

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

SMART SUPER MART LTD.

Respondent

**MOTION RECORD**  
**(Receiver's Motion for Approval and Vesting Order  
and Approval, Distribution and Discharge Order)**

December 22, 2025

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, ON L8P 4Z5

Tel: 905-528-8208

**Bart Sarsh (LSO 59208N)**

Tel: 905-540-3242

Email: [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver msi Spergel Inc.

**TO: THE SERVICE LIST**

## SERVICE LIST

<p><b>HARRISON PENSA LLP</b> 130 Dufferin Avenue, Suite 1101 London, ON N6A 5R2</p> <p><b>Timothy C. Hogan (LSO #36553S)</b> Tel: 519-679-9660 Fax: 519-667-3362 Email: <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a></p> <p>Lawyers for the Applicant, Royal Bank of Canada</p>	<p><b>CAPSTONE LEGAL</b> 1370 Hurontario Street Mississauga, ON L5G 3H4</p> <p><b>Pavninder S. Athwal (LSO #91514C)</b> Tel: 416-414-3311 Email: <a href="mailto:pn@capstonelegal.ca">pn@capstonelegal.ca</a></p> <p>Lawyers for the Respondent, Smart Super Mart Ltd.</p>
<p><b>GOWLING WLG (CANADA) LLP</b> 1 Main Street West Hamilton, ON L8P 4Z5</p> <p>Tel: 905-540-8208</p> <p><b>Bart Sarsh (LSO No. 59208N)</b> Tel: 905-540-3242 Email: <a href="mailto:bart.sarsh@gowlingwlg.com">bart.sarsh@gowlingwlg.com</a></p> <p><b>Rachel Moses (LSO 42081V)</b> Tel: 416-862-3630 Email: <a href="mailto:rachel.moses@gowlingwlg.com">rachel.moses@gowlingwlg.com</a></p> <p>Lawyers for Receiver, msi Spergel Inc.</p>	<p><b>MSI SPERGEL INC.</b> 505 Consumers Road, Suite 200 Toronto, ON M2J 4V8</p> <p><b>Mukul Manchanda</b> Tel: 416-498-4314 Email: <a href="mailto:mmanchanda@spergel.ca">mmanchanda@spergel.ca</a></p> <p><b>Philip Gennis</b> Tel: 416-498-4325 Email: <a href="mailto:pgennis@spergel.ca">pgennis@spergel.ca</a></p> <p>Receiver</p>
<p><b>RAVINDER SINGH CHOHAN and SHAINA RATHORE</b> 213 Edenbrook Hill Drive Brampton, ON L7A 2V4</p> <p>Email: <a href="mailto:rickchohan72@gmail.com">rickchohan72@gmail.com</a></p> <p>Guarantors</p>	<p><b>SATVINDER KAUR CHAHUAN and BALJINDER CHAHUAN</b> 36 Parity Road Brampton, ON L6X 5M5</p> <p>Email: <a href="mailto:smartsupermartltd@gmail.com">smartsupermartltd@gmail.com</a></p> <p>Guarantors</p>
<p><b>NISSAN CANADA INC.</b> 5290 Orbitor Drive Mississauga, ON L4W 4Z5</p> <p>Secured Creditor</p>	<p><b>CITY OF ST. CATHARINES Tax Department</b> 50 Church Street P.O. Box 3012 St. Catharines, ON L2R 7C2</p> <p>Tel: 905-688-5600 Email: <a href="mailto:taxes@stcatharines.ca">taxes@stcatharines.ca</a></p>

<b>CITY OF ST. CATHARINES By-Law Enforcement</b> 50 Church Street P.O. Box 3012 St. Catharines, ON L2R 7C2  Tel: 905-708-0852 Email: <a href="mailto:tdressel@st.catharines.ca">tdressel@st.catharines.ca</a>	<b>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA</b> 151 Yonge Street, 4 <sup>th</sup> Floor Toronto, ON M5C 2W7  Email: <a href="mailto:osbservice-bsfservice@ised-isde.gc.ca">osbservice-bsfservice@ised-isde.gc.ca</a>
<b>CANADA REVENUE AGENCY</b> c/o Department of Justice Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  Email: <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a>	<b>HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE</b> Revenue Collections Branch – Insolvency Unit 33 King Street West, P.O. Box 627 Oshawa, ON L1H 8H5  Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>
<b>AAK LAW OFFICE</b> 116-2550 Argentia Road Mississauga, ON L5N 5R1  <b>Aneel Ahmad Kamran (LSO 71589S)</b> Tel: 647-704-2010 Email: <a href="mailto:info@aaklawoffice.com">info@aaklawoffice.com</a>  Lawyers for Purchaser, Ahmed Petroleum Services Inc.	<b>MCDUGALL ENERGY INC.</b> Station Tower, 421 Bay Street, Suite 301 Sault Ste. Marie, ON P6A 1X3  <b>Daniel Shunock (LSO 76064R)</b> Corporate Counsel Tel: 705-971-7887 Email: <a href="mailto:danielshunock@mcdougallenergy.com">danielshunock@mcdougallenergy.com</a>  Fuel Supplier

### EMAIL SERVICE LIST

[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com); [pn@capstonelegal.ca](mailto:pn@capstonelegal.ca); [bart.sarsh@gowlingwlq.com](mailto:bart.sarsh@gowlingwlq.com);  
[rachel.moses@gowlingwlq.com](mailto:rachel.moses@gowlingwlq.com); [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca); [pgennis@spergel.ca](mailto:pgennis@spergel.ca);  
[rickchohan72@gmail.com](mailto:rickchohan72@gmail.com); [smartsupermartltd@gmail.com](mailto:smartsupermartltd@gmail.com); [taxes@stcatharines.ca](mailto:taxes@stcatharines.ca);  
[tdressel@st.catharines.ca](mailto:tdressel@st.catharines.ca); [osbservice-bsfservice@ised-isde.gc.ca](mailto:osbservice-bsfservice@ised-isde.gc.ca);  
[AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca);  
[info@aaklawoffice.com](mailto:info@aaklawoffice.com); [danielshunock@mcdougallenergy.com](mailto:danielshunock@mcdougallenergy.com)

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# TAB 1

**ONTARIO  
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and

SMART SUPER MART LTD.

Respondent

**NOTICE OF MOTION**

msi Spergel Inc. (“**Spergel**”) in its capacity as a court-appointed receiver (in such capacity, the “**Receiver**”) of the Respondent, Smart Super Mart Ltd. (“**Smart Super Mart**” or the “**Debtor**”), will make a motion to the court on **Thursday, January 15, 2026 at 10:00 a.m.**, or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard *(choose appropriate option)*

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

at the following location

Ontario Superior Court of Justice, 45 Main Street East, Ontario, L8N 2B7

Video conference details to be provided by the court

**THE MOTION IS FOR** *(state here the precise relief sought).*

- (a) An order, if necessary, abridging the time for service, filing and confirmation of this the Motion Record and this motion in the manner effected by the Receiver, or, if necessary, an Order dispensing with any further or other service or any other person besides those already served on the Service List, and declaring that this motion is properly returnable on the set day and time;
- (b) An order approving the First Report to the Court of the Receiver dated December 19, 2025 (the “**First Report**”), and the activities and conduct of the Receiver set out in the First Report provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report;
- (c) An order approving the Receiver’s Interim Statement of Receipts and Disbursements as at November 30, 2025;
- (d) An order approving an agreement of purchase and sale between the Receiver, as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name of the purchaser to Ahmed Petroleum Services Inc. (“**Ahmed**” or the “**Purchaser**”) and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);
- (e) An order vesting in the Purchaser all of Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Ahmed Agreement of Purchase and Sale



**“Ahmed APS”**) free and clear of any claims and encumbrances (other than the permitted encumbrances identified in the Ahmed APS);

- (f) An order that the Receiver and its affiliates, partners, directors, employees, advisers, agents, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the sales process, the Transaction and the Ahmed APS, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or willful misconduct of the Receiver, as determined by this Court;
- (g) An order sealing the Confidential Appendices to the First Report until the completion of the Transaction, or until a further order of this Court;
- (h) An order approving the Receiver’s request to disclaim the Fuel Supply Agreement entered into between the Debtor and McDougall Energy Inc. dated June 21, 2020 (the **“McDougall Agreement”**);
- (i) An order approving the fees and disbursements of the Receiver and its counsel, Gowling WLG (Canada) LLP, and authorizing payment of such fees and disbursements;
- (j) An order approving the Fee Accrual (as defined below);
- (k) An order approving the Proposed Distribution (as defined below);
- (l) An order that effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership

of the Debtor have been completed to the satisfaction of the Receiver, Spergel is discharged as Receiver and granting certain ancillary relief in relation to such discharge;

- (m) An order for costs of this motion on a substantial indemnity basis, if opposed; and
- (n) Such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE** *(specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on).*

**The Appointment of the Receiver**

1. Pursuant to an Order of this Court made on January 30, 2025 (the “**Receivership Order**”), Spergel was appointed as Receiver, without security, of the assets, undertakings and properties of Smart Super Mart Ltd., including the real property described known municipally as 179-185 St. Paul Street West, St. Catharines, Ontario and legally described as PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372; CITY OF ST. CATHARINES (PIN 46179-0340 LT) (the “**Real Property**”). The Real Property consists of a formerly operating gas bar, convenience store and self-serve car wash bays, none of which have been operating for approximately one year.

