, take or continue any proceedings against any other person or corporation who might claim contribution or indemnity from the Releasees, or any of them, in respect of any matters connected in any way with the Claims released by virtue of this Release.

**AND FOR THE SAID CONSIDERATION** the Releasors, and each of them, represent and warrant that they have not assigned to any person, firm, corporation or legal entity any of the Claims which are being released by this Release or with respect to which they agree herein not to make any claims, take or continue any proceedings.

**AND FOR THE SAID CONSIDERATION** the Releasors, and each of them, hereby agree that this Release shall operate conclusively as an estoppel in the event of any such claims or proceedings and may be pleaded accordingly.

**AND FOR THE SAID CONSIDERATION** the undersigned acknowledge and confirm that they have received, or have had the opportunity to receive, independent legal advice with respect to the terms of this Release and that the undersigned have read this Release carefully and have signed it voluntarily and freely and without any form of duress being exerted upon the Releasors, or anyone acting on behalf of the Releasors and with the express purpose of making a full and final compromise, adjustment and settlement with respect to all of the matters to which this Release applies.

**IN WITNESS WHEREOF** the undersigned have executed this Release this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**8331707 CANADA INC.**

Per:

\_\_\_\_\_  
Name: Jigneshbhai Shah  
Title: President  
I have authority to bind the Company

\_\_\_\_\_  
JIGNESHBHAI SHAH, in his personal capacity

\_\_\_\_\_  
TEJASH KUMAR SHAH, in his personal capacity

\_\_\_\_\_  
NIMISHA SHAH, in her personal capacity

\_\_\_\_\_  
MITTALBEN SHAH, in his personal capacity



# EXHIBIT “L”

---

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** Tuesday, November 17, 2020 11:20 AM  
**To:** 8331707canadainc@gmail.com  
**Cc:** CHOW, EUGENE  
**Subject:** 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]  
**Attachments:** 50366214\_2\_Forbearance Agreement November 2020 (833 Canada).pdf

Good morning Jigneshbhai and Tejash.

Further to your recent discussions with Eugene Chow at Bank of Montreal ("BMO"), I am the lawyer for BMO.

Attached is the Forbearance Agreement which sets out the terms and conditions under which BMO will hold off from taking further steps to recover your loans while you take steps to refinance the loans with another lender or sell the gas station.

The Forbearance Agreement is an important document and should be reviewed carefully. You should review the Forbearance Agreement with your own lawyer before signing. I would be pleased to discuss the Forbearance Agreement with your lawyer and to answer any questions he or she may have.

I would ask that you return the signed Forbearance Agreement to me by no later than November 24, 2020. Please let me know if you have any questions

**TONY VAN KLINK**  
Partner

**Miller Thomson LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, Ontario N6A 5R8  
**Direct Line:** +1 519.931.3509  
**Cell:** +1 519.636.7425  
**Fax:** +1 519.858.8511  
**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)

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# EXHIBIT “M”

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** Monday, November 30, 2020 1:59 PM  
**To:** 8331707 canadainc  
**Cc:** CHOW, EUGENE  
**Subject:** RE: **[\*\*EXT\*\*]** Re: 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Jignesh,

It is encouraging that you are finalizing a sale today. Please send me a copy of the signed sale agreement later today.

The purpose of the forbearance agreement is to give you additional time to complete a sale or refinance. So, even if a sale is arranged today, it will still be necessary to put the forbearance agreement in place. As the forbearance agreement was provided almost two weeks ago, you will need to do so without further delay.

**TONY VAN KLINK**  
**Partner**

**Miller Thomson LLP**  
 One London Place  
 255 Queens Avenue, Suite 2010  
 London, Ontario N6A 5R8  
**Direct Line:** +1 519.931.3509  
**Cell:** +1 519.636.7425  
**Fax:** +1 519.858.8511  
**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)

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**From:** 8331707 canadainc [mailto:8331707canadainc@gmail.com]  
**Sent:** Monday, November 30, 2020 1:38 PM  
**To:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Cc:** CHOW, EUGENE <EUGENE.CHOW@bmo.com>  
**Subject:** **[\*\*EXT\*\*]** Re: FW: 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Hi Tony,

We are working on selling the property.

Today our deal is going to be finalized.

Once I have completed sign Sale & Purchase agreement I will send to you.

Still we need to review paper with Lawyers?

Please advise.

Thanks,

Jignesh Shah

On Mon, Nov 30, 2020 at 1:32 PM Van Klink, Tony <[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)> wrote:

Jigneshbhai and Tejash,

I have not had a response from you to the email below. Please advise as to your intentions.

## **TONY VAN KLINK**

**Partner**

### **Miller Thomson LLP**

One London Place

[255 Queens Avenue, Suite 2010](#)

[London, Ontario N6A 5R8](#)

**Direct Line:** +1 519.931.3509

**Cell:** +1 519.636.7425

**Fax:** +1 519.858.8511

**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

**[millerthomson.com](http://millerthomson.com)**

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**From:** Van Klink, Tony [mailto:[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)]

**Sent:** Tuesday, November 17, 2020 11:20 AM

**To:** [8331707canadainc@gmail.com](mailto:8331707canadainc@gmail.com)

**Cc:** CHOW, EUGENE <[EUGENE.CHOW@bmo.com](mailto:EUGENE.CHOW@bmo.com)>

**Subject:** 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Good morning Jigneshbhai and Tejash.

Further to your recent discussions with Eugene Chow at Bank of Montreal ("BMO"), I am the lawyer for BMO.

Attached is the Forbearance Agreement which sets out the terms and conditions under which BMO will hold off from taking further steps to recover your loans while you take steps to refinance the loans with another lender or sell the gas station.

The Forbearance Agreement is an important document and should be reviewed carefully. You should review the Forbearance Agreement with your own lawyer before signing. I would be pleased to discuss the Forbearance Agreement with your lawyer and to answer any questions he or she may have.

I would ask that you return the signed Forbearance Agreement to me by no later than November 24, 2020. Please let me know if you have any questions

**TONY VAN KLINK**

Partner

**Miller Thomson LLP**

One London Place

[255 Queens Avenue, Suite 2010](#)

[London, Ontario N6A 5R8](#)

**Direct Line:** +1 519.931.3509

**Cell:** +1 519.636.7425

**Fax:** +1 519.858.8511

**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

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Best Regards,

Jignesh Shah P.Eng  
Cell-647-407-0171

-----  
[EXTERNAL EMAIL / COURRIEL EXTERNE]

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Veuillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspects.

-----

# EXHIBIT “N”



---

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** Wednesday, December 2, 2020 11:55 AM  
**To:** 8331707 canadainc  
**Cc:** CHOW, EUGENE  
**Subject:** RE: **[\*\*EXT\*\*]** Re: 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Jignesh,

I have not received a copy of the sale agreement. If there is a sale agreement, please send a copy to me.

I understand from the Bank that a payment of \$83,000 to Parkland has been presented on the operating account. There were insufficient funds to cover the payment so it has been returned. This raises a concern whether you will be able to obtain fuel to continue to operate.

I would like to have a call with you to discuss the status of the business, your intentions and the forbearance agreement. I am available for a call any time this afternoon after 12:30. Please let me know what time is best for you and a phone number where I can reach you.

**TONY VAN KLINK**  
Partner

**Miller Thomson LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, Ontario N6A 5R8  
**Direct Line:** +1 519.931.3509  
**Cell:** +1 519.636.7425  
**Fax:** +1 519.858.8511  
**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)

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**From:** Van Klink, Tony [mailto:[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)]  
**Sent:** Monday, November 30, 2020 1:59 PM  
**To:** 8331707 canadainc <[8331707canadainc@gmail.com](mailto:8331707canadainc@gmail.com)>  
**Cc:** CHOW, EUGENE <[EUGENE.CHOW@bmo.com](mailto:EUGENE.CHOW@bmo.com)>  
**Subject:** RE: **[\*\*EXT\*\*]** Re: 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Jignesh,

It is encouraging that you are finalizing a sale today. Please send me a copy of the signed sale agreement later today. 178

The purpose of the forbearance agreement is to give you additional time to complete a sale or refinance. So, even if a sale is arranged today, it will still be necessary to put the forbearance agreement in place. As the forbearance agreement was provided almost two weeks ago, you will need to do so without further delay.

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**From:** 8331707 canadainc [<mailto:8331707canadainc@gmail.com>]  
**Sent:** Monday, November 30, 2020 1:38 PM  
**To:** Van Klink, Tony <[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)>  
**Cc:** CHOW, EUGENE <[EUGENE.CHOW@bmo.com](mailto:EUGENE.CHOW@bmo.com)>  
**Subject:** [**\*\*EXT\*\***] Re: FW: 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Hi Tony,

We are working on selling the property.

Today our deal is going to be finalized.

Once I have completed sign Sale & Purchase agreement I will send to you.

Still we need to review paper with Lawyers?

Please advise.

Thanks,

Jignesh Shah

On Mon, Nov 30, 2020 at 1:32 PM Van Klink, Tony <[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)> wrote:

I have not had a response from you to the email below. Please advise as to your intentions.

**TONY VAN KLINK**

**Partner**

**Miller Thomson LLP**

One London Place

[255 Queens Avenue, Suite 2010](#)

[London, Ontario N6A 5R8](#)

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**From:** Van Klink, Tony [mailto:[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)]

**Sent:** Tuesday, November 17, 2020 11:20 AM

**To:** [8331707canadainc@gmail.com](mailto:8331707canadainc@gmail.com)

**Cc:** CHOW, EUGENE <[EUGENE.CHOW@bmo.com](mailto:EUGENE.CHOW@bmo.com)>

**Subject:** 8331707 Canada Inc - Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Good morning Jigneshbhai and Tejash.

Further to your recent discussions with Eugene Chow at Bank of Montreal ("BMO"), I am the lawyer for BMO.

Attached is the Forbearance Agreement which sets out the terms and conditions under which BMO will hold off from taking further steps to recover your loans while you take steps to refinance the loans with another lender or sell the gas station.

The Forbearance Agreement is an important document and should be reviewed carefully. You should review the Forbearance Agreement with your own lawyer before signing. I would be pleased to discuss the Forbearance Agreement with your lawyer and to answer any questions he or she may have.

I would ask that you return the signed Forbearance Agreement to me by no later than November 24, 2020. Please let me know if you have any questions

## **TONY VAN KLINK**

**Partner**

### **Miller Thomson LLP**

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[London, Ontario, N6A 5R8](#)

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Best Regards,

Jignesh Shah P.Eng  
Cell-647-407-0171

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Veuillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspectes.

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# EXHIBIT “O”

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**From:** 8331707 canadainc <8331707canadainc@gmail.com>  
**Sent:** Wednesday, December 2, 2020 1:14 PM  
**To:** CHOW, EUGENE; Van Klink, Tony  
**Subject:** [\*\*EXT\*\*] Fwd: FW: Settlement Dec 1,2020.pdf  
**Attachments:** Settlement Dec 1,2020.pdf

Please see attached dealer statement.

I will send you sale & Purchase agreement once I have it.

If you have any questions please let me know.

Thanks,

Jignesh

----- Forwarded message -----

From: **Veena Budihal** <[Veena.Budihal@parkland.ca](mailto:Veena.Budihal@parkland.ca)>  
Date: Tue, Dec 1, 2020 at 6:19 PM  
Subject: FW: Settlement Dec 1,2020.pdf  
To: 8331707 canadainc <[8331707canadainc@gmail.com](mailto:8331707canadainc@gmail.com)>

Hi Jignesh,

Attached is the latest settlement.

Thank you

**Veena Budihal** | Settlement Analyst

Parkland

1800, 240 4<sup>th</sup> [Ave SW, Calgary, AB, T2P 4H4](#)

O: 403 592 3416

[Veena.budihal@parkland.ca](mailto:Veena.budihal@parkland.ca)

--

Best Regards,

Jignesh Shah P.Eng  
Cell-647-407-0171

-----  
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# EXHIBIT “P”

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**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** Thursday, December 3, 2020 2:09 PM  
**To:** 8331707 canadainc  
**Cc:** CHOW, EUGENE  
**Subject:** RE: **[\*\*EXT\*\*]** Fwd: Settlement Dec 1,2020.pdf [MTDMS-Legal.FID9302932]

Jignesh,

You have not responded to the email below. The following have also not been provided:

1. A copy of the sale agreement (initially promised for Monday);
2. The contact information for your lawyer; and
3. The explanation for the \$83,000 debit from Parkland.

The Bank is no longer prepared to commit to entering into a forbearance agreement. Instead, the Bank requires that a copy of the sale agreement be provided by 5:00 p.m. today. Upon receipt of the sale agreement, the Bank will advise whether it is prepared to enter into a forbearance agreement and, if so, the terms of same. If the Bank is prepared to proceed with a forbearance agreement, it must be signed and in place by no later than 5:00 p.m. tomorrow.

The Bank has been quite patient, but its patience is not endless. If the sale agreement is not provided by the end of the day, the Bank will be proceeding with a receivership application.

## **TONY VAN KLINK**

Partner

### **Miller Thomson LLP**

One London Place  
 255 Queens Avenue, Suite 2010  
 London, Ontario N6A 5R8

**Direct Line:** +1 519.931.3509

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**Fax:** +1 519.858.8511

**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)

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**From:** Van Klink, Tony [mailto:[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)]  
**Sent:** Wednesday, December 2, 2020 1:33 PM  
**To:** 8331707 canadainc <8331707canadainc@gmail.com>  
**Cc:** CHOW, EUGENE <EUGENE.CHOW@bmo.com>  
**Subject:** FW: **[\*\*EXT\*\*]** Fwd: Settlement Dec 1,2020.pdf [MTDMS-Legal.FID9302932]

Thank you Jignesh.

On the attached statement there is a pre-authorized debit (PAD) for \$7,000 on November 30. I understand from Eugene that there was also a PAD for \$7,500 on November 2. What are the PADs for?

Please provide the name and contact information for the lawyer that is reviewing the forbearance agreement.

## **TONY VAN KLINK**

**Partner**

### **Miller Thomson LLP**

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London, Ontario N6A 5R8

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**From:** 8331707 canadainc [<mailto:8331707canadainc@gmail.com>]

**Sent:** Wednesday, December 2, 2020 1:14 PM

**To:** CHOW, EUGENE <[eugene.chow@bmo.com](mailto:eugene.chow@bmo.com)>; Van Klink, Tony <[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)>

**Subject:** [\*\*EXT\*\*] Fwd: FW: Settlement Dec 1,2020.pdf

Please see attached dealer statement.

I will send you sale & Purchase agreement once I have it.

If you have any questions please let me know.

Thanks,

Jignesh

----- Forwarded message -----

From: **Veena Budihal** <[Veena.Budihal@parkland.ca](mailto:Veena.Budihal@parkland.ca)>

Date: Tue, Dec 1, 2020 at 6:19 PM

Subject: FW: Settlement Dec 1,2020.pdf

To: 8331707 canadainc <[8331707canadainc@gmail.com](mailto:8331707canadainc@gmail.com)>

Hi Jignesh,

188

Attached is the latest settlement.

Thank you

**Veena Budihal** | Settlement Analyst

Parkland

1800, 240 4<sup>th</sup> [Ave SW, Calgary, AB, T2P 4H4](#)

O: 403 592 3416

[Veena.budihal@parkland.ca](mailto:Veena.budihal@parkland.ca)



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Best Regards,

Jignesh Shah P.Eng  
Cell-647-407-0171

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Veuillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspectes.

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# EXHIBIT “Q”

# **Agreement of Purchase and Sale Commercial**

## **Form 500**

For use in the Province of Ontario

This Agreement of Purchase and Sale dated this 18 day of November, 2020

**BUYER:** 5039420 Ontario Limited agrees to purchase from

**SELLER:** 8331707 Canada Inc., the following

### **REAL PROPERTY:**

Address: 59 Woodlawn Road West Guelph, ON N1H 1G8

Fronting on the Side of of the City of Guelph

and having a frontage of 170.00 ft more or less by a depth of 130.26 ft more or less

and legally described as: Automotive fuel station with or without service facilities

(Legal description of land including easements and restrictive covenants) (property)

**PURCHASE PRICE:** DOLLARS Dollars

**DEPOSIT:** Buyer submits upon acceptance Dollars ADN

by negotiable cheque payable to Seller's Solicitor in Trust Deposit Holder, to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S) A** attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer on 11:59 or after the 23 day of November, 2020 after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 5:00 p.m. on the 26 day of February, 2021. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**R** This form is a standard form of contract for the purchase and sale of real property and is not intended to be used for the purchase and sale of real property in a jurisdiction other than the Province of Ontario. It is not intended to be used for the purchase and sale of real property in a jurisdiction other than the Province of Ontario. It is not intended to be used for the purchase and sale of real property in a jurisdiction other than the Province of Ontario.

- 3. NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notice pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notice pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice, including hereby provided for herein shall be in writing in addition to any provision contained hereon and in all Schedules hereto. This offer and acceptance of offer of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (as a "Notice Document") shall be deemed given and received when delivered personally or hand-delivered to the Address for Service provided in the Acknowledgement to Offer or where a facsimile number or email address is provided hereon. When transmitted electronically to that facsimile number or email address, respectively, in which case the signature(s) of the party (parties) shall be deemed to be original.

TAX Tip

For delivery of Documents to Seller

FAX Tip

For delivery of Documents to Buyer

Email Address

For delivery of Documents to Seller

Email Address

For delivery of Documents to Buyer

#### 4. CHATTELS INCLUDED:

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

#### 5. FIXTURES EXCLUDED:

- 6. RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s) if applicable:

The Buyer agrees to cooperate and execute such documentation or may be required to facilitate such documentation.

- 7. HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST. The Buyer provides to the Seller a copy of the Seller's registered under the Excise Tax Act (ETA) in together with a copy of the Buyer's ETA in legislation, to warrant that the Buyer shall verify and remit the HST payable and file the prescribed form and file it with the Seller in respect of any HST payable. The foregoing warranties shall not be given but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify in writing before closing that the transaction is not subject to HST. Any HST or charges, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**R** The undersigned hereby certifies that the above information is true and correct to the best of their knowledge and belief. The undersigned hereby certifies that the above information is true and correct to the best of their knowledge and belief. The undersigned hereby certifies that the above information is true and correct to the best of their knowledge and belief. The undersigned hereby certifies that the above information is true and correct to the best of their knowledge and belief.



8. **TITLE SEARCH:** Buyer shall be allowed until 12:00 p.m. on the 12th day of February 2021 (Regulation Date) to examine the title to the property of his own expense and with the aid of (i) three days from the later of the Regulation Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property that is present use (E550 Gas Station w/ C-Store); may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies needing to have details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard or Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

**10. TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for all interests, registered restrictions or encumbrances that run with the land provided that such are complied with, (b) any registered interests, covenants and registered agreements with public or regulated utilities providing such have been complied with, or security has been posted to ensure compliance with such, (c) is evidenced by a letter from the relevant municipality or regulated utility, (d) any minor easements for the benefit of domestic utility or telecommunications services to the property or adjacent properties, and (d) any easements for drainage, storm or sanitary sewers, electric, gas, or telecommunications lines, cable television lines or other services which do not materially interfere with the use of the property. If after the specified time referred to in paragraph 8 and/or a collection of time or to any outstanding work order or deficiency notice, or to the satisfaction of the Buyer, the Seller may, at his/her sole discretion, be held liable for all the principal sum being paid, not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to provide, namely, a written obligation insurance save and except against risk of fire (the insurance, in favour of the Buyer and any mortgagee, is to be obtained at the expense of the Seller, and which Buyer will not waive this Agreement notwithstanding any intermediate offer or negotiations in respect of such objection), shall be returned and all monies paid shall be returned without interest to the Buyer by Seller, using Brokerage and/or Escrowing Broker's fee shall not be liable for any costs or damages. Save as to any, valid objection to make by such day and except for any objection going to the title of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

**11. CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer herein is a law firm to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to R.S.O. c. 43, s. 23(1) (the "Electronic Registration Act"), Chapter 44 and the Electronic Registration Act, 2006 ("ERA"), Chapter 44, and any documents, which the Seller and Buyer acknowledge and agree that the exchange of said forms, notes, and/or documents and other items that the Requested Deliveries and the release thereof to the Seller and Buyer will, at the latest, occur at the same time as the registration of the said documents, and any other documents needed to be registered in connection with the completion of this transaction and (a) be subject to conditions whereby the deliveries, including the Requested Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document (the "Closing Agreement") between the said law firms. The Seller and Buyer irrevocably instruct the said law firms to be bound by the document (the "Closing Agreement") which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the law firms, all exchange of Deliveries and Deliveries shall occur by the delivery of the Requested Deliveries of each party to the office of the law firm for the other party, or such other location as is agreed by both law firms.

**12. DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Redemption Date. If a discharge or any Charge (Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act, Canada, (Chartered Bank, Trust Company, Credit Union, Co-Op, Real Estate or Insurance Company) and which is not to be assumed by Buyer as completion) is not available in the applicable form or completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a prepayment executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of his offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all money paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred for completion. If Seller is taking back a Charge, Mortgage, or Buyer is assuming a Charge, Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S) \_\_\_\_\_



8. **TITLE SEARCH:** Buyer shall be allowed until 5:00 p.m. on the 12th day of February 2024 (Registration Date) to examine the title to the property at his own expense and until the earlier of (i) this day from the later of the Registration Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or (ii) five days prior to completion to satisfy himself that there

are no outstanding work orders or deficiencies affecting the property that is present use [ESSO Gas Station w/ C-Store] may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies needing to bring details of all outstanding work orders and deficiencies, notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save (i) except for (a) any registered restrictions or covenants that run with the land providing that such are complied with, (b) any registered mineral rights agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility, (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties, and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunications lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice on the part of the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and such Seller, capable of acting to remove, remedy or satisfy or obtain insurance save and except against risk of fire (the insurance, in favour of the Buyer and at a mortgagee's (both a related party or the expense of the Seller) and which Buyer will not waive this Agreement notwithstanding any intermediate act or negotiations in respect of such objections, shall be an expense and all monies paid shall be returned without interest or deduction and Seller, using Brokerage and Cooperating Brokerage shall not be liable for any costs or damages. Save as to any valid objection made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer intends to comply with the Agreement of Purchase and Sale of the property and where the transaction will be completed by electronic registration pursuant to Part 1 of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, R.S.O. 1990, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, nonregistered documents and other items (the "Request Deliveries") and the receipt thereof by the Seller and Buyer will (a) not occur at the same time as the registration of the transaction and (b) will occur at a time determined by the Seller and Buyer. The Seller and Buyer agree to hold some in trust and not release same except in accordance with the terms of a closing agreement between the said parties. The Seller and Buyer irrevocably instructive said lawyers to be bound by the documents and/or agreements which are recommended from time to time by the Law Society of Ontario, if not otherwise agreed to by the lawyers. All disbursements of Request Deliveries shall occur by the delivery of the Request Deliveries of each party to the office of the lawyer for the other party, except where objection is made by such lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. It is agreed by Buyer, Seller and lawyer any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Registration Date. For discharge or any change of mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act, Ontario, (Incorporated Bank Trust Company, Division of a Public Corporation or Insurance Company) and which is not to be dissolved by Buyer on completion, a notarial certificate or a discharge form or combination. Buyer agrees to instruct Seller's lawyer's personal undertaking to return, but of the closing funds, a discharge in registered form, and to register same. Such discharge to be registered on title within a reasonable period of time after completion provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to discharge the mortgage and, where a real time electronic cleared funds transfer system is not being used, a power of attorney executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that as in his reliance of his offer, there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be insured from and completion of the title of Seller. Pending completion, Seller shall hold all insurance policies, monies and the proceeds thereof in trust for the parties in their interests, may appear and in the event of a disaster, damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or may take the proceeds of any insurance and complete the purchase. The insurance and the monies received upon completion of Seller is taking back a Charge, Mortgage or Buyer is assuming a Charge, Mortgage. Buyer shall satisfy Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representations and warrants shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada.  
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes, including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion; the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be reassessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a reassessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any remittance of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the large value transfer system.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent form(s) thereto provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein, for the purposes of this Agreement. Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



The undersigned Broker, in compliance with the Real Estate Act, Ontario Regulation 194/01, has provided the following information to the Buyer(s) in accordance with the requirements of the Act and the Regulation.

2.1.1.1. The Broker has provided the Buyer(s) with a copy of the Real Estate Act, Ontario Regulation 194/01, and the Real Estate Council of Ontario's Code of Ethics and Standards of Practice.



195

Buyer - Authorized Buying Office

Buyer: Authorized Signing Office

SIGNED, SEALED AND DELIVERED in the presence of \_\_\_\_\_ IN WITNESS whereof I have hereunto set my hand and seal

1998-1999

United States Copyright Office

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

6 (2)

File: 23 Date: NOV 20 20

Listing Brokerage

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I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale as a condition to the Brokerage to forward a copy to my lawyer.

833:707 Canada Inc.,

Address: 38

23/Nov/2020

5039426 Ontario Limited

Address for Service

**Seller's Inquiries**

Address:

Email

Conf. No.

Bayer's Licensee

Address:

## Travel

100

FOR OFFICIAL USE ONLY

### COMMISSION TRUST AGREEMENT

To Cooperating Brokerage (Show or Not Showing Agreement) (Purchase and Sale)

In connection with the Co-Securitizing Share sale pursuant to the foregoing Agreement of Purchase and Sale, hereby declare that I am not a retained shareholder of the Seller in connection with the Transaction as contemplated in the MSF Rules and Regulations of the First Estate Board (that may be void and hence null and void). This agreement and comparable Co-Securitizing Agreement(s) entered into in the MSF Rules and Regulations shall be subject to and governed by the MSF Rules and Regulations of the Co-Securitizing Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement to Purchase by the

1. Agenda and minutes of the last meeting.

doi:10.1017/S0022292414000093

**Schedule A**  
**Agreement of Purchase and Sale - Commercial**

Form 500

For more information, contact us at 1-800-368-2267.