## **The Receiver's Activities**

2. The Receiver's activities since its appointment have concentrated on, among other things:

- (a) generally managing the Real Property;
- (b) filed all required reports under the BIA;
- (c) communicated with the Canada Revenue Agency ("**CRA**");
- (d) arranged for liability insurance coverage for the Real Property;
- (e) arranged for regular site inspections of the Real Property as required by the insurer;
- (f) arranged for the registration of the Receivership Order on the title to the Real Property
- (g) arranged for two fair market value appraisals of the Real Property;
- (h) arranged for a Phase 2 environmental assessment of the Real Property;
- (i) opened a dedicated trust account for the receivership entity;
- (j) arranged for funding from the Bank;
- (k) requested and received sales and marketing proposals from two commercial real estate brokerages;
- (l) entered into an MLS listing agreement with Avison Young Commercial Real Estate Services LP, Brokerage (the "**Listing Broker**") and instructed the Listing Broker to commence a fulsome sales and marketing process; and
- (m) entered into an Agreement of Purchase and Sale for the Real Property, conditional only upon approval of this Honourable Court; and,
- (n) preparing the First Report.

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

### **The Sale Process**

4. Paragraph 4(j) of the Receivership Order authorizes the Receiver to market any or all the Property of the Debtor, including advertising and soliciting offers in respect of the Property of the Debtor, including the Real Property, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

5. Paragraph 4(k) of the Receivership Order authorizes the Receiver to sell the Property of the Debtor, subject to Court approval, having regard to the monetary limits set out in it.

6. Paragraph 4(l) of the Receivership Order authorizes the Receiver to apply for a vesting order, or other orders necessary to convey the Property, or any part or parts of it to a purchaser, or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.

7. The Receiver engaged the services of Antec Appraisal Group Inc. ("**Antec**") and Colliers International ("**Colliers**") to attend at and conduct full narrative appraisals of the Real Property. These appraisals were reviewed by the Receiver.

8. In addition, the Receiver requested and obtained sales and marketing proposals from Avison Young Commercial Real Estate Services LP, Brokerage ("**Avison**") and CBRE Real Estate Brokerage ("**CBRE**"), which were reviewed by the Receiver.

9. Following such review process, the Receiver entered into an MLS Listing Agreement with Avison, to market the Real Property, based on:

- (a) the commission structure as proposed by Avison, was reasonable compared to the other listing proposals; and
- (b) Avison had the skillset to garner optimum recovery.

10. Avison widely marketed the Real Property to obtain maximum interest. This included listing the Real Property on MLS and reaching out to over 4,800 contacts. This resulted in 32 interested parties executing Confidentiality Agreements, 27 people accessing the data room for the Real Property and a number of interested parties touring the Real Property.

### **Sale Agreement**

11. As a result of the marketing efforts, three offers were received. The Receiver accepted the offer submitted by Shakeel Ahmed (in trust for corporation to be formed) (the “**Ahmed APS**”) as being the best of the offers received.

12. The Ahmed APS is an “as-is, where-is” basis transaction, conditional upon the Purchaser being able to obtain an Approval and Vesting Order (the “**AVO**”) issued by the Court and the disclaimer of the McDougall Agreement.

13. The Receiver is of the view that the sales process was one that resulted in the best price in these circumstances, considered the interests of all parties, was a fair and public process and was conducted in a commercially reasonable manner.

14. The Receiver is of the view that the market was extensively canvassed pursuant to Avison's professional, and industry standard marketing efforts as detailed above and as provided for in the Avison sales and marketing proposal. Further, the Receiver is of the opinion that the efforts of Avison through the listing of the Real Property on MLS and Avison's internal and external network have provided sufficient exposure of the Real Property to the market.

15. It is the opinion of the Receiver that the terms and conditions contained within the Ahmed APS are commercially reasonable in all respects and that the purchase price in the Ahmed APS is at market value for the Real Property and is the best outcome to the receivership estate in the circumstances.

16. Royal Bank of Canada ("**RBC**") holds a first mortgage over the Real Property and has been consulted with respect to the Transaction and supports the completion of it as well as the relief sought by the Receiver on this motion.

17. The Receiver recommends that the Court approve the Transaction.

### **Sealing Order**

18. The Receiver is requesting that the Court seal the Confidential Appendices to the First Report.

19. The Confidential Appendices should be sealed as their contents contain commercially sensitive information related to the Real Property, the release of which prior to completion of the Transaction would be prejudicial to the stakeholders of the Debtor's estate.

20. Until such time as the Transaction is completed and the Real Property is sold, or until further order of this Court, the Receiver is of the view that the information and documentation contained in the Confidential Appendices should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained on the Confidential Appendices would have.

### **The McDougall Fuel Supply Agreement**

21. Until it closed, Smart Super Mart purchased its fuel from McDougall Energy Inc. ("**McDougall**") under the terms of the McDougall Agreement (as described above).

22. The McDougall Agreement contains a Right of First Refusal ("**ROFR**") in favour of McDougall. Following the signing of a Confidentiality Undertaking by McDougall, the Receiver provided McDougall with a copy of the Ahmed APS and all other Confidential Appendices for which approval is being sought by the Receiver accompanied by a request for confirmation as to whether McDougall intended to exercise its ROFR with respect to the Real Property and the business operation located on it. As of the date of the First Report, the Receiver has not received a response from McDougall as to its intention relative to the ROFR nor in regard to the Receiver's disclaiming of the McDougall Agreement.

23. The Listing Broker has advised the Receiver that the Purchaser has no intention of assuming the McDougall Agreement, intending to purchase fuel from other third-party providers.

24. It is a requirement for the completion of the Transaction with the Purchaser that the McDougall Agreement be disclaimed. The Receiver is aware of the

impact that a disclaimer will have on McDougall, the Ahmed APS represents the best offer in terms of price obtained through a sales process that widely canvassed the market, considered the interests of all parties, was a fair and public process, and was done in a commercially reasonable manner.

25. In not pursuing the disclaimer of the McDougall Agreement, the Receiver risks the termination of the Transaction since the Purchaser specifically bargained for the right to use its own fuel supplier in subparagraphs 4(e)(i) and (ii) of the Ahmed APS.

26. If the Transaction is terminated, then the deposit is likely returned to the Purchaser under paragraph 5 of the Ahmed APS and the Receiver must again restart a further marketing and sales process for the Property resulting in the same costs that were incurred in the first sales process and ongoing delay. There is no assurance that the Receiver will obtain an offer similar in price to the Ahmed APS.

### **Professional Fees and Disbursements**

27. The Receivership Order requires the Receiver and its legal counsel to pass its accounts from time to time.

28. The Receiver and its counsel have each properly incurred fees and disbursements as detailed in the First Report.

29. The Receiver estimates that the costs to complete the Transaction, if approved, and complete the administration of the estate should not exceed \$150,000 plus disbursements and HST and as such the Receiver seeks approval to hold back this sum pending completion of all matters and the Receiver's discharge (the "**Fee Accrual**").



**Receiver's Borrowing Charge and Proposed Distribution**

30. Paragraph 21 of the Receivership Order grants the Receiver the authorization to borrow monies, secured by the Receiver's Borrowing Charge, provided that the outstanding principal amount does not exceed \$150,000, or such greater amount as the Court may by further Order authorize.

31. The Receiver borrowed funds from the Bank in the amount of \$70,000 (the "**Receiver's Borrowings**") to fund its disbursements during the receivership.

32. The Receiver has concluded that the first mortgage held by RBC is a senior charge over the Real Property subject to the claims under the Receivership Order. As of June 17, 2024 the amount owing under the RBC mortgage was \$1,762,509.33 plus costs of enforcement, including legal and professional costs and accruing interest.

33. As of December 10, 2025, there was outstanding realty taxes on the Real Property in the amount of \$80,031.51. If the Transaction is approved and completed, the outstanding realty taxes will be paid from the sale proceeds.

34. The Receiver proposes to make a distribution (after payment of the fees of the Receiver and the Receiver's Counsel outlined in the First Report, including the Fee Accrual) as follows (the "**Proposed Distribution**"):

- (a) to RBC for repayment of the Receiver's Borrowing in the amount of \$70,000.00 plus interest in accordance with the Receiver's Borrowing Certificate;
- (b) to the Corporation of the City of St. Catharines for all property tax arrears;

- (c) the balance of any and all funds in the Debtor's estate to RBC on account of the Debtor's secured indebtedness to RBC.