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER: 5039420 Ontario Limited

SELLER: 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West Guelph, ON N1H 1G8

dated the 18 day of November 20

Buyer agrees to pay the balance as follows:

- 1) The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.
- 2) This purchase shall be subjected to the Bulk Sales Act and the Seller shall transfer all assets free and clear of all encumbrances, liens, and mortgages.
- 3) The day prior to closing the seller will ensure that the property is operating under a current provincial license to allow the sale of gasoline in a self-service gas bar on the property. The Seller will ensure that all equipment pertaining to the business and building are in good working order, and kept up with the maintenance schedule.
- 4) The Buyer shall have the right to inspect the property and equipment three (3) days prior to closing to ensure that all equipment is in good working order.
- 5) The Seller shall provide training to the Buyer in all modes of the business for two (2) weeks after the closing of this transaction without any remuneration during the operating hours of the business.
- 6) The purchase price of this offer includes ESSO (Parkland Corp) Gas Station with Convenience store and all chattels, equipment and property;

## LAWYERS BEHIND

This offer is conditional upon the review of the terms hereof by the Buyer's and the Seller's Solicitor(s). Unless the Buyer's Seller gives notice in writing delivered to the Seller & Buyer no later than fifteen (15) banking days from the date of acceptance, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Buyer and Seller and may be waived at the Buyer's & Seller's sole option by notice in writing to the Seller and Buyer within the time period stated herein.

## SELLER'S INFORMATION &amp; DOCUMENTS

The agreement to be constituted by the acceptance of this offer is subject to the following conditions, compliance with all of which (unless the Buyer shall in writing waive such compliance) within Seven (7) days from the date of acceptance shall be a condition precedent to any obligation hereunder on the part of the Buyer. The conditions referred to are:

- 1) The Seller delivers to the Buyer a copy of the existing building location survey;

This form may be initiated by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



 The R package `nlme` (version 3.0-15) is available from the Comprehensive R Archive Network (CRAN) at <http://cran.r-project.org/web/packages/nlme/index.html>. The source code is available at <http://cran.r-project.org/web/packages/nlme/src/contrib/00-NEWS.html>. The package is licensed under the GNU General Public License (GPL).

Form 500 8-1-2005 Page 6 of 12



### Agreement of Purchase and Sale - Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER: 5039420 Ontario Limited

**SELLER:** 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West Guelph, ON N1H 1G8

dated the 18 day of November 2020

Buyer agrees to pay the balance as follows:

- 2) The Seller delivers to the Buyer the names, addresses and telephone numbers of all owners of the leased or loaned equipment and copies of all lease or loan agreements;
- 3) A copy of the 2020 final property tax bill & two (2) years of financial statements;
- 4) A copy of ESSO Gas Bar lease, supply and dealer agreements and any and all documents or agreements entered into between the Seller which affect the property and are to be assumed by the Buyer on closing;
- 5) The Phase II environment reports in possession of the Seller;
- 6) The Seller warrants there is no known environmental issue with the property. The Seller represents that the Gas Bar, lines or equipment fully comply with all municipal, provincial and federal laws, standards, rules and regulations for gas bar operations;
- 7) Any inspection report in possession with Seller with respect to structures, buildings on the property;
- 8) The Seller to give written authority to the Buyer and the Buyer's lawyer to conduct searches on the property as they deemed necessary;
- 9) List of items, all fixtures, goods, chattels, rights and other assets relating to or connected with the property that is included with this transaction (signed by the Seller);
- 10) Copies of any other agreements affecting the business operations or use of equipment or fixtures (leases, rental, services etc.)

Subsequent to the above the Seller shall fully co-operate in providing and facilitating information needed by the Buyer and its consultants to do their due diligence. All information obtained shall be kept confidential.

If such conditions are not complied with within the time period aforesaid and such compliance is not waived as aforesaid, this Agreement shall be null and void and the Buyer shall be entitled to the immediate return of the deposit in full.

### CONDITIONS FOR THE BENEFIT OF THE BUYER

The agreement to be constituted by the acceptance of this offer is further subject to the following conditions, compliance with all of which (unless the Buyer shall in writing waive such compliance) within Thirty (30) banking days from the date of delivery of items listed under "Seller's Information & Documents" shall be a condition precedent to any obligation hereunder on the part of the Buyer. The conditions referred to are that:

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



**R** The modernist novel, 1955. 174-175. With 18 illustrations. 1955. 144pp. 32. 0-670-01000-0.  
The Oxford English Dictionary, 1914 and 1928. The 1914 edition with 10 illustrations. 1914. 1000pp. 10s. 6d. 0-19-100000-0.  
The Oxford English Dictionary, 1928. The 1928 edition with 10 illustrations. 1928. 1000pp. 10s. 6d. 0-19-100000-0.  
The Oxford English Dictionary, 1928. The 1928 edition with 10 illustrations. 1928. 1000pp. 10s. 6d. 0-19-100000-0.

Form 500 Revised 2020 Page 7 of 12

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** 5039420 Ontario Limited

and

**SELLER:** 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West, Guelph, ON N1H 1G8

dated the 18 day of November 2020

Buyer agrees to pay the balance as follows:

1) The Buyer arranges financing on terms satisfactory to the Buyer;

A) The Buyer is satisfied with the contents and the accuracy of the allocation and the building location survey;

2) Be satisfied with due-diligence of the property at its sole discretion;

3) The Buyer conducting satisfactory inspections of the property, fixtures and chattels (including inspections of all aspects of the structures therein), surveys, and such other tests and investigations on and of the property as the Buyer considers advisable. For such purpose, the Buyer, its representatives and authorized agents shall be permitted such access to the property as they may reasonably require. Seller to provide Buyer with written directions authorizing such information released to the Buyer;

4) The Buyer being satisfied with the information delivered to it by the Seller under paragraph of "Seller's Information & Documents" above;

a) A phase II soil test, which shows that the property meets the current MOE and TSSA Guidelines for operating a gas bar and there is no contamination or evidence of leakage of gasoline products. If the Buyer or the Buyer's solicitor notifies the Seller or the Seller's solicitor that such conditions have not been satisfied, then notwithstanding any intermediate acts or negotiations this Agreement shall be of no further force or effect, and the deposit shall be returned to the Buyer in full;

5) The Buyer being approved in writing by ESSO (Parkland Corp) to assume the lease, dealer agreement, supply agreement and any other agreement or contract to be transferred from the Seller to the Buyer relating to ESSO (Parkland Corp) on or before the closing of this transaction;

If such conditions are not complied with within the time aforesaid and such compliance is not waived as aforesaid, this agreement shall be null and void and the Buyer shall be entitled to the immediate return of the deposit in full.

**SELLER COVENANTS AND WARRANTIES**

The Seller and the undersigned covenants and warrants (which covenants and warranties shall survive closing) that:

1) The Seller is a resident of Canada within the meaning of the Income Tax Act (Canada). The Seller, or or before completion, will produce evidence that he or she is not now, and upon completion, will not be, a non-resident person within the meaning and for the purposes of Section 116 of the Income Tax Act of Canada or if he or she is a non-resident person will fully comply with the provisions of Section 116 of the said Act prior to completion;

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**R** The Ontario Real Estate Association (OREA) and its members are not licensed by the Government of Ontario to provide legal advice. The OREA and its members are not licensed by the Government of Ontario to provide legal advice. The OREA and its members are not licensed by the Government of Ontario to provide legal advice.



This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: 5039420 Ontario Limited

**SELLER:** 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West Guelph, ON N1H 1G8

dated the 18 day of November 1920

Buyer agrees to pay the balance as follows:

23 The Seller is a valid subsisting corporation under the laws of the Province of Ontario;

2) It has full power and authority to accept this offer and to perform its obligations under this agreement and the entering into and performance of this Agreement do not conflict with or breach the articles of incorporation or by-laws or any agreement by which it is bound;

4) There is no action or proceeding pending or threatened that questions the ability of the Seller to perform its obligations hereunder, or the title of the Seller to the Property, or the zoning thereof as represented herein, or the future development of the property;

5) Neither the Seller nor any tenant of the Seller has received any notice of any violation of any applicable federal, provincial or municipal laws, regulations, orders or approvals, writs, injunctions, orders or judgments outstanding or lawsuits, claims, proceedings or investigations pending or threatened relating to the ownership, use, maintenance or operation of the Property, nor is there to the knowledge of the Seller, any basis for such lawsuits, claims, proceedings or investigations being instituted or filed;

6) The financial operating statements and income-expense statements;

7) All systems of the Property, including but not limited to the computer system, electrical, plumbing, heating, roofing shall be in good working condition on the date of Closing;

8: There are no work orders or deficiency notices outstanding against the property and if so, will be complied with, at his expense, on or before closing:

9) Any mortgages or liens or other encumbrances (other than those agreed herein to be assumed by the Buyer) registered against the property will be discharged on or before closing at the Seller's expense either from the proceeds of this sale or by Seller's own undertaking;

18) The Property is to the best of the Seller's knowledge in compliance in all material respects, with all applicable laws, rules, regulations, ordinances and standards, including but not limited to, environmental, civil rights, occupational safety and health, hazardous substances, zoning laws and building codes. The licenses, permits, and other governmental approvals and authorities held by the Business are in full force and effect; no violations thereof are or have been recorded; and no proceeding is pending or, to the best of Seller's knowledge and belief, threatened, which could result in the revocation or limitation thereof;

11. During the period of the Seller's occupancy of the property and, to the best of his or her knowledge, prior thereto, no building on the property has been insulated with urea formaldehyde foam insulation or asbestos;

\*This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**R**esearcher: "The results of the study show that the use of the new technology in the classroom significantly improves student performance. The data indicates that students who used the technology scored higher on the tests than those who did not. This suggests that the technology is effective in enhancing learning outcomes." (The researcher is making a claim about the effectiveness of the technology based on the results of the study.)

Form 500  Page 4 of 12

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** 5039420 Ontario Limited and

**SELLER:** 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West, Guelph, ON N1H 1G8

dated the 18 day of November 2020.  
Buyer agrees to pay the balance as follows:

12) The Seller shall maintain all of the Property's tangible assets in the same condition as they now exist, ordinary wear and tear excepted.

#### SELLERS DELIVERY ON CLOSING

The Seller agrees to deliver the following to the Buyer effective as of closing:

- 1) A statutory declaration by the Seller stating that the Seller is as of the closing date a resident of Canada within the meaning of the Income Tax Act of Canada;
- 2) A transfer of the Property in a registrable form together with such other documentation as may be required to convey the Property to the Buyer free and clear of any claim by the registered owner of the Property or the holder of any encumbrances affecting the Property;
- 3) It's undertaking to readjust the statement of adjustments if necessary;
- 4) Its certificate that all representations and warranties contained in this agreement are true upon closing;
- 5) Upon closing the Seller will provide the Buyer with a list of contact names and addresses for all suppliers, maintenance companies, garbage removal and landscaping companies and all companies/entities with which the Seller has been conducting normal business with on a day-to-day basis. In addition, any applicable customer lists;

#### INSURANCE

Until completion of the sale, all buildings and equipment on the property shall be and remain at the risk of the Seller until closing and the Seller will hold all policies of insurance affected on the property and the proceeds thereof in trust for the parties hereto, as their interests may appear. In the event of damage to the said building and equipment before the completion of this transaction, the Buyer shall have the right to elect to take such proceeds and complete the purchase or cancel this Agreement, whereupon the Buyer shall be entitled to the return, without interest or deduction, of all moneys theretofore paid on account of this purchase.

#### AGENCY

The Seller will pay the brokerage all applicable fees and commissions.

This form must be initialed by all parties to the Agreement of Purchase and Sale:

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



The undersigned shall not be liable for any loss or damage to the property or the proceeds thereof in the event of fire, theft or any other cause, unless the Seller has obtained and maintained adequate insurance coverage for the property and the proceeds thereof, and the Seller has provided a copy of the policy to the Buyer. The Seller shall be responsible for obtaining and maintaining adequate insurance coverage for the property and the proceeds thereof, and the Seller shall be responsible for providing a copy of the policy to the Buyer.



**Form 500**

**Agreement of Purchase and Sale - Commercial**

For use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** 5039420 Ontario Limited and

**SELLER:** 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West, Guelph, ON N1H 1G8

dated the 18 day of November 2020

Buyer agrees to pay the balance as follows:

**NON-COMPETITION**

The Seller and undersigned, jointly covenant that to carry on or engaged in or concerned with (either directly or indirectly in any manner whatsoever including without limitation as a principal, agent, partner or shareholder) any business competitive with or similar to any of the businesses presently carried on, within a radius of 5KM the premises for 36 months after completion. The aforementioned covenant shall survive the completion of the transaction provided herein.

Purchaser to satisfy himself, during the due diligence period, with the accuracy and content of all the financial statements, sales and expense reports, profit and loss statements, and statement of the assets or liabilities and to see if they have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and present fairly the financial position of the Business and include and disclose the material liabilities (other actual, accrued or contingent and whether direct or indirect) of the Business;

The Business is not now, nor at Closing will be bound by any agreement whether written or oral with any employee providing for a specified period of notice of termination nor providing for any fixed term of employment, and has now and at Closing will have no employees who cannot be dismissed upon such notice as is required by statutory or common law;

The Vendor now has and at Closing will have a good and marketable title to the Assets, free and clear of any and all claims, liens, encumbrances and security interests whatsoever;

There are no outstanding orders, directions, notices, requirements, deficiencies, investigations or proceedings (collectively "Orders") involving the premises or under the Environmental Protection Act or any other legislation of an environmental nature, the Occupational Health and Safety Act, the Workplace Safety and Insurance Act, 1997, the Employment Standards Act, the Labour Relations Act, the Ontario or Canada Human Rights Codes, the Criminal Code, the Building Code Act, the Fire Marshall's Act, the Electrical Safety Code, the Municipal Act or any other legislation regulating the obligations of the Premises, including but not limited to any property standard by-law, and no such Orders shall be outstanding on closing. The Vendor has received no notices of non-compliance in respect to such Orders; All levies under the Workplace Safety and Insurance Act, 1997, or under the workers' compensation legislation or any other the jurisdiction where the Business is carried on by the Vendor, have been paid by the Vendor; No bankruptcy, insolvency or receivership proceedings have been instituted or are pending against the Vendor and the Vendor is able to satisfy its liabilities as they become due, to the best of the Vendor's knowledge and belief; To transfer and assign telephone number of the business to the Purchaser and do such things as may be required by Bell Canada to effect the transfer.

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**R** The undersigned hereby certifies that the foregoing is a true and correct copy of the original document as it appears in the records of the Ontario Real Estate Association. The undersigned is a member of the Ontario Real Estate Association and is duly qualified to execute this document. The undersigned is not a solicitor, barrister, notary public or other legal professional. The undersigned is not a party to the transaction and is not acting in the capacity of a legal professional. The undersigned is not a party to the transaction and is not acting in the capacity of a legal professional.

## Form 500

For use as the Page size of Centre...

## Schedule A

### Agreement of Purchase and Sale – Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER: 5039420 Ontario Limited

**SELLER:** 8331707 Canada Inc.,

for the purchase and sale of 59 Woodlawn Road West, Guelph, ON N1H 1G8

dated the 18 day of November 2020

Buyer agrees to pay the balance as follows:

To pay to all employees as of closing all pay, statutory vacation pay, remuneration, bonuses and benefits due to them to the date of closing and remit necessary statutory deductions and taxes to the governmental authorities. The Vendor shall terminate all employers as at the closing date, and provide copies of the notices of termination to the Purchaser on closing. Purchaser to have the right to re-employ employees of its choice.

The Vendor acknowledges that the Purchaser has the right and is permitted, prior to the closing of this transaction, to assign this Agreement and all the benefits contained herein or the rights under this Agreement, to any person, firm, partnership, limited partnership, company or corporation, whether or not presently in existence or to be formed and upon such assignment, all of the respective obligations and liabilities of the Purchaser will cease.

Inventory shall be physically counted. Purchaser shall not be obliged to pay for spoiled, outdated or damaged goods in Purchaser's discretion. On the date of closing, the Vendor and Purchaser (or their representatives) will, confirm any inventory which was counted and the Vendor will provide the basic cash for the day's sales, it being understood that the assets sale does not include cash on hand or accounts receivable. When the respective Solicitors confirm closing by phone, the Vendor will hand over to the Purchaser all keys and Purchaser will pay the Vendor for the inventory.

This offer is conditional upon the Sellers receiving written notice from ESSO (Parkland Corp) informing the Seller that ESSO (McDougall Energy) does not wish to exercise its first right of refusal on the property. If the Seller or the sellers solicitors notify the Buyer or the Buyers solicitors that such conditions have not been fulfilled, then notwithstanding any intermediate acts of negotiations the Agreement shall be of no further force or effect and the deposit shall be returned to the Buyer in full without any deductions.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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# EXHIBIT “R”

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** Thursday, December 3, 2020 8:46 PM  
**To:** 8331707 canadainc  
**Cc:** eugene.chow@bmo.com  
**Subject:** RE: **[\*\*EXT\*\*]** Sale & Purchase agreement [MTDMS-Legal.FID9302932]

Jignesh, why would you think it was even possible that the buyer would increase the purchase price when you had already accepted the offer of \$[REDACTED]? When we spoke you advised me the agent had just told you that the offer had been accepted, but you didn't know the final price. That is not consistent with a signed agreement already being in place.

There is no agent shown on the agreement. The deposit is held in a solicitor's trust account, which is atypical if an agent being involved. Who is the agent? Please provide the name of the lawyer holding the deposit.

The seller's information was to be provided within 7 days of acceptance, which would be November 30. The delivery of the information is a condition precedent. Please provide the signed waiver from the buyer confirming that condition has been fulfilled or waived.

## **TONY VAN KLINK**

Partner

### **Miller Thomson LLP**

One London Place  
 255 Queens Avenue, Suite 2010  
 London, Ontario N6A 5R8

**Direct Line:** +1 519.931.3509

**Cell:** +1 519.636.7425

**Fax:** +1 519.858.8511

**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)

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**From:** 8331707 canadainc [mailto:8331707canadainc@gmail.com]  
**Sent:** Thursday, December 3, 2020 8:32 PM  
**To:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Cc:** eugene.chow@bmo.com  
**Subject:** Re: **[\*\*EXT\*\*]** Sale & Purchase agreement [MTDMS-Legal.FID9302932]

Yes, when I spoke to you at that time we aiming for [REDACTED] or [REDACTED]. ( we are trying to convince buyer to increase price)but Current situation & Business is going down ,buyer change his mind & decided not to increase price.



If you need more info please let me know.

205

Thanks,

Jignesh

On Thu, Dec 3, 2020 at 8:20 PM Van Klink, Tony <[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)> wrote:

Jignesh,

When we spoke yesterday, you advised me that the price had just been agreed and were waiting for the agreement from your agent. You had asked for \$ [REDACTED] and were expecting the final price to be \$ [REDACTED], or maybe \$ [REDACTED].

The attached agreement is for \$ [REDACTED]. It is dated November 18 (accepted at 6:00 p.m. on November 23) and bears your signature. You would have known this when we spoke.

An explanation is required.

**TONY VAN KLINK**

Partner

**Miller Thomson LLP**

One London Place  
[255 Queens Avenue](#), Suite 2010  
London, Ontario N6A 5R8

**Direct Line:** +1 519.931.3509

**Cell:** +1 519.636.7425

**Fax:** +1 519.858.8511

**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

**[millerthomson.com](http://millerthomson.com)**

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**From:** 8331707 canadainc [mailto:[8331707canadainc@gmail.com](mailto:8331707canadainc@gmail.com)]

**Sent:** Thursday, December 3, 2020 7:30 PM

To: Van Klink, Tony <[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)>; [eugene.chow@bmo.com](mailto:eugene.chow@bmo.com)

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Subject: **[\*\*EXT\*\*]** Sale & Purchase agreement

Please see all pages.

Thanks,

Jignesh

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--

Best Regards,

Jignesh Shah P.Eng  
Cell-647-407-0171

# EXHIBIT “S”



---

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** Friday, December 4, 2020 10:29 AM  
**To:** 8331707 canadainc  
**Cc:** eugene.chow@bmo.com  
**Subject:** Loans with Bank of Montreal [MTDMS-Legal.FID9302932]

Jignesh,

The agreement which you have provided was signed on November 23, but a copy was only provided to the Bank yesterday. The Bank needs to know whether the agreement remains effective and binding. Please provide the following information by the end of the day today:

1. The name of the lawyer that is reviewing the sale agreement and will be completing the sale for you;
2. The name of the buyer's lawyer;
3. If an agent is involved, the name and contact information of the agent;
4. Evidence of the payment of the deposit (a copy of an email or letter from the buyer's lawyer confirming that he/she has received the deposit); and
5. Evidence that the "seller's information" was provided to the buyer and that the 7 day condition related to same has been fulfilled or waived.

**TONY VAN KLINK**

Partner

**Miller Thomson LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, Ontario N6A 5R8

**Direct Line:** +1 519.931.3509

**Cell:** +1 519.636.7425

**Fax:** +1 519.858.8511

**Email:** [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)

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# EXHIBIT “T”

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**From:** 8331707 canadainc <8331707canadainc@gmail.com>  
**Sent:** Monday, December 7, 2020 8:02 PM  
**To:** Van Klink, Tony; eugene.chow@bmo.com  
**Subject:** [\*\*EXT\*\*] Buyer Lawyer info  
**Attachments:** CamScanner 12-07-2020 19.55.pdf

Hi Tony/ Chow,

Buyer's Lawyer info

Joel H Mixa Barrister  
10 King st.Suit#1400  
Toronto.

Here I am attaching demand draft of Buyer's Lawyer trust.

I will send you my Lawyer info once we finalized.

If you need more information please let me know.

Thanks,

Jignesh Shah P.Eng

-----  
[EXTERNAL EMAIL / COURRIEL EXTERNE]

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66224606 5-516

DATE 20201207  
Yrs Mo Du

**PAY TO THE ORDER OF**  
PAVEZ A L'ORDRE DE Joel H. Miza, Barisbr & Sol. Trust Account \$25,000.00

**EXACTLY \$25,000.00**

AUTHORIZED SIGNATURE REQUIRED FOR AMOUNTS OVER \$500.00 CANADIAN / SIGNATURE AUTORISÉE REQUISE POUR UN MONTANT EXCÉDANT \$500.00 CANADIENS

RECBLET 59 WOODLAWN ROAD WEST, GUELPH, ONTARIO CANADIAN DOLLARS CANADIENS

**PURCHASER NAME** S. J. Luchessa  
**PURCHASER ADDRESS** SYLVIA LITTON

**NOM DE L'ACHETEUR** S. J. Luchessa  
**ADRESSE DE L'ACHETEUR** SYLVIA LITTON

DO NOT SIGN HERE / NE PAS SIGNER ICI

66224606 1000240031 099001305

# EXHIBIT “U”

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

This Agreement is made on MARCH 11 - 2015 (the "Effective Date")

BETWEEN:

**PARKLAND INDUSTRIES LTD.**  
(hereinafter called "Distributor")

- and -

**2011263 ONTARIO INC.**  
(hereinafter called "Dealer") having a  
motor fuels "Marketing Premises" located at  
**59 Woodlawn Road W, Guelph, Ontario N1H 1G8**

- and -

**BALBIR SINGH DHALIWAL, LAKHVIR S. DHALIWAL  
and MANMOHN S. GREWAL**  
(hereinafter called the "Guarantors")

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

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

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

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

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

NOW THEREFORE the Distributor and the Dealer agree as follows:

**1. Grant**

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

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

## **2. Related Businesses**

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

## **3. Term**

- a. The term of this Agreement is for the period beginning on **May 1, 2015** and ending on **April 30, 2025**, unless terminated earlier in accordance with this Agreement. If the said term exceeds the term of the Esso Branded Distributor Agreement that is in effect between the Distributor and Imperial Oil at the beginning of this Agreement, then the term of this Agreement shall expire upon the expiry of the said Esso Branded Distributor Agreement; and
- b. If the Dealer has not purchased 30,000,000 litres of Motor Fuels during the initial term, the term will be extended until that volume is purchased by the Dealer, unless Parkland advises otherwise.

## **4. Product Quantities**

- a. Distributor shall sell and deliver and Dealer shall purchase, receive and pay for the Dealer's entire requirements of Esso-branded motor fuel for sale at the Marketing Premises in the quantities and at the prices and terms and conditions set out herein. The motor fuels purchased by Dealer from Distributor under this Agreement shall be for resale at the Marketing Premises only. The Dealer shall use good faith and diligent efforts to maximize the sale of Esso-branded motor fuels at the Marketing Premises. Dealer shall at all times have available for sale at the Marketing Premises such quantities of the Esso-branded motor fuels as are sufficient to meet the demand from time to time of the Dealer's retail customers.
- b. The minimum annual volume of Esso-branded motor fuel Dealer is obligated to purchase during any contract year ("contract year" meaning the consecutive twelve (12) months beginning on the Effective Date and each subsequent consecutive twelve (12) month period) is **3,000,000 litres** (the "Minimum Annual Volume"). The Minimum Annual Volume shall be subject to any

changes prescribed by government rules, regulations or orders or resulting from any plan of allocation by Imperial Oil.

- c. In each contract year, Dealer must purchase from Distributor a minimum of eighty percent (80%) of the Minimum Annual Volume for Esso-branded motor fuel. Should Dealer fail, in any contract year, to purchase the aforementioned 80% of the Minimum Annual Volume of Esso-branded motor fuel, Distributor may terminate or not renew this Agreement upon giving 60 days prior written notice to the Dealer and the Guarantor(s).

#### **5. Dealer Payment**

- a. As consideration in part for the Dealer accepting the use of the Proprietary marks as set out herein, Distributor shall pay to the Dealer a payment in the amount of 1.30 cents per litre (plus applicable taxes) multiplied by the number of litres of the Esso-Branded motor fuels purchased by the Dealer from Distributor pursuant to this Agreement (the "Dealer Payment"). The Dealer Payment shall be calculated by Distributor based on the Distributors' records and paid by Distributor to the Dealer monthly in arrears within twenty (20) days immediately following the end of each month during the term of this Agreement.
- b. Distributor shall have the right to reduce the amount of the Dealer Payment upon sixty (60) days' prior written notice to the Dealer and the Guarantors if the Dealer fails to purchase eighty (80) percent of the Minimum Annual Volume in any contract year.
- c. It shall be a condition precedent to the payment of the Dealer Payment each month that: (i) the Dealer shall not be in default in the observance or performance of any of the covenants or agreements contained in this Agreement; and (ii) this Agreement shall not have terminated.