**Discharge of the Receiver**

35. In the event the Order approving the sale of the Real Property is granted by the Court, the Receiver proposes to attend to the following matters:

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

36. Section 243 and 249 of the *Bankruptcy and Insolvency Act*.

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

38. Rules 1.04, 2, 3, 37, and 38 of the *Rules of Civil Procedure*.

39. Such further and other grounds contained in the First Report and as the Receiver's lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion: *(list the affidavits or other documentary evidence to be relied on)*.

- (a) The First Report dated December 19, 2025;
- (b) Such further and other evidence as the Receiver's lawyers may advise and this Honourable Court may permit.

December 22, 2025

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, ON L8P 4Z5

Tel: 905-540-8208

**Bart Sarsh (LSO No. 59208N)**

Tel: 905-540-3242

Email: [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver msi Spergel

**TO: THE SERVICE LIST**

## SERVICE LIST

<p><b>HARRISON PENZA LLP</b> 130 Dufferin Avenue, Suite 1101 London, ON N6A 5R2</p> <p><b>Timothy C. Hogan (LSO #36553S)</b> Tel: 519-679-9660 Fax: 519-667-3362 Email: <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a></p> <p>Lawyers for the Applicant, Royal Bank of Canada</p>	<p><b>CAPSTONE LEGAL</b> 1370 Hurontario Street Mississauga, ON L5G 3H4</p> <p><b>Pavninder S. Athwal (LSO #91514C)</b> Tel: 416-414-3311 Email: <a href="mailto:pn@capstonelegal.ca">pn@capstonelegal.ca</a></p> <p>Lawyers for the Respondent, Smart Super Mart Ltd.</p>
<p><b>GOWLING WLG (CANADA) LLP</b> 1 Main Street West Hamilton, ON L8P 4Z5</p> <p>Tel: 905-540-8208</p> <p><b>Bart Sarsh (LSO No. 59208N)</b> Tel: 905-540-3242 Email: <a href="mailto:bart.sarsh@gowlingwlg.com">bart.sarsh@gowlingwlg.com</a></p> <p><b>Rachel Moses (LSO 42081V)</b> Tel: 416-862-3630 Email: <a href="mailto:rachel.moses@gowlingwlg.com">rachel.moses@gowlingwlg.com</a></p> <p>Lawyers for Receiver, msi Spergel Inc.</p>	<p><b>MSI SPERGEL INC.</b> 505 Consumers Road, Suite 200 Toronto, ON M2J 4V8</p> <p><b>Mukul Manchanda</b> Tel: 416-498-4314 Email: <a href="mailto:mmanchanda@spergel.ca">mmanchanda@spergel.ca</a></p> <p><b>Philip Gennis</b> Tel: 416-498-4325 Email: <a href="mailto:pgennis@spergel.ca">pgennis@spergel.ca</a></p> <p>Receiver</p>
<p><b>RAVINDER SINGH CHOHAN and SHAINA RATHORE</b> 213 Edenbrook Hill Drive Brampton, ON L7A 2V4</p> <p>Email: <a href="mailto:rickchohan72@gmail.com">rickchohan72@gmail.com</a></p> <p>Guarantors</p>	<p><b>SATVINDER KAUR CHAHUAN and BALJINDER CHAHUAN</b> 36 Parity Road Brampton, ON L6X 5M5</p> <p>Email: <a href="mailto:smartsupermartltd@gmail.com">smartsupermartltd@gmail.com</a></p> <p>Guarantors</p>
<p><b>NISSAN CANADA INC.</b> 5290 Orbitor Drive Mississauga, ON L4W 4Z5</p> <p>Secured Creditor</p>	<p><b>CITY OF ST. CATHARINES</b> <b>Tax Department</b> 50 Church Street P.O. Box 3012 St. Catharines, ON L2R 7C2</p> <p>Tel: 905-688-5600 Email: <a href="mailto:taxes@stcatharines.ca">taxes@stcatharines.ca</a></p>

<b>CITY OF ST. CATHARINES By-Law Enforcement</b> 50 Church Street P.O. Box 3012 St. Catharines, ON L2R 7C2  Tel: 905-708-0852 Email: <a href="mailto:tdressel@st.catharines.ca">tdressel@st.catharines.ca</a>	<b>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA</b> 151 Yonge Street, 4 <sup>th</sup> Floor Toronto, ON M5C 2W7  Email: <a href="mailto:osbservice-bsfservice@ised-isde.gc.ca">osbservice-bsfservice@ised-isde.gc.ca</a>
<b>CANADA REVENUE AGENCY</b> c/o Department of Justice Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  Email: <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a>	<b>HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE</b> Revenue Collections Branch – Insolvency Unit 33 King Street West, P.O. Box 627 Oshawa, ON L1H 8H5  Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>
<b>AAK LAW OFFICE</b> 116-2550 Argentia Road Mississauga, ON L5N 5R1  <b>Aneel Ahmad Kamran (LSO 71589S)</b> Tel: 647-704-2010 Email: <a href="mailto:info@aaklawoffice.com">info@aaklawoffice.com</a>  Lawyers for Purchaser, Ahmed Petroleum Services Inc.	<b>MCDUGALL ENERGY INC.</b> Station Tower, 421 Bay Street, Suite 301 Sault Ste. Marie, ON P6A 1X3  <b>Daniel Shunock (LSO 76064R)</b> Corporate Counsel Tel: 705-971-7887 Email: <a href="mailto:danielshunock@mcdougallenergy.com">danielshunock@mcdougallenergy.com</a>  Fuel Supplier

## EMAIL SERVICE LIST

[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com); [pn@capstonelegal.ca](mailto:pn@capstonelegal.ca); [bart.sarsh@gowlingwlq.com](mailto:bart.sarsh@gowlingwlq.com);  
[rachel.moses@gowlingwlq.com](mailto:rachel.moses@gowlingwlq.com); [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca); [pgennis@spergel.ca](mailto:pgennis@spergel.ca);  
[rickchohan72@gmail.com](mailto:rickchohan72@gmail.com); [smartsupermartltd@gmail.com](mailto:smartsupermartltd@gmail.com); [taxes@stcatharines.ca](mailto:taxes@stcatharines.ca);  
[tdressel@st.catharines.ca](mailto:tdressel@st.catharines.ca); [osbservice-bsfservice@ised-isde.gc.ca](mailto:osbservice-bsfservice@ised-isde.gc.ca);  
[AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca);  
[info@aaklawoffice.com](mailto:info@aaklawoffice.com); [danielshunock@mcdougallenergy.com](mailto:danielshunock@mcdougallenergy.com)

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

Court File No. CV-24-00086229-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
HAMILTON

**NOTICE OF MOTION**

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, Ontario L8P 4Z5

Tel: 905-540-8208

**Bart Sarsh (LSO No. 59208N)**

Tel: 905-540-3242

Email: [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO No. 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver, msi Spergel Inc.

File No. G10047010

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**ROYAL BANK OF CANADA**

**Applicant**

**and**

**SMART SUPER MART LTD.**

**Respondent**

**FIRST REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
SMART SUPER MART LTD.**

**DECEMBER 19, 2025**



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2. Receivership Order dated January 30, 2025
3. McDougall Fuel Supply Agreement
4. Signed Listing Agreement
5. MLS Data Information Form
6. Redacted copy of the Ahmed Offer
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8. Receiver's Fee Affidavit sworn December 12, 2025
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10. Receiver's Interim Statement of Receipts and Disbursements
11. Receiver's Borrowing Certificate
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## **CONFIDENTIAL APPENDICES**

1. Appraisal Report from Antec Appraisal Group
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6. Comparative Summary of Offers Received
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## **I. APPOINTMENT AND BACKGROUND**

1. This report (the “**First Report**”) is filed by msi Spergel inc. (“**Spergel**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of Smart Super Mart Ltd. (“**Smart**” or the “**Debtor**”).
2. Smart is incorporated pursuant to the laws of the Province of Ontario having its registered office at 213 Edenbrook Hill Drive, Brampton, Ontario.
3. Smart is the owner of the real property known municipally as 179-185 St. Paul Street West, St. Catharines, Ontario and legally described as Part Lots 1852-1854 CP PL Grantham designated as Part 2 30R15372, City of St Catharines (PIN 48179-0340) (the “**Real Property**”). The Real Property consists of a formerly operating gas bar, convenience store and self-serve car wash bays, none of which have been operating for approximately one year.
4. On July 3, 2024, Royal Bank of Canada (“**RBC**” or the “**Bank**”), a secured creditor of the Debtor, moved by way of an application in the Ontario Superior Court of Justice (the “**Court**”) for a Court order appointing Spergel as the Receiver of all of the assets, undertakings, and properties, including the Real Property (collectively, the “**Property**”) of the Debtor.
5. After multiple adjournments, the Bank’s application was finally heard on January 30, 2025 by which time the Honourable Justice Bordin issued an Endorsement (the “**January 30th Endorsement**”) and granted an Order appointing Spergel as Receiver of the Property of the Debtor (the “**Receivership Order**”). Attached to this First Report as **Appendices “1”** and “**2**”, respectively, are copies of the January 30<sup>th</sup> Endorsement and the Receivership Order.
6. Pursuant to the Receivership Order, the Receiver retained the services of Gowling WLG (Canada) LLP on April 28, 2025 as the Receiver’s independent Counsel (the “**Receiver’s Counsel**” or “**Gowling WLG**”).

## II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER

7. The purpose of this First Report is to advise the Court as to the steps taken by the Receiver to date in these proceedings and to seek Orders from the Court, including:
- a) providing the Court with an update in respect of the activities of the Receiver since the date of the Receivership Order;
  - b) approving this First Report and the actions and activities of the Receiver described herein and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report;
  - c) approving the Receiver's Interim Statement of Receipts and Disbursements as at November 30, 2025;
  - d) approving an agreement of purchase and sale between the Receiver, as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name of the purchaser to Ahmed Petroleum Services Inc. ("**Ahmed**" or "**Purchaser**") and authorizing the Receiver to complete the transaction contemplated thereby (the "**Transaction**");
  - e) vesting in the Purchaser all of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Ahmed APS) free and clear of any claims and encumbrances (other than permitted encumbrances identified in the Ahmed Offer);
  - f) sealing the Confidential Appendices (as defined herein) to the First Report until the closing of the Transaction or further Order of this Court;
  - g) approving the Receiver's request to disclaim the Fuel Supply Agreement entered into between the Debtor and McDougall Energy Inc. dated June 21, 2020 (the "**McDougall Agreement**");

- h) approving the fees and disbursements of the Receiver to and including, October 31, 2025, and payment of same;
- i) approving the fees and disbursements of the Receiver's Counsel to and including December 15, 2025, and payment of same;
- j) approving the Fee Accrual (as defined herein);
- k) approving the Proposed Distribution (as defined herein);
- l) effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, discharging Spergel as Receiver and granting certain ancillary relief in relation thereto; and
- m) such further and other relief as counsel may request and this Honourable Court may permit.

*Disclaimer*

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

10. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

### III. RECEIVER'S ACTIVITIES

11. A copy of the Receivership Order was provided to the Debtor. In addition, the Receiver prepared its statutory Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and mailed same to all creditors known to the Receiver.
12. Since the effective date of its appointment on January 30, 2025, the Receiver directly or through the Receiver's Counsel attended to the following:
- a) generally managing the Real Property;
  - b) filed all required reports under the BIA;
  - c) communicated with the Canada Revenue Agency (“**CRA**”);
  - d) arranged for liability insurance coverage for the Real Property;
  - e) arranged for regular site inspections of the Real Property as required by the insurer;
  - f) arranged for the registration of the Receivership Order on the title to the Real Property;
  - g) arranged for two fair market value appraisals of the Real Property;
  - h) arranged for a Phase 2 environmental assessment of the Real Property;
  - i) opened a dedicated trust account for the receivership entity;
  - j) arranged for funding from the Bank;
  - k) requested and received sales and marketing proposals from two commercial real estate brokerages;
  - l) entered into an MLS listing agreement with Avison Young Commercial Real Estate Services LP, Brokerage (the “**Listing Broker**”) and instructed the Listing Broker to commence a fulsome sales and marketing process; and

- m) entered into an Agreement of Purchase and Sale for the Real Property, conditional only upon approval of this Honourable Court.

#### IV. THE SALE PROCESS WITH RESPECT TO THE REAL PROPERTY

##### *The McDougall Fuel Supply Agreement*

13. Smart formerly operated a gas bar, convenience store and a number of self-serve car wash bays on the Real Property.
14. Until it closed, Smart purchased its fuel from McDougall Energy Inc. (“**McDougall**”), under the terms of the McDougall Agreement (as described above). Attached to this First Report as **Appendix “3”** is a copy of the McDougall Agreement.
15. The McDougall Agreement contains a Right of First Refusal (“**ROFR**”) in favour of McDougall.
16. Following the signing of a Confidentiality Undertaking by McDougall, the Receiver provided McDougall with a copy of the Ahmed Offer and all other Confidential Appendices for which approval is being sought by the Receiver accompanied by a request for confirmation as to whether McDougall intended to exercise its ROFR with respect to the Real Property and the business operation located thereon. As of the date of this First Report, the Receiver has not received a response from McDougall as to their intentions relative to the ROFR nor as regards the Receiver’s disclaiming of the McDougall Agreement.
17. The Listing Broker has advised the Receiver that the Purchaser has no intention of assuming the McDougall Agreement, intending to purchase fuel from other third-party providers. This is expressly provided for in the Ahmed APS.
18. It is a requirement for the completion of the Transaction with the Purchaser that the McDougall Agreement be disclaimed. While the Receiver is aware of the impact that a disclaimer will have on McDougall, the Ahmed Offer represents the best offer in terms of price obtained through a sales process that widely canvassed



the market, considered the interests of all parties, was a fair and public process, and was done in a commercially reasonable manner. In not pursuing the disclaimer of the McDougall Agreement, the Receiver risks the termination of the Transaction since the Purchaser specifically bargained for the right to use its own fuel supplier in subparagraphs 4(e)(i) and (ii) of the Ahmed Offer. If the Transaction is terminated, then the deposit is likely returned to the Purchaser under paragraph 5 of the Sale Agreement, and the Receiver must again restart a further marketing and sales process for the Property resulting in the same costs that were incurred in the first sales process and ongoing delay. There is no assurance that the Receiver will obtain an offer similar in price to the Ahmed Offer. For all of these reasons, the Receiver seeks Court approval for the disclaimer of the McDougall Agreement.

### *The Sale of the Real Property*

19. Pursuant to the terms of the Receivership Order, the Receiver is authorized 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. The sole asset of the Debtor is the Real Property and the gas bar, convenience store and car wash operation conducted thereon.
20. The Receiver engaged the services of Antec Appraisal Group (“**Antec**”) and Colliers International (“**Colliers**”) to attend at and conduct full narrative appraisals of the Real Property. Attached to this First Report as **Confidential Appendices “1”** and “**2**”, respectively, are copies of the Antec and Colliers’ appraisals.
21. In addition to the above-noted appraisals, the Receiver requested and obtained sales and marketing proposals from Avison Young Commercial Real Estate Services LP (“Avison”) and CBRE Real Estate Brokerage (“**CBRE**”). Attached to this First Report as **Confidential Appendices “3”** and “**4**”, respectively are unredacted copies of the Avison and CBRE sales and marketing proposals.

22. The Receiver entered into an MLS Listing Agreement with Avison as the commission structure was commercially reasonable and the skill set of the brokerage would garner optimum recovery. Attached to the First report as **Appendices “4” and “5”**, respectively are copies of the Signed Listing Agreement and MLS Data Information Form. The Listing Agreement provides that all offers are subject to the approval of the Court.
23. Avison widely marketed the Real Property to obtain maximum interest and several offers to purchase. This included listing the Real Property on MLS and reaching out to over 4,800 contacts through email blasts. This resulted in 32 interested parties executing Confidentiality Agreements, 27 people accessing the data room for the Property and a number of interested parties touring the Real Property. Attached to this First Report as **Confidential Appendix “5”** is a copy of the Final Progress Report issued by Avison dated December 1, 2025.
24. As a result of the marketing efforts described above, three offers were received. Attached to this First Report as **Confidential Appendix “6”** is a comparative summary of the offers received.
25. On the basis of the marketing efforts described above, the Receiver accepted the Ahmed APS as being the best of the offers received.
26. The Ahmed APS is on an “as-is, where-is” basis, conditional only upon the Purchaser being able to obtain an Approval and Vesting Order issued by the Court and the disclaimer of the McDougall Agreement Attached to this First Report as **Appendix “6”** is a redacted copy of the Ahmed APS and the Amendment to Change the Buyer’s Name. Attached to this First Report as **Confidential Appendix “7”** is an unredacted copy of the Ahmed APS and the Amendment to Change the Buyer’s name.
27. The Receiver is of the view that the sales process was one that resulted in the best price in these circumstances, considered the interests of all parties, was a fair and public process and was conducted in a commercially reasonable manner.

28. The Receiver is of the view that the market was extensively canvassed pursuant to Avison's professional, and industry standard marketing efforts as detailed above and as provided for in the Avison sales and marketing proposal. Further, the Receiver is of the opinion that the efforts of Avison through the listing of the Real Property on MLS and Avison's internal and external network have provided sufficient exposure of the Real Property to the market.
29. It is the opinion of the Receiver that the terms and conditions contained within the Ahmed Offer are commercially reasonable in all respects and that the purchase price in the Ahmed Offer is at market value for the Real Property and is the best outcome to the receivership estate in the circumstances.
30. RBC has been consulted with respect to the Transaction and supports the completion of same as well as the relief sought by the Receiver within this motion.
31. The Receiver recommends that the Court approve the Transaction.