#### **6. Right of First Refusal**

- a. The Marketing Premises are located on those lands legally described as:

##### **PART LOT 4 PLAN 169 AS IN R0803884; GUELPH**

(hereinafter referred to as the "Lands"). The Dealer operates its Esso branded motor fuels business and other ancillary business from the Lands (hereinafter referred to as the "Business"). If at any time during the term of this Agreement the Dealer shall receive a bona fide offer (hereinafter in this Article referred to as the "Offer") from a third party with whom the Dealer is dealing at arm's length (the "Third Party") for the purchase of the Business and/or the Lands in whole or in part and the Dealer is prepared to accept the Offer, the Dealer shall, before accepting the Offer, give written notice to the Distributor within three (3) Business Days of the date the Dealer received the Offer by sending to the Distributor an executed copy of the Offer and notifying the Distributor therewith of the Dealer's desire to accept the Offer. The Distributor shall have the right to purchase on the terms and conditions of the Offer, the Business and/or the Lands referred to in the Offer. The right to purchase shall be exercised by the Distributor delivering notice in writing thereof to the Dealer within thirty (30) Business Days after receipt of a copy of the executed Offer (hereinafter in this Article referred to as the "Exercise Period").

- b. In the event the Distributor does not exercise the right to purchase the Business and/or the Lands referred to in the Offer within the Exercise Period, the Dealer shall be at liberty to complete the sale of the Business and/or the Lands referred to in the Offer to the Third Party; provided that such sale shall be completed within ninety (90) days from the expiry of the Exercise Period, failing which the Dealer's right to complete such sale shall terminate.



- c. In the event that the Distributor shall notify the Dealer in writing within the Exercise Period of its desire to purchase the Business and/or the Lands referred to in the Offer, a binding agreement of purchase and sale shall exist between the Dealer and the Distributor with respect to the Business and/or the Lands at and for a price equal to that described in the Offer and on the terms and conditions therein contained. In the event the Offer provides for financing from the Dealer to allow the Third Party to close the purchase of the Business and/or the Lands referred to in the Offer, the Distributor shall pay the principal amount of the Dealer financing in cash on closing.
- d. The Dealer covenants and agrees that the Dealer shall not:
  - (i) accept any offer for the purchase of all or any portion of the Land which will require some form of consideration, other than cash or cash equivalent in Canadian currency, to be paid, it being intended that the consideration not be of a unique nature such that the Distributor would be unable to provide the same consideration;
  - (ii) accept any offer to purchase the Business and/or the Lands from a party or parties with whom the Dealer is not dealing at arm's length;
  - (iii) accept any offer to purchase the Business and/or the Lands which is not a bona fide offer.
- e. Any purchase and sale of the Business and/or the Lands pursuant to the terms of this Agreement shall close on the thirtieth (30th) day after the expiry of the Exercise Period or on such other date as the Parties may agree upon.
- f. The Dealer covenants and agrees that as a condition precedent to the Distributor allowing the Dealer to sell the Business and/or the Lands to a third party, the Dealer will execute and deliver to the solicitor acting on the Dealer's behalf in such transaction an irrevocable authorization and direction to pay to the Distributor, out of the proceeds of the transaction, such amounts of money that are still due and owing to the Distributor by the Dealer. In the event the proceeds of the sale paid to the Distributor are insufficient to extinguish the Dealer's indebtedness to the Distributor, the Dealer shall continue to be liable to the Distributor for any remaining indebtedness to the Distributor.

## 7. Price and Terms of Sale

- a. The Dealer shall pay Distributor for the Esso-branded motor fuels purchased pursuant to this Agreement the price thereof in effect at the Distributors' designated loading rack at the time that the motor fuels are loaded for delivery to the Dealer, plus the cost of delivery, plus all applicable taxes. The motor fuel prices hereunder will be established daily by the Distributor and are subject to change at any time and without notice. In the event of a shortage or unavailability of the motor fuels at the Distributors' designated loading rack for any particular delivery to the Dealer the Distributor shall use its best efforts to deliver motor fuels from an alternate loading rack in order to complete the delivery and the Dealer hereby agrees to pay for any increased costs required to complete such delivery.
- b. Measurement of the volume of each delivery of the motor fuels sold and purchased hereunder will be determined as the metered volume loaded at the loading rack adjusted to a temperature of 15 degrees Celsius in accordance with normal industry practice.
- c. All purchases of the Esso-branded motor fuels shall be paid by the Dealer upon or before delivery in immediately available funds as set out herein, unless Distributor, in its sole discretion and from time to time, grants credit terms to the Dealer. If Distributor grants credit terms to the

Dealer, such credit terms may be amended by Distributor in its sole discretion upon written notice from time to time. If Distributor grants credit terms to the Dealer and the Dealer accepts delivery of any Esso-branded motor fuel in accordance therewith, the Dealer shall comply with such credit terms for all purposes, including without limitation paying interest on overdue accounts at rates to be determined by Distributor from time to time. Distributor reserves the right to withhold any amounts due by the Distributor to the Dealer and apply such amounts directly as a set-off against any amounts due and outstanding owing to the Distributor. If the Dealer's account is past due the Distributor may in its sole discretion and without notice decline to make deliveries of motor fuels to the Dealer and the Distributor shall not be liable for any costs, claims, or damages in connection therewith.

- d. The Dealer shall pay interest on any past due amounts at the rate of 18% per annum calculated daily, not in advance, and compounded monthly so long as payment of any monies due and payable hereunder is outstanding.
- e. Any payment made to Distributor by the Dealer pursuant to this Agreement:
  - (1) shall be made together with applicable taxes and become due and payable on the date and at the time and at the location determined by Distributor, in its sole discretion and from time to time;
  - (2) may be collected by Distributor by pre-authorized debit in the manner set out on Schedule "A" or by wire transfer.
- f. The Dealer shall, from time to time, execute and deliver to Distributor an authorization for pre-authorized debit substantially in the form of Schedule "A" in order to facilitate the collection of payments pursuant to this Section. Distributor may amend Schedule "A", in its sole discretion and from time to time, upon sixty (60) days' prior written notice to the Dealer.
- g. The Dealer shall use the retail credit and debit system and point of sale services prescribed by Imperial Oil from time to time to be used by the Dealer exclusively in the Dealer's business, and for no other purpose. The Dealer shall be entitled to use such equipment and facilities and certain maintenance and support services; provided that the Dealer pays for all costs associated therewith, including complying with all requirements of such retail credit and debit system and regular maintenance and replacement in the event of loss or damage, and the Dealer complies with all guidelines therefor. Dealer shall pay all fees established from time to time for the use of all such retail credit and debit systems and the Dealer shall comply with all the terms, conditions and regulations relating thereto. The Dealer shall pay all commissions and charges required to be paid by the Dealer to the proprietors and operators of such system(s).
- h. Distributor agrees that, upon receipt of information from Imperial Oil that the Dealer has submitted any valid customer credit card receipts to Imperial Oil for processing, the Distributor will credit the Dealer's purchase of the next delivery of motor fuels with the amount of such receipts.

## 8. Delivery

- a. Delivery will be by tank truck into Dealer's storage tanks at the Marketing Premises. Property, title and risk of loss of the motor fuel shall pass to the Dealer as the motor fuel is discharged from Distributor's tank truck and passes the collar of the fill pipe of the Dealer's storage tanks at the Marketing Premises.

- b. Dealer shall ensure that the Distributors tank truck will have unimpeded access to the fill pipes and storage tanks while making any delivery to the Marketing Premises.
- c. Dealer will notify Distributor of any required delivery of motor fuels in accordance with Distributors written ordering and delivery procedures. Dealer will only order deliveries in orders of a minimum of **55,000 litres** per delivery (hereinafter referred to as "full truck load"). Distributor reserves the right to amend its ordering and delivery procedures on written notice to the Dealer. Dealer will accept delivery of the Esso-branded motor fuels into the storage tank(s) on the Marketing Premises in accordance with the Distributors ordering and delivery procedures.
- d. Upon the dispatch of a delivery vehicle by Distributor to deliver the Esso-branded motor fuels to the Marketing Premises, the Dealer agrees to either accept the delivery of a "full truck load" of the Esso-branded motor fuels (or less than a "full truck load" of the Esso-Branded motor fuels only pursuant to Subsection (e) of this Section) at the time the delivery truck arrives at the Marketing Premises or pay to Distributor all the reasonable costs incurred by Distributor in connection with any delay or aborted delivery.
- e. Distributor shall not be required to deliver to the Dealer the Esso-Branded motor fuels in any quantity less than a "full truck load" or "deemed full truck load", which shall be determined in each case by Distributor in its sole discretion and from time to time. If the Dealer requests the delivery of and Distributor agrees to deliver the Esso-branded motor fuels in a quantity less than a "full truck load" or "deemed full truck load", then Distributor may charge, and the Dealer shall pay, an additional service charge therefor; however, the delivery by Distributor of Esso-branded motor fuels in a quantity less than a "full truckload" or "deemed full truckload" on any one or more occasions shall not require Distributor to deliver Motor Fuels in such quantity on any other occasion. Whether such additional service charge shall be levied and, if so, in what amount shall in each case be in the sole discretion of Distributor from time to time.

## **9. Product Control**

- a. Dealer shall exercise the highest degree of care in handling, storing, selling and using the Esso-branded motor fuel delivered to the Marketing Premises. Dealer shall not cause or allow any contamination, mixing, commingling, adulteration or otherwise change in the composition of any Esso-branded motor fuel (including without limitation, the blending of such motor fuels with ethanol). Dealer shall not sell from the Marketing Premises Esso-branded motor fuels that are contaminated or adulterated or fail to meet the fuel requirements under applicable law in effect at the time of delivery including, without limitation, requirements relating to octane, oxygen content, sulfur content, and all other regulated components or characteristics of a motor fuel or motor fuel additive, or unleaded gasoline requirements. Distributor may refuse to make deliveries into Dealer's storage tanks at the Marketing Premises until in Distributor's judgment, any deficiencies in the quality of motor fuels at the Marketing Premises are corrected.
- b. Access to Premises. Dealer grants Distributor and Imperial Oil (including their employees, agents and contractors) the right to enter the Marketing Premises during normal business hours to examine the contents of Dealer's storage tanks in which said motor fuels purchased hereunder are handled or stored. Distributor and Imperial Oil (including their employees, agents and contractors) may obtain samples from any of the aforementioned storage tanks and may otherwise review all documents and records relating either directly or indirectly to Dealer's obligations under this Agreement.

## 10. Contingencies

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

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

## 11. Proprietary Marks

- a. Dealer shall only use the Proprietary Marks designated and permitted by Imperial Oil for Dealer's use and shall only use such marks to designate the origin of the Esso-branded motor fuels and otherwise in the manner authorized and instructed by Distributor from time to time. DEALER AGREES THAT MOTOR FUELS AND PETROLEUM PRODUCTS OF OTHERS WILL NOT BE SOLD BY DEALER UNDER SUCH PROPRIETARY MARKS. If, in the sole opinion of Distributor, any samples taken by Distributor or Imperial Oil under this Agreement are not Esso-branded motor fuels, or are not in the condition in which delivered by Distributor, or any documents and records reviewed by Distributor or Imperial Oil show Dealer has failed to comply with its obligations hereunder, Distributor may, at its sole option, debrand the Marketing Premises in question or cancel and terminate this Agreement.
- b. By written notice to Dealer, Distributor may withdraw its approval to: (i) brand the Marketing Premises ("debrand") or (ii) use or operate any motor fuels business or Related Businesses at the Marketing Premises, if, in Distributor's sole judgment: (i) the Marketing Premises (or the motor fuels business and/or Related Businesses) fails to portray the image and standards expected from Esso-branded retail outlets; or (ii) Dealer is in default of any obligation, condition, representation, or warranty under this Agreement or any related or supplemental agreement.
- c. If Distributor debrands the Marketing Premises, withdraws its approval to use or operate the motor fuels business or Related Businesses at the Marketing Premises, upon termination of this Agreement, or prior thereto upon demand by Distributor, Dealer shall discontinue the posting, mounting, display or other use of the Proprietary Marks, and any sign, poster, placard, plate, device or form of advertising matter whether or not received from Distributor, consisting in whole or in part of the name Imperial Oil or any of the Proprietary Marks except only to the extent they appear as labels or identification of products still in the containers or packages designed and furnished by Imperial Oil.

- d. Dealer agrees to take no action that will diminish or dilute the value of the Proprietary Marks. Dealer shall not sell non-Esso branded motor fuels under any of the Proprietary Marks, including without limitation, any Esso-identified canopy or at any fueling island where Dealer is selling Esso-branded motor fuels.
- e. Dealer shall not use the Proprietary Marks as part of Dealer's corporate or other name.
- f. Dealer hereby consents to Distributor or Imperial Oil removing or painting over the Proprietary Marks the use of which is granted to the Dealer pursuant to this Agreement, including without limitation the Esso trade name, trade-marks, signs and advertising items, prior to the expiration or earlier termination of this Agreement.