#### **V. SECURED, PRIORITY AND OTHER CREDITORS**

32. RBC holds a first mortgage (the "**RBC Mortgage**") over the Real Property having a principal balance in the amount of \$2,135,000.
33. As of June 17, 2024, the amount owing under the RBC Mortgage was \$1,767,509.33 with costs and interest accruing.<sup>1</sup>
34. Attached to this First Report as **Appendix "7"** is a copy of a search of registrations against Smart under the *Personal Property Security Act* ("**PPSA**"). As at the date of this First Report, RBC, followed by Nissan Canada are the sole registrants under the PPSA.
35. The Receiver has obtained a tax certificate from the City of St. Catharines which confirms that as of the date of this First Report, there are outstanding realty taxes on the Real Property in the amount of \$80,031.51, for which the Municipality has

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<sup>1</sup> Affidavit of Craig Innes filed in support of the Bank's Application for the appointment of a Receiver

registered a Notice on title. If the Transaction is approved and completed, the outstanding realty taxes will be paid from the sale proceeds.

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

36. The Receiver is seeking a sealing order in respect of the Confidential Appendices to this First Report as they each contain commercially sensitive information, the release of which prior to completion of the Transaction would be prejudicial to the stakeholders of the Debtor's estate. The requested sealing of the Confidential Appendices is for a temporary period, until the earlier of the completion of the Transaction or further Order of this Court.

## **VII. PROFESSIONAL FEES AND DISBURSEMENTS**

32. Attached to this First Report as **Appendix "8"** is the Affidavit of Philip Gennis sworn December 12, 2025, (the "**Receiver's Fee Affidavit**") which incorporates by reference a copy of the Receiver's time dockets pertaining to the receivership of Smart to and including October 31, 2025 in the amount of \$33,380.29 inclusive of disbursements and HST. This represents a total of 79.45 hours at an average hourly rate of \$371.72 excluding HST.
33. Attached hereto as **Appendix "9"** to this First Report is the Affidavit of Rachel Moses sworn December 17, 2025, (the "**Receiver's Counsel Fee Affidavit**") which incorporates by reference a copy of the time dockets of the Receiver's Counsel for the period to and including December 15, 2025, in the amount of \$16,913.64 inclusive of disbursements and HST.
34. The Receiver has reviewed the accounts of the Receiver's Counsel and is of the view that all the work set out in these accounts was carried out and was necessary, that the hourly rates of the lawyers who worked on this matter were reasonable in light of the services required and that the services were carried out by lawyers with the appropriate level of experience.

35. Provided there is no opposition to the relief sought in this First Report and that such relief is granted, the Receiver estimates that the costs to complete the Transaction, if approved, and complete the administration of the estate should not exceed \$150,000.00 plus disbursements and HST and as such the Receiver is seeking approval to hold back this sum pending completion of all matters and the Receiver's discharge (the "**Fee Accrual**").

#### **VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

36. Attached hereto as **Appendix "10"** is a copy of the Interim Statement of Receipts and Disbursements of the Receiver as of November 30, 2025.

#### **IX. RECEIVER'S BORROWING AND PROPOSED DISTRIBUTION**

37. Pursuant to paragraph 21 of the Receivership Order, the Receiver borrowed funds from the Bank in the amount of \$70,000.00 (the "**Receiver's Borrowing**") to fund its disbursements during the receivership. Attached to this First Report as **Appendix "11"** is a copy of the Receiver's Borrowing Certificate in the amount of \$70,000.
38. Further pursuant to paragraph 21 of the Receivership Order, the issuance of the Receiver's Certificate has the effect of creating a charge on the Property, by way of a fixed and specific charge as security for the repayment of the monies borrowed, together with interest and charges thereon, in priority to all statutory interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order) over the property of the Debtor in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order) but subordinate to the Receiver's Charge (as defined in the Receivership Order) and the charges set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

39. A title search conducted with respect to the Real Property shows the following registrations on title in order of priority:
1. R0493091 being a Notice Re Zoning registered March 4, 1985
  2. NR529711 being a Notice registered by The Corporation of the City of St. Catharines registered December 11, 2019
  3. NR547085 being a Notice registered by The Regional Municipality of Niagara registered July 22, 2020
  4. NR547245 being a mortgage in favour of Royal Bank of Canada registered July 23, 2020 in the principal amount of \$2,135,000
  5. NR647338 being a Certificate registered by The Corporation of the City of St. Catharines registered July 26, 2023
  6. NR670511 being a Notice registered by The Corporation of the City of St. Catharines registered July 12, 2024
40. Attached to this First Report as **Appendix “12”** is a copy of the abstract with respect to the Real Property.
41. Attached to this First Report as **Appendix “13”** is the security opinion issued by Gowling WLG dated December 19, 2025, providing its opinion that the security comprised of the first mortgage held by the Bank is valid and enforceable in accordance with its terms.
42. The Receiver has concluded that the first mortgage held by RBC is a senior charge over the Real Property subject to the claims under the Receivership Order.
43. The Receiver has not been provided with any claims from Canada Revenue Agency nor from the Wage Earner Protection Plan program.
44. On the basis of the foregoing, the Receiver is proposing to make a distribution (after payment of the fees of the Receiver and the Receiver’s Counsel outlined in this First Report, including the Fee Accrual) as follows (the “**Proposed Distribution**”):

- a) to RBC for repayment of the Receiver's Borrowing in the amount of \$70,000.00 plus interest thereon in accordance with the Receiver's Borrowing Certificate;
- b) to The Corporation of the City of St. Catharines for all property tax arrears; and
- c) balance of any and all funds in the Debtor's estate to RBC on account of the Debtor's secured indebtedness to RBC. It is anticipated that RBC will suffer a shortfall, and accordingly there will be no funds available for distribution to any other stakeholders.

**X. DISCHARGE OF THE RECEIVER**

- 44. In the event that the Order approving the sale of the Real Property is granted by the Court, the Receiver proposes to attend to the matters listed below:
  - a. closing the Transaction;
  - b. payment of real estate commission;
  - c. preparing and filing of the Receiver's closing certificate provided for in the Sale Approval and Vesting Order sought from this Honourable Court;
  - d. preparing and filing of final BIA notices; and
  - e. preparing and filing of the Receiver's discharge certificate provided for in the Ancillary Order sought from this Honourable Court.
- 45. The Receiver seeks an Order from the Court approving its activities and conduct described in this First Report and upon the Receiver filing a Certificate with the Court confirming that it has completed the administration of these receivership proceedings, that Spergel be discharged and released from any and all liability that it has now or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part.

**XI. RECOMMENDATION**

46. Based on the foregoing, the Receiver respectfully recommends that the Court make Orders granting the relief detailed in Paragraph 7 of this First Report.

All of which is respectfully submitted.

Dated at Toronto, this 19th day of December 2025.

**msi Spergel inc.**

solely in its capacity as Court-appointed  
Receiver of Smart Super Mart Ltd.

and not in any corporate  
or personal capacities

Per:



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Mukul Manchanda, CPA, CIRP, LIT  
Managing Partner



# Appendix 1

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Royal Bank of Canada, Applicant

**AND:**

Smart Super Mart Ltd, Respondent

**BEFORE:** M. Bordin J.

**COUNSEL:** T. Masterson, for the Applicants

R. Chohan, for the respondent corporation

S. Chauhan, for the respondent corporation

**HEARD:** January 30, 2025

**ENDORSEMENT**

- [1] The applicant seeks the appointment of a receiver without security of all the assets, properties and undertakings of the respondent corporation. The application was commenced over six months ago, in July 2024.
- [2] The respondent operates an Esso gas station in St. Catharines. The applicant granted credit facilities to the respondent. The respondent has been in default for over a year. Notice of default was issued. The applicant made formal written demand for payment. Notice of intention to enforce security has been served. The respondent has requested and received time to refinance. The respondent owe the applicant more than \$1.7 million. The respondent has not paid the amounts owing. The proposed receiver consents to the appointment.
- [3] The applicant has been adjourned at least 3 times and marked peremptory on the respondent. The adjournments were for the purpose of the respondent obtaining financing.
- [4] On November 28, 2024, Goodman J. ordered that the application was adjourned to January 16, 2025, peremptory on the respondent to allow time for the respondent to obtaining financing and to repay the applicant in full. Further, Goodman J. ordered that if the respondent failed to pay in full by January 16, 2025, the respondent consents to the appointment of the receiver over the respondent's property on that date and pursuant to the provision of the draft appointment order.

- [5] No affidavit has been filed by the respondent. The respondent has filed some materials in Case Centre which are not appended to an affidavit. I have reviewed those materials. The respondent uploaded more documents this morning which are not appended to an affidavit, which I have also reviewed. The respondent did file an affidavit.
- [6] I heard submissions from Mr. Chohan as a representative of the respondent. The respondent points to work done by the city on the road and bridge near the gas station that affected their business. The respondent sought a purchaser for the property. The respondent filed an agreement of purchase and sale from October 2024. Although the owner of the property is the corporation, the agreement lists Mr. Chohan and Mrs. Chauhan as the vendor. When asked how they could sell a property they do not own, Mr. Chohan said it must be a mistake on his part.
- [7] Mr. Chohan referred to refinancing he has been attempting to obtain. He filed a series of text messages in January about financing. The name of the lender is not clear from the exchange of messages. Mr. Chohan asserts that the commitment letter he has filed in Case Centre is confirmation of the financing requested in writing in the text exchange in January. However, the commitment letter is dated December 2, 2024. The prospect of refinancing is far from clear.
- [8] The respondent's representatives say that they are prepared to pay installments. I was not taken to any evidence that installments have been voluntarily paid.
- [9] The applicant seeks one last chance to find refinancing. Mr. Chohan submits he has another possible lender in the wings.
- [10] As explained by Osborne J. in *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, 2023 ONSC 4772 at paras. 54 and 55, if it is appropriate to appoint a receiver, nothing prevents or prohibits the Receiver from continuing discussions with the proposed lender or lenders to pursue this proposed commitment and determine whether it is in the best interests of stakeholders. Further, if the asserted funding commitment closed relatively quickly, it follows that the cost of the receivership would be minimized. The receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process. If there is a legitimate sale that is in play, including the one put forward by the respondent, a receiver could investigate and pursue a sale if appropriate.
- [11] The security granted by the respondent to the applicant allows for the appointment of a receiver over the property of the debtors upon default. The security includes a mortgage which also grants the applicant power to appoint a receiver over real property. In such circumstances the burden on the applicant is relaxed as the applicant is merely seeking to enforce a term of an agreement between the parties. The appointment of a receiver is less extraordinary when dealing with default under a mortgage.
- [12] The applicant's materials satisfy me, having regard to all the circumstances but in particular the nature of the property and the rights and interest of all parties in relation thereto that it is just and convenient to appoint a receiver.

[13] Order to go in accordance with the draft order at pages A650-A666 of the Case Centre master bundle.



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M. Bordin, J.

**Date:** January 30, 2025

## **Appendix 2**

Court File No. CV-24-00086229-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE BORDIN

)  
)  
)

THURSDAY, THE 30TH  
DAY OF JANUARY, 2025



**ROYAL BANK OF CANADA**

Applicant

- and -

**SMART SUPER MART LTD.**

Respondent

**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 (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Smart Super Mart Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the real property described at Schedule "A" hereto and owned by the Respondent (the "Real Property") was heard this day at 45 Main Street East, Hamilton, Ontario.

ON READING the affidavit of Craig McInnes sworn July 3, 2024 and the Exhibits thereto, the Supplementary Affidavit of Craig McInnes sworn August 13, 2024 and the Exhibits thereto, the Second Supplementary Affidavit of Craig McInnes sworn September 23, 2024 and

the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, no one appearing although duly served as appears from the affidavit of service of Emma Benaway sworn July 4, 2024, July 8, 2024, August 13, 2024, and September 23, 2024, and the affidavit of service of Amy Broome dated October 22, 2024, and on reading the Order of Justice A.J. Goodman on November 28, 2024, 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 is hereby abridged and validated so that this motion 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 the Real Property and also including all proceeds thereof (the "Property").

### **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 \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$150,000.00; 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, 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;

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

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 \$150,000.00 (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 <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice->



[%20commercial/#Part III The E-Service List](#)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://www.spergelcorporate.ca/engagements>>’.

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 shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.

"on behalf of Justice Bordin"

Justice, Ontario Superior Court of Justice

Issued and entered electronically by

\_\_\_\_\_  
Local Registrar  
45 Main St East  
Hamilton, ON  
L8N 2B7

**SCHEDULE "A"**  
**REAL PROPERTY**

PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372; CITY  
OF ST CATHARINES (PIN 46179-0340 (LT)).

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that msi Spergel inc., the receiver (the "Receiver") of the assets, undertakings and properties Smart Super Mart Ltd. acquired for, or used in relation to a business carried on by the Debtor, including the Real Property and including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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 \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

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:

ROYAL BANK OF CANADA

and

SUPER SMART MART LTD.

Applicant

Respondent

Court File No. CV-24-00086229-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
HAMILTON, ONTARIO

**ORDER**

**HARRISON PENSA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2  
  
**Timothy C. Hogan (LSO #36553S)**  
  
Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
  
Solicitors for the Applicant  
Royal Bank of Canada

## **Appendix 3**

**ASSIGNMENT, ASSUMPTION AND AMENDING AGREEMENT**

THIS AGREEMENT, made June 21, 2020.

**BETWEEN:**

**SMART SUPER MART LTD.**  
(hereinafter called the "Dealer")

- and -

**McDOUGALL ENERGY INC.**  
(hereinafter called the "Distributor")

- and -

**RAVINDERJIT SINGH CHOHAN and SATVINDER KAUR CHAUHAN**  
(hereinafter called the "Guarantors")

- and -

**2595543 ONTARIO INC.**  
(hereinafter called "2595543 ")

- and -

**WEI WEI**  
(hereinafter collectively called "WEI")

**WHEREAS:**

- A. 2595543 entered into a Motor Fuel Supply Agreement Esso-Branded Motor Fuels with the Distributor dated December 1, 2017 ("Agreement");
- B. Wei had executed a written guarantee in favour of the Distributor respecting the obligations of 2595543 under the Agreement;
- C. The parties intend that 2595543 will assign the benefit of the rights, and the Dealer will assume the burden of the obligations of the Agreement on the effective date of this Agreement;
- D. The parties have agreed to amend the Agreement as described herein; and
- E. The Distributor consents to the assignment and amendment of the Agreement effective on the 30<sup>th</sup> day of June, 2020 ("Effective Date").

**NOW THEREFORE** in consideration of the sum of Two Dollars (\$2.00) the receipt and sufficiency of which are hereby acknowledged, the parties hereto acknowledge and agree that:

- 1. 2595543 hereby assigns to the Dealer all its rights, obligations, title and interest in and to the Agreement.



2. The Dealer hereby accepts such assignment, and the Dealer hereby assumes all 2595543's obligations and liabilities under the Agreement, including but not limited to those obligations to repayment of the Branding and Dealer Upgrades more particularly set forth in Section 38 of the Agreement and covenants to and with the Distributor to observe, perform, fulfill and keep those conditions and covenants contained in the Agreement to be performed by 2595543 in the same manner and to the same extent as if the Dealer had been originally mentioned as 2595543 in the Agreement.

3. The Distributor hereby consents to such assignment and agrees that they shall hold the Dealer responsible for the observance and performance of the conditions and covenants contained in the Agreement on and after the Effective Date of this Agreement.

4. Wei hereby consent to the assignment and to the covenants contained herein.

5. The Guarantors hereby covenant and agree to observe, perform and fulfill all guarantees contained in the Agreement in the same manner and to the same extent as if the Guarantors had been originally mentioned as Wei in the Agreement.

6. Article 3 is deleted in its entirety and replaced by the following:

**"3. Term**

a. *The term of this Agreement is for a period of **ten (10) years** beginning on June 30, 2020 ("Commencement Date") and ending on June 29, 2030 ("End Date"), unless terminated earlier in accordance with this Agreement. In the event, that the Marketing Premises is not substantially completed by the Commencement Date, then the Commencement Date shall be amended to be the date of first delivery ("New Commencement Date") and the End Date shall be amended to that date which is 10 years after the New Commencement Date. 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.*

b. *The parties agree that they will negotiate during the **eighth (8<sup>th</sup>)** year of this Agreement for a new agreement to purchase and sell Esso-branded motor fuels that will have a term of ten (10) years and that will be in effect immediately after the expiration of this Agreement. The parties will conduct a new final and binding Esso-branded motor fuels supply agreement no later than the end of the ninth (9<sup>th</sup>) year of this Agreement."*

7. In consideration of the Distributor consenting to the assignment of the Agreement to the Dealer, the Dealer shall provide the Distributor with a cash deposit or irrevocable letter of credit from a Canadian chartered bank in the amount of fifty thousand (\$50,000.00) dollars. The cash deposit or letter of credit shall be received by the Distributor prior to Distributor extending any credit terms and until such time as received the Dealer shall pre-pay for all Esso-branded motor fuels.