## **12. Customer Service & Operating Standards**

- a. Dealer shall ensure that its Marketing Premises meet the following minimum image requirements (unless such compliance will result in the Dealer being in breach of any federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits), failing which Dealer shall lose the right to use or display Proprietary Marks at any such Marketing Premises:
  - (1) Paved driveways with safe and good ingress and egress; and
  - (2) Permanent building which is structurally sound and complies with all fire, building and zoning codes and ordinances; and
  - (3) Clean premises free of debris, trash, and fire hazards; and
  - (4) Modern restrooms for men and women available to the general public; and
  - (5) Offer two(2) grades of Esso-branded motor fuels; and
  - (6) Posting, at all times, of actual motor fuel prices, in numerals, in Imperial Oil-approved price sign systems located on the Marketing Premises; and
  - (7) Compliance with applicable operating standards as described in Schedule "B", and facility standards as described in Schedule "C" ("Facility Requirements"), which are incorporated herein and made a part of this Agreement.
- b. While using any Proprietary Marks, Dealer agrees:
  - (1) To render appropriate, prompt, efficient, and courteous service, at the Marketing Premises, to respond expeditiously to all customer complaints, making fair adjustment when appropriate, and otherwise conduct Dealer's business in a fair and ethical manner and maintain the Marketing Premises in a manner which will foster customer acceptance of and desire for the Esso-branded motor fuels sold hereunder; and
  - (2) To provide sufficiently qualified and neatly dressed personnel in uniform at the Marketing Premises as appropriate to render first class service to customers; and
  - (3) To keep restrooms clean, orderly, sanitary and adequately furnished with restroom supplies; and

- (4) To assist in maintaining a high level of customer acceptance of Proprietary Marks by keeping the Marketing Premises open for dispensing of the Esso-branded motor fuels during such hours each day and days a week as are reasonable considering customer convenience, competitive conditions and economic consequences to Dealer; and
  - (5) To purchase, maintain, and display an adequate quantity of Esso-branded motor oils, lubricants, greases, anti freeze, and other petroleum products and related products (the "Petroleum Products" ) for resale from the Marketing Premises to meet the needs of Dealer's retail customers from time to time. Dealer acknowledges that the Distributor is not a distributor of Petroleum Products and agrees to purchase the Petroleum Products directly from Imperial Oil or its designated distributor of Petroleum Products in the Dealer's market area; and
  - (6) The Dealer shall keep the Marketing Premises open for business on the days and during the hours that are sufficient to meet the demand from time to time of the Dealer's retail customers; and
  - (7) The Dealer shall ensure that the automobile maintenance and repair services, if any, provided on the Marketing Premises are performed to the reasonable satisfaction of the consumers of such services.
- c. Dealer agrees that Distributor may revoke permission to display Proprietary Marks at the Marketing Premises which, after reasonable notice by Distributor to cure, continues to be in violation of this Section.
- d. Dealer shall not permit at the Marketing Premises:
- (1) Any consumption of intoxicating beverages in violation of applicable federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits; or
  - (2) The sale or use of illegal drugs or drug paraphernalia; or
  - (3) The sale of any pornographic material or other material that Distributor determines may be offensive to the general public.
- e. Dealer shall not permit at the Marketing Premises the illegal sale of any tobacco products, including without limitation, sales in violation of any federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits relating to youth access to tobacco products. Dealer shall promptly advise Distributor of any charges or notifications of violations received at the Marketing Premises from any regulatory authority resulting from any such tobacco sales and of the resolution of any such charges and notifications.
- f. The Dealer acknowledges receipt of and shall comply with the Imperial Oil Operating Standards Manual ( the "Manual" ), including without limitation the Operating Standards and the other standards, methods, procedures and specifications established by Imperial Oil from time to time applicable to the operation the Dealer's business. The provisions of the Manual, including without limitation the Operating Standards and the other standards, methods, procedures and specifications applicable to carrying on the Dealer's business, are hereby incorporated into and shall form a part of this Agreement and the Dealer shall comply with same as if fully set forth herein. The Manual shall at all times remain the exclusive property of Imperial Oil and shall be returned to Distributor promptly upon request and, in any event, upon the expiration or earlier

termination of this Agreement. Neither the Dealer nor the Dealer's employees shall at any time copy, duplicate or otherwise reproduce or transcribe the Manual or any part thereof without Imperial Oil's prior written consent. The Dealer acknowledges that the entire contents of the Manual is of a proprietary and confidential nature and is a trade secret of Imperial Oil. The Dealer shall maintain the absolute confidentiality of all such information during the term of this Agreement and after the expiration or earlier termination of this Agreement and shall not disclose any such information for any reason whatsoever, disclosing the same to the Dealer's employees only to the extent necessary for the operation of the Dealer's business in accordance with this Agreement. The Dealer further agrees not to use any such information, directly or indirectly, in any other business or in any other manner or obtain any benefit therefrom not specifically approved in writing by Imperial Oil.

### **13. No Exclusive Marketing Rights**

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

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

### **14. Fuel Handling Equipment**

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

- a. The Dealer warrants and represents to Distributor that as of the effective date of this Agreement, the storage tanks, tight fill connections and dispensing equipment on the Marketing Premises are in good condition and repair and meet regulatory requirements.
- b. The Dealer shall keep, at all times, the storage tanks, tight fill connections and dispensing equipment on the Marketing Premises in good condition and repair, and to meet regulatory requirements. The Dealer shall make all needed repairs and replacements promptly.
- c. The Dealer shall have in place on all underground motor fuels storage tanks the following equipment:

- (1) spill containment boxes; and
- (2) overfill prevention valves,

and such equipment shall, at all times, be in good operating condition and repair.

- d. Notwithstanding any other provision in this Agreement, if Distributor is required by law, or if in Distributor's reasonable opinion, the delivery to the Dealer of any motor fuels may constitute a hazard to life, property or the environment (a "hazard"), then Distributor may at any time and without liability therefor suspend or delay delivery of the motor fuels. Distributor shall not be obliged to re-commence delivery of the Motor Fuels until Distributor is satisfied, in its sole discretion, that the hazard does not exist or has ceased to exist.
- e. The Dealer agrees :
  - (1) that if Distributor does or causes the doing of any act to remedy a hazard, whether or not the acts are required by law, the Dealer will pay Distributor for all costs and expenses incurred by Distributor for the doing of such act; and
  - (2) upon completion of the delivery of any product, the Dealer shall inspect the Marketing Premises for any spillage of any motor fuel or other substance and so notify Distributor immediately if any such spillage is determined to have occurred and Dealer shall immediately take all reasonable and safe action to clean up and minimize the environmental impact of any spill.
- f. Distributor shall have no liability whatsoever for losses occasioned by business interruption resulting from or attributable to any other activity taken or not taken, on the Marketing Premises in response to actual or potential environmental hazards.

#### **15. Loaned Equipment**

- a. Distributor will loan to the Dealer the equipment listed in Schedule "D" hereto (the "Equipment") as and when it may be available for use on the Marketing Premises in the Dealer's business; and the Dealer hereby accepts such loan.
- b. Distributor shall have the right, in its sole discretion and from time to time, to replace, add to or substitute any one or combination of items of the Equipment.
- c. The Dealer shall:
  - (1) pay all licensing fees, taxes and other fees of every kind applicable to the Equipment;
  - (2) obtain all necessary permits, licences and other rights necessary to permit the installation, maintenance and use of the Equipment on the Marketing Premises, and the removal of the Equipment from the Marketing Premises;
  - (3) not alter, part with possession of, or encumber, lease, or sell the Equipment;
  - (4) complete day to day maintenance and repair, including replacement of parts, of the Equipment unless Distributor advises the Dealer in writing that Distributor shall be responsible for all or any part of such maintenance, repair and replacement for any one or a combination of items of the Equipment;



- (5) keep and maintain on the Equipment any of the Proprietary Marks or colour scheme which appears thereon;
  - (6) comply with all laws applicable to the Equipment;
  - (7) be responsible for all damage caused to the Equipment by the gross negligence or willful act of any person or persons other than Distributor, its employees, contractors and agents;
  - (8) use the Equipment intended for storage, handling, advertising or displaying the Esso-branded motor fuels and the Petroleum Products, solely for such intended purpose;
  - (9) return to Distributor in good repair and operating condition, reasonable wear and tear excepted (i) all Equipment immediately upon the expiration or earlier termination of this Agreement and (ii) any Equipment replaced by Distributor for any reason immediately upon such replacement;
  - (10) for greater certainty, permit Distributor, its employees, contractors, agents and invitees to enter upon the Marketing Premises at all reasonable times in order to (i) effect maintenance and repair of the Equipment and (ii) replace, add to or substitute any one or combination of items of the Equipment; and
  - (11) upon the expiration or earlier termination of this Agreement, permit Distributor, its employees, contractors, agents and invitees to enter upon the Marketing Premises to remove the Equipment.
- d. The title to and ownership of the Equipment shall at all times remain with the Distributor, and the Dealer agrees not to affix the Equipment to the Marketing Premises in such a way that the Equipment shall become a fixture of the Marketing Premises.
- e. The Dealer acknowledges that it has examined the Equipment provided to the Dealer as of the effective date of this Agreement and is satisfied therewith and shall indemnify Distributor from and against all claims and demands for loss, damage or injury in respect of the Equipment unless such claims or demands arise by reason of Distributor's negligence or a defect in the Equipment, provided the Dealer shall have given Distributor prompt written notice of such negligence or defect.

#### 16. Compliance with Laws

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

#### 17. Indemnity

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

- a. the operation of the Dealer's business on the Marketing Premises;

- b. the storage, handling and sale of the motor fuels on and from the Marketing Premises; and
- c. the Equipment.

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

#### **18. Insurance**

- a. Without in any way limiting any liability of the Dealer under this Agreement, the Dealer shall maintain in full force and effect the following insurance:
  - (1) a comprehensive general liability policy which insures the Dealer in respect of liability to third parties and Distributor arising out of all the operations of the Dealer pertaining to the Dealer's business, whether or not conducted on or from the Marketing Premises with all inclusive limits of at least three million dollars (\$3,000,000) for any one incident. This insurance policy shall insure the Dealer for liability assumed pursuant to this Agreement; and
  - (2) a third party liability policy on all vehicles used in the Dealer's business, with all inclusive limits of at least one million dollars (\$1,000,000) for any one incident.
- b. The insurance policy referred to in subsection 18a.(2) above shall be written using the standard garage automobile policy (S.P.F. No. 4, or its equivalent in provinces with compulsory government insurance plans), or in the alternative, using a standard garage automobile policy in combination with an endorsement excluding owned automobiles and with an owner's form of the standard automobile policy (S.P.F. No. 1).
- c. Upon written request by Distributor, the Dealer shall provide Distributor with a certificate of insurance and such other information as may reasonably be required by Distributor in a form satisfactory to Distributor as evidence of the insurance required under this Section. The insurance policies shall be endorsed to provide that in the event of any change in them which could affect Distributor's interests, or in the event of their cancellation, the insurers shall give prior written notice thereof by registered mail to Distributor thirty (30) days prior to the effective date of any such change or cancellation.
- d. Distributor may amend this Section, in its sole discretion and from time to time, on the anniversary of the commencement date of this Agreement upon sixty (60) days' prior written notice to the Dealer.

#### **19. Technology and Communications**

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

- a. Install and maintain in good operating condition and at Dealer's expense at the Marketing Premises:
  - (1) a facsimile machine for sending and receiving written communications; and
  - (2) equipment that allows access to the internet or other electronic-transmission or data communications systems designated by Distributor from time to time.
- b. Subscribe, at Dealer's expense, at the Marketing Premises to a voicemail system for transmitting and receiving telephone communications.

- c. Make other reasonable expenditures or investments to update equipment, technology and communications systems at the Marketing Premises, including without limitation, the addition, replacement or updating of point of purchase equipment, pump dispensing technology, credit and cash processing equipment and software.

## **20. Retail Credit and Debit System**

The Dealer acknowledges receipt of an imprinter, computer equipment and electronic transmission facilities to be used by the Dealer exclusively in the Dealer Business, and for no other purpose, as the retail credit and debit system presently prescribed by Imperial. The Dealer shall be entitled to use such equipment and facilities and certain maintenance and support services; provided that the Dealer pays for all costs associated therewith, including complying with all requirements of such retail credit and debit system and regular maintenance and replacement in the event of loss or damage, and the Dealer complies with all guidelines therefor. The Dealer will pay a flat monthly fee for transmission and maintenance and repair of equipment, currently set at Seventy Five (\$75.00) Dollars.

The Dealer shall pay to Distributor the following fee(s), which Distributor may amend, in its sole discretion and from time to time, upon sixty (60) days' prior written notice to the Dealer:

**Passport data transmission fee: \$0.00/month.**

**eN-Touch fee: 0 unit(s) at \$0.00/month.**

**Manual Imprinter: 1 at \$0.00/month.**

**VSAT Satellite: 1 unit(s) at \$0.00/month**

**Speedpass "inside pay" pad: 1 unit(s) at \$0.00/month**

The Dealer shall implement and utilize the retail credit and debit system(s) designated by Distributor, in its sole discretion and from time to time, to be used by its dealers and the Dealer further shall comply with all the terms, conditions and regulations relating thereto. The Dealer shall pay all commissions and charges required to be paid by the Dealer to the proprietors and operators of such system(s).

## **21. Termination**

- a. Where the end of the term of this Agreement set out in Section 3 is later than the end of the term of the Esso Branded Distributor Agreement that is in effect between the Distributor and Imperial Oil at the beginning of this Agreement, or where the said Esso Branded Distributor Agreement is terminated before the end of the term of this Agreement, then this Agreement shall automatically terminate immediately upon the end of the term or the expiry, as the case may be, of the said Esso Branded Distributor Agreement, unless:
  - (1) the said Esso Branded Distributor Agreement is extended, renewed or replaced; and
  - (2) Imperial Oil gives approval to the Distributor that the Marketing Premises are approved as an Esso location.
- b. Distributor, in its sole discretion, shall have the right to terminate this Agreement between Dealer and Distributor immediately and without notice and demand immediate payment of all monies due it as follows:

- (1) In accordance with the applicable provisions of this Agreement; or
- (2) Bankruptcy proceedings are instituted by or against Dealer; control of Dealer's business or assets pass by law or otherwise to any person or representative other than Dealer; or
- (3) Dealer is in breach of a provision under this Agreement; or
- (4) Dealer fails to timely pay obligations due Distributor under this Agreement; or
- (5) Dealer is in default of any Third Party Credit Card Agreement entered into between the parties in connection with this Agreement, or in the event the Third Party terminates the Dealers use of the Third Party's credit card processing facilities for any reason whatsoever; or
- (6) Any intended indemnity, guarantee, or suretyship in connection with this Agreement is revoked or curtailed; or
- (7) If any motor fuel, other than the Esso-Branded motor fuels are kept, sold or otherwise dealt with on or from the Marketing Premises; or
- (8) If the Dealer fails to sell the Esso-branded motor fuels strictly in accordance with the grades and kinds designated in the Manual; or
- (9) The Dealer sells any Esso-branded motor fuel: (i) in bulk, (ii) to any person for resale, or (iii) to any person not using a government approved container; or
- (10) If the Dealer ceases to carry on the Dealer's business on or from the Marketing Premises; or
- (11) If the Dealer or any of the Guarantors makes or is deemed to have made a general assignment for the benefit of its creditors under the Bankruptcy and Insolvency Act (the "Act"), or if a petition is filed against the Dealer or any of the Guarantors under the Act, or if the Dealer or any of the Guarantors shall be declared or adjudicated bankrupt, or if an application is made in respect of the Dealer or any of the Guarantors under the Companies' Creditors Arrangement Act, or if a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager, moderator or any other officer with similar powers shall be appointed for the Dealer or any of the Guarantors, or if the Dealer or any of the Guarantors shall commit any act of bankruptcy or institute proceedings to be adjudged bankrupt or insolvent or consents to the institution of such appointment or proceedings, or if the Dealer or any of the Guarantors admits in writing the inability to pay its debts generally as they become due or becomes an "insolvent person" as that term is defined in the Act; or
- (12) If the Dealer or any of the Guarantors shall at any time have any of the goods and chattels of the Dealer's business seized or taken in execution or in attachment by a creditor of the Dealer, or a writ of execution shall issue against such goods and chattels or if the Dealer shall without the prior written consent of Distributor sell any of such goods or chattels except in the normal course of business, such that the foregoing materially impairs the operation of the Dealer's business; or

- (13) If the Dealer fails to operate the Dealer's business for seventy-two (72) consecutive hours during which time it was not prevented from doing so by fire, flood, labour disturbance or any other cause beyond its control; or
  - (14) If the Dealer or any of the Guarantors is convicted of or pleads guilty to any criminal offense, whether or not related to the Dealer Business; or
  - (15) If the Dealer fails to maintain adequate inventory of the Motor Fuels at the Marketing Premises to meet the needs of its retail customers; or
  - (16) The Dealer or any of the Guarantors attempts to abandon the Marketing Premises or to sell or dispose of its goods or chattels otherwise than in the ordinary course of its business; or
  - (17) If the Dealer (i) is a corporation and a principal shareholder of the Dealer dies or becomes incapacitated or (ii) is a person other than a corporation and the Dealer, a Guarantor or a principal interest holder of the Dealer dies or becomes incapacitated; or
  - (18) If any applicable law now or hereafter in effect renders any provision of this Agreement unenforceable or unlawful.
- c. Upon the expiration or earlier termination of this Agreement for any reason, the Dealer shall immediately:
- (1) cease all use of the Proprietary Marks;
  - (2) pay to Distributor or any person, firm or corporation affiliated or associated with Distributor, all amounts and charges as have or will thereafter become due hereunder or under any other agreement between the Dealer and Distributor or any person, firm or corporation affiliated or associated with Distributor, and are then unpaid;
  - (3) return to Distributor all copies of the Manual then in the possession of the Dealer;
  - (4) notify the telephone company and all listing agencies of the expiration or earlier termination of the Dealer's right to use the Proprietary Marks and terminate all such listings using the Proprietary Marks;
  - (5) surrender the Equipment to Distributor; and
  - (6) at the request of Distributor, take all such action as may be necessary to cancel any trade or business name registration which contains any part of the Proprietary Marks under any applicable law and furnish Imperial with evidence satisfactory to it of compliance with the Dealer's obligation hereunder within thirty (30) days after the expiration or earlier termination of this Agreement.

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

## 22. Claims

- a. Neither Distributor nor Imperial Oil is liable to Dealer for shortages in quantity or quality unless Dealer notifies Distributor within 48 hours after delivery (or discovery in the case of latent defect for quality deficiencies) in writing setting forth fully the facts upon which any such claim for shortage in quantity or defect in quality is made and unless Distributor and/or Imperial Oil are given a reasonable opportunity to inspect the Motor fuels concerning which any such claim is being made. Distributor's and/or Imperial Oil's liability with respect to any shortage in quantity shall be limited to an amount equal to the volume of any shortage multiplied by the Dealer's cost of motor fuel including delivery and taxes in effect for the delivery in question. Distributor and/or Imperial Oil's liability with respect to any defect in quality shall be limited to the cost of removing the defective motor fuels from the Marketing Premises at its own expense and replacing them without charge to the Dealer. Distributor and/or Imperial Oil shall not be liable for any special, indirect, or consequential damages to the Dealer for any shortage in quantity or defect in quality. All other claims by Dealer against Distributor or Imperial Oil including their affiliates and subsidiaries of any kind, whether or not arising out of this Agreement, are barred unless Dealer gives Distributor and/or Imperial Oil, as the case may be, notice within ninety (90) days after the event, act or omission to which the claim relates. Whether or not Dealer provides timely notice of a claim, any claim by Dealer is barred unless asserted by the commencement of a lawsuit naming Distributor and/or Imperial Oil as defendant in a court of competent jurisdiction within twelve (12) months after the event, act or omission to which the claim relates.
- b. Dealer recognizes that, at any time during the term of this Agreement, any of the grades or brands of motor fuels sold hereunder or any of the Proprietary Marks may be changed, altered, amended or eliminated. Dealer also recognizes that, at any time during the term of this Agreement, the quality or specification of any of the motor fuels sold hereunder may be changed or altered. If any such change or alteration materially affects the performance of such motor fuels or the needs of Dealer therefor for the purposes intended by Dealer, Dealer may terminate this Agreement as to any such motor fuels so affected on thirty (30) days' prior written notice to Distributor. However, Dealer may not terminate this Agreement for any change in quality or specification of any said motor fuels resulting from compliance with federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or permits. In the event that the manufacture of certain of the Esso-branded motor fuels sold hereunder is discontinued, Distributor shall notify Dealer of such an event and this Agreement shall terminate as to such motor fuels when such notice is effective.

## 23. Entire Agreement; Modifications

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

## 24. Miscellaneous

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective assigns. Any assignment of this Agreement by Dealer without Distributor's written consent shall be void. Distributor's right to require strict performance shall not be affected by any previous waiver or course of

dealing. Neither this Agreement nor any modification or waiver shall be binding on Distributor unless in writing signed by an authorized representative. Past performance shall not be deemed a waiver of this requirement.

The Dealer may not assign the Agreement or part with any interest in it, unless the Dealer obtains Parkland's consent, which will not be unreasonably withheld or delayed. If Parkland consents, the Dealer must pay Parkland an administrative fee not to exceed Five Thousand (\$5000.00) Dollars.

If required by Parkland the Dealer will provide a security deposit not to exceed Twenty Five Thousand (\$25,000.00) Dollars.

## **25. Guarantee**

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

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

may be, cease to be involved, directly or indirectly in the Dealer Business or in the Dealer.

## **26. Notices**

Any notice to be given hereunder:

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

**5101, 333 – 96 Avenue NE  
CALGARY, Alberta  
T3K 0S3  
Attention: Legal Services Department  
Facsimile No.: (403) 567-2599**

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

## **27. Quality Assurance**

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

## **28. Right of Entry**

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

## **29. Survival**

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

## **30. Withholding Payments**

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



any amounts due to Distributor or any person affiliated with Distributor.

### **31. Further Assurances**

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

### **32. Governing Law**

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

### **33. Severability**

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

### **34. No Waiver**

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

### **35. Compliance with Law; Workers Compensation; Environmental**

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

### **36. No Special or Consequential Damages**

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

**37. Independent Legal Advice**

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

**EXECUTED** as of the date first herein specified.

**PARKLAND INDUSTRIES LTD.**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

**Peter Kilty**  
Vice President, Retail

**2011263 ONTARIO INC.**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

*K. Berh*

Witness

*K. Berh*

Witness

*K. Berh*

Witness

*Balbir Singh Dhaliwal*

**BALBIR SINGH DHALIWAL, Guarantor**

*Lakhvir S. Dhaliwal*

**LAKHVIR S. DHALIWAL, Guarantor**

*Manmohan S. Grewal*

**MANMOHN S. GREWAL, Guarantor**

**SCHEDULE "A"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Industries Ltd. and 2011263 Ontario Inc.

**PAYOR'S AUTHORIZATION FOR PRE-AUTHORIZED DEBITS**  
(Business Purposes)

1. The Payor hereby certifies the accuracy of the following information:

Name: \_\_\_\_\_ (the "Payor")  
 Address: \_\_\_\_\_  
 Town: \_\_\_\_\_  
 Province: \_\_\_\_\_  
 Postal Code: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_  
 Account: \_\_\_\_\_ (the "Account")  
 Name of Payor's \_\_\_\_\_  
 Financial Institution: \_\_\_\_\_ (the "Processing Institution")

2. Attached to this Authorization is a specimen cheque of the Payor marked 'VOID'.
3. The Payor will notify Parkland (the "Payee"), in writing, of any change in the information provided in Sections 1 and 2 of this Authorization thirty (30) days prior to the effective date of any such change.
4. The Payor hereby authorizes the Payee to draw on the Account with the Processing Institution (each a pre-authorized debit or ("PAD")) to facilitate the payment of any and all such monies owing by the Payor to the Payee, including without limitation any monies owing pursuant to the Motor Fuel Supply Agreement - Esso-Branded Motor Fuels among the Payee, the Payor and others.
5. The Payor represents and warrants that all persons whose signatures are required to authorize withdrawals from the Account have signed this Authorization and that all persons signing this Authorization are the authorized signatories and are duly authorized to execute this Authorization.
6. This Authorization may be cancelled by the Payor at any time upon written notice to the Payee.
7. The Payor acknowledges that executing and delivering this Authorization to the Payee constitutes delivery by the Payor to the Processing Institution.
8. The Payor and the Payee each hereby waive any and all PAD pre-notification requirements otherwise required by Rule H1 of the Canadian Payments Association ACSS Rules Manual.
9. The Payee may issue PADs in a dollar amount up to a maximum of \$ \_\_\_\_\_ per day.
10. The Payor acknowledges that the Processing Institution is not required as a condition to honouring a PAD issued to verify that a PAD has been issued in accordance with the particulars of the Authorization, including without limitation the amount of the PAD and that the consideration for the payment for which the PAD was issued has been received by the Payee.
11. The revocation of this Authorization by the Payee does not terminate any contract for goods or services that exists between the Payee and the Payor. This Authorization applies only to the method of payment and does not otherwise have any bearing on the contract for goods or services exchanged.

12. The Payor may dispute a PAD only under the following conditions:

- (1) the PAD was not drawn in accordance with this Authorization; or
- (2) this Authorization was revoked.

The Payor acknowledges that in order to be reimbursed, a declaration to the effect that one of foregoing circumstances occurred, must be completed and presented to the branch of the Processing Institution holding the Account up to and including 10 business days after the date on which the PAD in dispute was posted to the Account.

13. The Payee shall provide to the Payor notice and particulars of each PAD within 10 days following the date the Payee issues the PAD.

14. The Payor acknowledges that when disputing any PAD beyond the time allowed in this section it is a matter to be resolved solely between the Payor and the Payee, outside the payments system.

15. The Payor acknowledges that the information contained in the Authorization may be disclosed to the Payee's financial institution(s) as may be required or desirable to complete any PAD transaction.