8. Article 21a is deleted in its entirety and replaced by the following:

***“Termination***

- a. *Notwithstanding any other provision in this Agreement to the contrary, 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, or in the event that the Marketing Premises is debranded then this Agreement shall, at the sole option of the Distributor, remain binding upon the parties, save and except that all reference to Imperial Oil and those rights and obligations related to Proprietary Marks and the Program (as defined in Schedule “E”), including but not limited to obligations by the Dealer to comply with loyalty programs and operating standards, shall be read out of this Agreement. All other provisions within this Agreement, particularly the obligation of the Dealer to purchase motor fuels from the Distributor shall remain binding upon the parties, until expiration or earlier termination of this Agreement.”*
9. Article 21b(20) to be added to the Agreement
- “(20) If the Esso Branded Distributor Agreement between the Distributor and Imperial Oil expires or is terminated prior to the expiration of this Agreement.”*
10. Schedule C of the Agreement shall be deleted in its entirety and replaced by Schedule “C” attached hereto.
11. Schedule D of the Agreement shall be deleted in its entirety and replaced by Schedule “D” attached hereto.
12. Exhibit I to Schedule E of the Agreement shall be deleted in its entirety and replaced by Exhibit “I” attached hereto.
13. Schedule F of the Agreement shall be deleted in its entirety and replaced by Schedule “F” attached hereto.
14. Schedule G of the Agreement shall be deleted in its entirety and replaced by Schedule “G” attached hereto.
15. Nothing in this Agreement shall operate as a release of 2595543 and Wei from any obligation or liability under the Agreement that occurred prior to the Effective Date of this Agreement.
16. Any notice shall be given to the respective parties at the following addresses:

**Dealer**

**And Guarantor -** 179-185 St. Paul St. West  
St Catharine's, ON

**Distributor -** 421 Bay Street, Suite 301  
Sault Ste. Marie, ON P6A 1X3

**2595543**

**Ontario Inc. -** 4 Grayson Rd  
Ajax, On L1Z 1E4

17. Each the Dealer and the Guarantors acknowledge 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.

18. In the event of any conflict between the terms of this Assignment, Assumption and Amending Agreement and the terms of the Agreement, the terms of this Assignment, Assumption and Amending Agreement shall be paramount and, in all other circumstances and to the extent possible, the provisions of this Assignment, Assumption and Amending Agreement shall be interpreted by incorporation in the Agreement as if recited there, *mutatis mutandis*, and any reference to the Agreement as amended by the terms hereof.

19. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed/e-mailed form and the parties hereto adopt any signatures received by a receiving fax machine or computer as original signatures of the parties.

20. The Agreement is amended to the extent necessary to give force and effect to this Agreement and are ratified, approved and confirmed as so amended.

*Balance of the page left intentionally blank.*

SIGNED, SEALED AND DELIVERED  
In the Presence of:

Balinder Singh Chohan  
Witness

Balinder Singh Chohan  
Witness

\_\_\_\_\_  
Witness

Balinder Singh Chohan  
Witness

Balinder Singh Chohan  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

SMART SUPER MART LTD.

[Signature]  
Name: RAVINDERJIT SINGH CHOHAN  
Title: PRESIDENT

Satvinder Kaur Chauhan  
Name: SATVINDER KAUR CHAUGHAN  
Title: VICE PRE.

I/We have the authority to bind the Corporation

MCDUGALL ENERGY INC.

[Signature]  
Name: Frank Sarlo  
Title: VP legal & HR  
I have the authority to bind the Corporation.

GUARANTOR(S)

[Signature]  
Ravinderjit Singh Chohan  
Satvinder Kaur Chauhan  
Satvinder Kaur Chauhan

2595543 Ontario Inc.

Wei Wei  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I/We have the authority to bind the Corporation

[Signature]  
Wei Wei

**SCHEDULE "A"**

**Motor Fuel Supply Agreement  
Esso-Branded Motor Fuels  
Dated December 1<sup>st</sup>, 2017**

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

Site # TBD

This Agreement is made in duplicate on December 1, 2017.

BETWEEN:

**McDougall Energy Inc.**  
having a Head Office at  
421 Bay Street, Suite 301 Sault Ste. Marie, ON P6A 1X3  
(hereinafter called "Distributor" or "McDougall")

- and -

**2595543 Ontario Inc.**  
(hereinafter called "Dealer") operating a retail motor fuels outlet  
located at 179-185 St. Paul St. W., St. Catharines, ON L2S 2C8  
(herein after called the "Marketing Premises")

- and -

**Wei Wei**  
(hereinafter called the "Guarantor")

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 Guarantor has 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-Fontenac 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 Commencement Date (as herein defined), 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 a period of 10 years beginning on January 1, 2018 ("Commencement Date") and ending on December 31, 2027 ("End Date") unless terminated earlier in accordance with this Agreement. In the event, that the Marketing Premises is not substantially completed by the Commencement Date, then the Commencement Date shall be amended to be the date of first delivery by the Distributor ("New Commencement Date") and the End Date shall be amended to that date which is 10 years after the New Commencement Date. 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 terminate upon the expiry of the said Esso Branded Distributor Agreement.
- b. The parties agree that they will negotiate during the eighth (8<sup>th</sup>) year of this Agreement for a new agreement to purchase and sell Esso-branded motor fuels that will have a term of ten (10) years and that will be in effect immediately after the expiration of this Agreement. The parties will conduct such negotiations in a timely manner and will endeavour to conclude a new final and binding Esso-branded motor fuels supply agreement no later than the end of the ninth (9<sup>th</sup>) year of this Agreement.

## **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 volume of Esso-branded motor fuel the Dealer is obligated to purchase during the term of this Agreement is 50,000,000 litres (the "Minimum Volume"). The Minimum 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. Should the Dealer fail to purchase the Minimum Volume of Esso branded motor fuels, the term of this Agreement shall be automatically extended beyond the End Date, as set out in paragraph 3.a. (the



"Expiration Date") for such period of time as the Minimum Volume of Esso-branded motor fuel is purchased by the Dealer. In the event that Distributor does not wish to extend the term of this Agreement beyond the Expiration Date, Distributor shall provide the Dealer with a minimum of thirty (30) days written notice of its intention not to extend the term of this Agreement.

#### **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 \$0.02 per litre on an annual basis (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 Guarantor if the Dealer fails to purchase 4,000,000 litres 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 Dealer hereby grants to the Distributor the right of first refusal to purchase, lease or sublease (as the case may be) the Marketing Premises on the terms of any bona fide written offer received by the Dealer during the Term of this Agreement which the Dealer is willing to accept. This right of first refusal shall include any offer to Purchase made by the Dealer to the Registered Owner of the Marketing Premises where the Dealer is a Tenant. The Dealer shall send such written offer to the Distributor in the manner provided herein for the giving of notices and the Distributor shall have thirty (30) days from the receipt of such written offer in which to notify the Dealer that it elects to purchase, lease or sublease (as the case may be) the Marketing Premises on the terms of such offer. If the offer does not consist wholly of cash, the Distributor shall have the right to meet the terms of such offer with a reasonable equivalent in cash. In the event the Distributor does not exercise its rights hereunder, the Dealer shall be free, after the end of said period of thirty (30) days, to sell, lease or sublease (as the case may be) the Marketing Premises on the terms contained in the bona fide written offer but subject to the terms of this Agreement including this option.
- b. In the event the Distributor exercises its rights to purchase, lease or sublease (as the case may be) the Marketing Premises, this Agreement, together with any other related agreements, shall terminate on the date of closing or completion of the transaction.
- c. In the event the Distributor does not exercise its right to purchase, lease or sub-lease the Marketing Premises (as the case may be) as hereinbefore set forth, the Dealer may sell, lease or sub-lease the Marketing Premises on the terms and conditions contained in the bona fide written offer conditional upon and subject to:
  - i. receipt by the Dealer of the express written consent of the Distributor to such sale, lease or sub-lease. The Dealer acknowledges that such consent may be withheld or refused by the Distributor based upon such consideration as the Distributor may, in its sole discretion, determine including but not limited to the financial condition of the purchaser/tenant/sub-tenant; and
  - ii. the purchaser, tenant or sub-tenant (as the case may be) executing an agreement with the Distributor to assume all obligations of the Dealer under the within Supply Agreement or in the alternative such purchaser, tenant or sub-tenant executing a new Supply Agreement with the Distributor on such terms or conditions as are satisfactory to the Distributor; and



- iii. such purchaser, tenant or sub-tenant providing satisfactory security to the Distributor, as in the Distributor's sole discretion may be required, to obtain the Distributor's consent referred to (i) above; and
- iv. payment in full by the Dealer to the Distributor of all monies or other obligations owned by the Dealer to the Distributor; and
- v. payment by the Dealer to the Distributor of all costs, charges or other expenses whatsoever (including but not limited to all legal and administrative costs of the Distributor) incurred by the Distributor to consider, review, facilitate and/or implement the foregoing; and
- vi. the Distributor's legal counsel being satisfied as to the form and content of all documentation to satisfy the foregoing.

In the event the Dealer proceeds with any sale, lease or sub-lease of the Marketing Premises without full compliance with the foregoing requirements, the Dealer shall be deemed to be in breach of the Dealer's obligations under this Agreement and the Distributor shall be at liberty to pursue its remedies against the Dealer as a result of such breach, including but not limited to those remedies as set forth in paragraph 21 herein.

For the purposes of the foregoing, any change of control, transfer, assignment, amalgamation or other dealing whatsoever with the shareholdings of the Dealer or corporate parent of the Dealer shall be deemed to be a sale of the Marketing Premises and require compliance by the Dealer of all terms and conditions as set forth in this paragraph 6.

- d. As a condition precedent to the Distributor allowing the Dealer to sell, lease or sublease (as the case may be) the Marketing Premises and the Dealer Business thereon to a third party, the Dealer shall 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 as are then due and owing to the Distributor by the Dealer. In the event the proceeds of the transaction paid to the Distributor are insufficient to extinguish the Dealer's indebtedness to the Distributor, the Dealer shall, notwithstanding such sale, lease or sublease (as the case may be) continue to be liable to the Distributor for any remaining indebtedness.