16. The Payor understands and accepts the terms of participating in a PAD plan.

## **SCHEDULE "B"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Industries Ltd. and 2011263 Ontario Inc.

### **OPERATING STANDARDS**

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

#### **Operating Procedures**

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

#### **Safety**

The Dealer's employees must:

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

#### **Security/Robbery Prevention**

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

#### **Critical Equipment**

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

#### **Emergency Response**

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

**Workplace Hazardous Materials Information System ("WHMIS")**

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

**Waste Management**

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

**Licences and Permits**

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

**Incident Definition and Reporting**

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

**Training**

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

**Credit Card**

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

**Esso Extra Card**

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

**Record Retention**

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

**SCHEDULE "C"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Industries Ltd. and 2011263 Ontario Inc.

**FACILITY REQUIREMENTS**

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



	Operating retail automation system compatible with Imperial's card processing network		X	X
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\*\*\*Subject to MID sign permit availability

### Definitions

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

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

**SCHEDULE "D"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Industries Ltd. and 2011263 Ontario Inc.

**EQUIPMENT**

The following is a list of the Equipment:

<b>Sign Type</b>	<b>Quantity</b>
<b>MID Inserts (1 per side)</b>	<b>4 inserts</b>
<b>Canopy Inserts &amp; boxes (1 per side)</b>	<b>4 sides</b>
<b>Price Panel</b>	<b>1</b>
<b>VSAT</b>	<b>1</b>
<b>Speedpass Pad</b>	<b>1</b>
<b>Manual Imprinter</b>	<b>1</b>
<b>G-site/Passport POS device</b>	<b>Passport</b>
<b>Hurricane Sign Frame</b>	<b>1</b>
<b>Pump topper sign frames</b>	<b>5</b>
<b>Widshield/waste combo unit</b>	<b>4</b>
<b>Column cladding</b>	<b>4 uprights</b>

## **SCHEDULE "E"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between Parkland Industries Ltd. and 2011263 Ontario Inc.

### **CUSTOMER LOYALTY OBLIGATIONS**

#### **1. Participation**

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

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

#### **2. Electronic Reward Redemption Remuneration**

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

#### **3. Promotional Program Fee**

If applicable law permits, the Dealer shall pay Distributor a promotional program fee (the "Program Fee"), plus applicable taxes (other than income taxes). The Program Fee payable by Dealer to Distributor

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

The Fee Points are the total of:

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

For greater certainty, the Fee Points excludes:

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

The Fee Rate is defined as:

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

**TO: PARKLAND INDUSTRIES LTD.**

**RE: Guarantee of Corporate Indebtedness**

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

**GIVEN** under hand and seal at 14188 138 Ave, in the Province of Ontario this MARCH  
day of 11, 2015.

  
Signature of Witness

  
BALBIR SINGH DHALIWAL

**AFFIDAVIT OF EXECUTION**

**CANADA** ) I, KEVIN BERKES,  
 )  
**PROVINCE OF ONTARIO** ) of HAMILTON, in the Province of Ontario,  
 )  
**TO WIT** ) **MAKE OATH AND SAY:**

1. **THAT** I was personally present and did see **Balbir Singh Dhaliwal** named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes therein.

2. **THAT** the same was executed at MISSISSAUGA, in the Province of Ontario and that I am the subscribing witness thereto.

3. **THAT** I know the said **Balbir Singh Dhaliwal** and he/she is in my belief of the full age of 18 years.

**SWORN BEFORE ME** at the City  
 of HAMILTON, in the Province  
 of Ontario, this 1 day  
 of April, A.D. 2015.

Norman S. Watson  
**A COMMISSIONER FOR OATHS** in  
 and for the Province of Ontario

My Commission expires N/A  
NOTARY PUBLIC

K. Berkes  
**Signature of Witness**  
 Name: KEVIN BERKES  
 Address: 1190 HYPER OTTAWA ST  
HAMILTON ONTARIO

Norman Watson  
 Legal Professional Corporation  
 983 King Street West  
 Hamilton, ON L8S 1K9

**GUARANTEE**

**TO: PARKLAND INDUSTRIES LTD.**  
236, 4919 – 59 Street  
RED DEER, Alberta, T4N 6C9  
(hereinafter called "Parkland")

**RE: Guarantee of Corporate Indebtedness**

The undersigned (hereinafter called the "Guarantor") being a principal of **2011263 Ontario Inc.**, (hereinafter called the "Corporation") in consideration of Parkland granting or extending credit (the "Indebtedness") to the Corporation arising from any dealings between Parkland and the Corporation, present or future, direct or indirect, including but not limited to the purchase of petroleum products, including all accessories related thereto, do hereby for myself, my heirs, executors, administrators (and where there are more than one undersigned Guarantor, jointly and severally) unconditionally guarantee the payment when due of all Indebtedness, interest and penalties thereon, if applicable, owing to Parkland by the Corporation from time to time and unconditionally guarantee the performance of all obligations of the Corporation to Parkland. Parkland shall have the right at any time to take and release any collateral or other securities, to extend the time for payment by the Corporation or any person liable upon any collateral or other securities, to compromise or compound with the Corporation or to release the Corporation without notice to the Guarantor and without the Guarantor's consent and without discharging or effecting the liability of the Guarantor to Parkland.

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

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

GIVEN under hand and seal at MISSISSAUGA, in the Province of Ontario this 31<sup>ST</sup> day of MAR, 2015.

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
MANMOHAN S. GREWAL

**AFFIDAVIT OF EXECUTION**

**CANADA** ) I, KEVIN BERKES  
 )  
**PROVINCE OF ONTAIRO** ) of HAMILTON, in the Province of Ontario,  
 )  
**TO WIT** ) **MAKE OATH AND SAY:**

1. **THAT** I was personally present and did see **Manmohan S. Grewal** named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes therein.

2. **THAT** the same was executed at MISSISSAUGA, in the Province of Ontario and that I am the subscribing witness thereto.

3. **THAT** I know the said **Manmohan S. Grewal** and he/she is in my belief of the full age of 18 years.

**SWORN BEFORE ME** at the City  
 of HAMILTON, in the Province  
 of Ontario, this 1 day  
 of April, A.D. 2015.

Norman S. Watson

**A COMMISSIONER FOR OATHS** in  
 and for the Province of Ontario

My Commission expires NOV 12/16

NOTARY PUBLIC

K. Berkes

**Signature of Witness**

Name: KEVIN BERKES

Address: 1190 UPPER OTTAWA ST  
HAMILTON, ONTARIO

Norman Watson  
 Legal Professional Corporation  
 983 King Street West  
 Hamilton, ON L8S 1K9



**GUARANTEE****TO: PARKLAND INDUSTRIES LTD.**

236, 4919 – 59 Street  
RED DEER, Alberta, T4N 6C9  
(hereinafter called "Parkland")

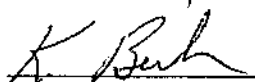
**RE: Guarantee of Corporate Indebtedness**

The undersigned (hereinafter called the "Guarantor") being a principal of **2011263 Ontario Inc.**, (hereinafter called the "Corporation") in consideration of Parkland granting or extending credit (the "Indebtedness") to the Corporation arising from any dealings between Parkland and the Corporation, present or future, direct or indirect, including but not limited to the purchase of petroleum products, including all accessories related thereto, do hereby for myself, my heirs, executors, administrators (and where there are more than one undersigned Guarantor, jointly and severally) unconditionally guarantee the payment when due of all Indebtedness, interest and penalties thereon, if applicable, owing to Parkland by the Corporation from time to time and unconditionally guarantee the performance of all obligations of the Corporation to Parkland. Parkland shall have the right at any time to take and release any collateral or other securities, to extend the time for payment by the Corporation or any person liable upon any collateral or other securities, to compromise or compound with the Corporation or to release the Corporation without notice to the Guarantor and without the Guarantor's consent and without discharging or effecting the liability of the Guarantor to Parkland.

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

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

**GIVEN** under hand and seal at MISSISSAUGA, in the Province of Ontario this \_\_\_\_\_ day of 11 MARCH, 2015.

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
**LAKHVIR S. DHALIWAL**

**AFFIDAVIT OF EXECUTION**

**CANADA** ) I, KEVIN BERKES  
 )  
**PROVINCE OF ONTAIRO** ) of HAMILTON, in the Province of Ontario,  
 )  
**TO WIT** ) **MAKE OATH AND SAY:**

1. **THAT** I was personally present and did see **Lakhvir S. Dhaliwal** named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes therein.

2. **THAT** the same was executed at MISSISSAUGA, in the Province of Ontario and that I am the subscribing witness thereto.

3. **THAT** I know the said **Lakhvir S. Dhaliwal** and he/she is in my belief of the full age of 18 years.

**SWORN BEFORE ME** at the City  
 of Hamilton, in the Province  
 of Ontario, this 1 day  
 of April, A.D. 2015.

Norman S. Watson  
**A COMMISSIONER FOR OATHS** in  
 and for the Province of Ontario  
 My Commission expires No Life

NOTARY PUBLIC

K. Berkes  
**Signature of Witness**  
 Name: KEVIN BERKES  
 Address: 1190 Upper Ottawa St.  
HAMILTON, ONTARIO

Norman Watson  
 Legal Professional Corporation  
 983 King Street West  
 Hamilton, ON L8S 1K9

### ADDENDUM

THIS ADDENDUM IS ATTACHED TO AND FORMS PART OF THE ESSO-BRANDED MOTOR FUEL SUPPLY AGREEMENT DATED EFFECTIVE MAY 1, 2015 AND MADE BETWEEN PARKLAND INDUSTRIES LTD., AS DISTRIBUTOR, AND 2011263 ONTARIO INC., AS DEALER AND BALBIR S. DHALIWAL, LAKHVIR S. DHALIWAL AND MANMOHN S. GREWAK, AS GUARANTORS.

### FORGIVABLE LOAN

1. At the request of the Dealer, the Distributor will provide a forgivable loan up to a maximum of **Fifty Three Thousand (\$53,000.00) DOLLARS** to be used towards site improvements at the Marketing Premises. Such site improvements may include, but are not limited to, the purchase of new petroleum fuel equipment.

2. The said sum of **\$53,000.00** will be earned by the Dealer in the following manner: every time a delivery of Esso Branded motor fuels is made by the Distributor to the Dealer at the time of payment by the Dealer for such delivery, the Distributor will forgive an amount equal to **\$0.0030** per litre for every litre of Esso Branded motor fuels delivered by the Distributor to the Dealer, subject to the following: if the Dealer discontinues the business of a retail petroleum fuels outlet at the Marketing Premises, or if said Esso-Branded Motor Fuels Supply Agreement is terminated or cancelled or expires at any time prior to its having been in full force and effect for a time sufficient for the Dealer to earn the said sum then the Dealer hereby promises to repay, on demand, to the Distributor that portion of the said sum of ~~\$58,000.00~~ <sup>53,000</sup> that has not been earned by the Dealer.

3. Prior to any advancement of funds:

- (a) The Dealer will execute and deliver the Esso-Branded Motor Fuel Supply Agreement and this Addendum to the Distributor;
- (b) The Dealer will cause to be delivered to the Distributor sufficient security in the form of:
  - (i) a Firm Irrevocable Letter of Credit (in form and content acceptable to the Distributor) issued by a recognized financial institution in the sum of ~~\$58,000~~ <sup>53,000</sup> or
  - (ii) a Collateral Mortgage in the principal amount of ~~\$58,000~~ <sup>53,000</sup> granted by the Borrower in favour of the Lender, on the Marketing Premises;
- (c) The Dealer will provide the Distributor with the paid invoices of approved site improvements;

INTENTIONALLY LEFT BLANK

- (d) There is no event of default under this Agreement; and
- (e) There is, in the opinion of the Distributor, acting reasonably, no material adverse change in risk.

**PARKLAND INDUSTRIES LTD.**

PER: 

PER: 

**Peter Kilty**  
Vice President, Retail

**2011263 ONTARIO INC.**

PER: 

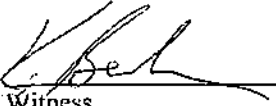
PER:  

  
Witness

  
Guarantor, **BALBIR SINGH DHALI WAL**

  
Witness

  
Guarantor, **LAKHVIR S. DHALI WAL**

  
Witness

  
Guarantor, **MANMOHAN S. GREWAL**

BANK OF MONTREAL

and

8331707 CANADA INC.

Applicant

Respondent

Court File No:

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF EUGENE CHOW  
(SWORN DECEMBER 10, 2020)**

**MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON CANADA N6A 5R8**

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Bank of Montreal

## TAB 4

Court File No.:

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

BETWEEN:

**BANK OF MONTREAL****Applicant**

- and -

**8331707 CANADA INC.****Respondent**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. c-43, as amended

**CONSENT**

msi Spergel Inc. hereby consents to act as Receiver of the respondent pursuant to  
the Application of Bank of Montreal.

DATED at Toronto, Ontario this 9<sup>th</sup> day of December, 2020.

**MSI SPERGEL INC.**

Per:



---

Deborah Hornbostel, Partner  
CPA, CA, CIRP, CFE, LIT

BANK OF MONTREAL

and

8331707 CANADA INC.

Applicant

Respondent

Court File No:

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

Proceeding commenced at TORONTO

**CONSENT**

**MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON CANADA N6A 5R8**

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Bank of Montreal



BANK OF MONTREAL                      and                      8331707 CANADA INC.  
Applicant                      Respondent

Court File No:

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

Proceeding commenced at TORONTO

**APPLICATION RECORD  
(RETURNABLE JANUARY 11, 2021)**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Bank of Montreal