#### **7. Price and Terms of Sale**

- a. The Dealer shall pay the Distributor for Esso-branded motor fuels purchased pursuant to this Agreement, eight tenths of one cent (\$0.008) per litre above the rack price at the Distributor's designated loading rack at the time the Esso-branded motor fuel are loaded for delivery to the Dealer, plus the cost of delivery and all applicable taxes.
- b. In the event that the Distributors purchase price for Esso-branded motor fuels is increased such that it is deemed by the Distributor that it no longer makes economic sense to sell Esso-branded motor fuels to the Dealer at the price set out in subsection (a) above, the Distributor shall provide the Dealer with sixty (60) days written notice of its intention to negotiate a new purchase price with the Dealer. In the event that the parties cannot reach mutual agreement on a new purchase price within the aforementioned sixty (60) day period, the Distributor may, in its discretion, provide the Dealer with a minimum of thirty (30) days written notice of termination of this Agreement.
- c. 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.
- d. 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.

- e. 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.
- f. 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.
- g. 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 thirty (30) days' prior written notice to the Dealer.
- h. 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 pay 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).
- i. 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 "full truck load" quantities. 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" 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", 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" 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.

- f. For the purposes of this Agreement, full truck load is 55,000 litres.

#### **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 ESSO-BRANDED MOTOR FUEL 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 "F" ("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.
  - (5) To purchase, maintain, and display an adequate quantity of Esso-branded motor oils, lubricants, greases, anti freeze, and other Esso-branded motor fuel and related products (the "Esso-branded motor fuel" ) 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 Esso-branded motor fuel and agrees to purchase the Esso-branded motor fuel directly from Imperial Oil or its designated distributor of Esso-branded motor fuel in the Dealer's market area.
  - (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.
  - (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 Commencement 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 Distributors' 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 "C" 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 Esso-branded motor fuel, 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 without each person now or hereafter having an interest in the Marketing Premises first executing an acknowledgement and consent in the form of Schedule "D".
- e. The Dealer acknowledges that it has examined the Equipment provided to the Dealer as of the Commencement 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 a point of sale cybera router to be used by the Dealer exclusively in the Dealer Business, and for no other purpose, as part of the retail credit and debit system presently prescribed by Imperial. The Dealer shall use the retail credit and debit system presently prescribed by Imperial and pay 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 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:

**Point of Sale (POS) equipment fee(s):\$30.00/month/Cybera Router**

The Dealer shall pay all commissions and charges required to be paid by the Dealer to the proprietors and operators of such system(s). All consumer credit cards accepted currently by McDougall Energy attract a rate of 1.75% and commercial fleet cards attract a rate of 2.2%. Debit card transaction currently attracts a seven cent (\$0.07) charge and Interac Flash transaction attract a nine cent (\$0.09) charge.

#### **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) If the volume of Esso-branded motor fuels purchased by the Dealer is less than 4,000,000 litres in any contract year; or
  - (10) 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
  - (11) If the Dealer ceases to carry on the Dealer's business on or from the Marketing Premises; or
  - (12) If the Dealer or the Guarantor make 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 the Guarantor under the Act, or if the Dealer or the Guarantor shall be declared or adjudicated bankrupt, or if an application is made in respect of the Dealer or the Guarantor 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 the Guarantor, or if the Dealer or the Guarantor 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 the Guarantor admit 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
  - (13) If the Dealer or the Guarantor 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
  - (14) 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
  - (15) If the Dealer or the Guarantor is convicted of or pleads guilty to any criminal offense, whether or not related to the Dealer Business; or

- (16) 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
  - (17) The Dealer or the Guarantor 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
  - (18) 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
  - (19) 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. Assignment, Miscellaneous**

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective assigns. The Dealer shall not sell, assign, transfer or otherwise dispose of or deal with, whether absolutely, by way of security or otherwise, any or all of its rights or obligations under this Agreement without the prior written consent of the Distributor, which consent is conditional upon and subject to the provisions of paragraph 6 c. of this Agreement. Any assignment of this Agreement by Dealer without Distributor's written consent shall be void. The Distributor shall have the right to sell, assign, transfer or otherwise dispose of or deal with any or all of its rights or obligations under this Agreement. 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.

### **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 Guarantor and Distributor, the Guarantor 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 Guarantor 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 Guarantor and the Guarantor 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 Guarantor 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 Guarantor under this Agreement;
- f. the covenants and agreements herein entered into by the Guarantor are to be construed as both joint and several;
- g. the guarantee and the liability of each of the Guarantor hereunder is not affected by the death or loss or diminution of capacity of any of the Guarantor; and
- h. for clarification, this guarantee extends to and is binding upon each of the Guarantor and their heirs, executors, administrators, legal representatives and assigns, it being understood that this guarantee will continue to bind the Guarantor even if any of the Guarantor, 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 Guarantor shall be conclusively deemed to have been given when addressed to the Dealer and: (i) delivered personally or by courier to the Marketing Premises; or (ii) mailed by prepaid 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 Guarantor 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:

**McDougall Energy Inc.,**  
**421 Bay Street, Suite 301,**  
**Sault Ste. Marie, ON P6A 1X3**  
 Att'n: VP. Legal Facsimile No.: (705) 946-1134

Any notice, if delivered personally or by courier shall be conclusively deemed to have been given when actually received, if mailed by prepaid mail, on the fifth Business Day following the deposit thereof in the mail or, if transmitted by electronic facsimile before 4:00 p.m. on a Business Day, on that Business Day and, if transmitted by electronic facsimile after 4:00 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 Guarantor 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.

### **38. Branding and Dealer Upgrades**

a. Distributor shall arrange for the purchase and installation of Esso brand signs, insignia and decals in order to brand the Marketing Premises to Imperial Oil standards ("Brand Signage"). The cost to purchase and install the Brand Signage shall not exceed the sum of one hundred and twenty thousand (\$120,000.00) dollars plus applicable taxes ("Branding Allowance"). The Distributor shall pay the suppliers of the Brand Signage directly. The Brand Signage shall be loaned to the Dealer.

b. In addition to the Branding Allowance, the Distributor shall grant to the Dealer the sum of fifty-five thousand (\$55,000.00) dollars plus applicable taxes ("Grant") to assist the Dealer towards the cost of approved site upgrades ("Upgrades"). Payment by the Distributor of the Grant shall be made upon review by Distributor of receipts verifying payment by the Dealer for the Upgrades and upon satisfactory review by the Distributor of the Dealers' and Guarantors' credit no later than sixty (60) days prior to payment.

c. In the event that the cost of the Brand Signage is less than the Branding Allowance then the amount of the Grant shall be increased by that same amount. In the event that the cost of the Brand Signage is greater than the Branding Allowance then the amount of the Grant shall be reduced by that same amount. In any event the amount of the Branding Allowance and the Grant shall not exceed the total sum of one hundred and seventy-five thousand (\$175,000) dollars plus applicable taxes.

d. In the event that the Distributor terminates the Agreement prior to expiration (either as a result of a breach or otherwise as set out in this Agreement), the Dealer shall immediately repay to the Distributor a prorata portion of the Grant and Branding Allowance based on the one hundred and twenty (120) month term of this Agreement and reimburse the Distributor for the cost incurred to remove the Brand Signage from the Marketing Premises.

### **39. Disclosure Of Volumes**

Distributor shall for business purposes disclose to third parties, the annual volume of Esso-Branded Motor Fuels purchased pursuant to this Agreement, from time to time and in its sole discretion.

### **40. Condition**


This Agreement is conditional upon satisfactory review by the Distributor of the Dealer's and the Guarantor's credit no later than sixty (60) days prior to the Commencement Date.

### **41. Counterparts and Fax/E-mail Signatures**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed/e-mailed form and the parties hereto adopt any signatures received by a receiving fax machine or computer as original signatures of the parties; provided however, that any party providing its signature in such a manner shall promptly forward to the other parties an original of the signed copy of which was so faxed/e-mailed.

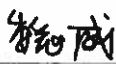
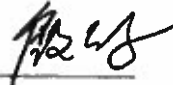
**EXECUTED** as of the date first herein specified.

**McDougall Energy Inc.**  
Per:

  
Name: Frank Sarlo  
Title: VP Legal & HR  
I have the authority to bind the corporation

2595543 Ontario Inc.

Per:

   
Name: Wei Wei  
Title: Owner

I have the authority to bind the corporation

GUARANTOR

\_\_\_\_\_  
Witness

  
Wei Wei

2017/12/01  
\_\_\_\_\_  
Date



**SCHEDULE "A"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between McDougall, 2595543 Ontario Inc. (The "Dealer") and Wei Wei (the "Guarantor") dated December 1, 2017.

**PAYOR'S AUTHORIZATION FOR PRE-AUTHORIZED DEBITS**  
*(Business Purposes)*

1. The Payor hereby certifies the accuracy of the following information:

Name: 2595543 Ontario Inc. (the "Payor")  
Address: 179-185 St. Paul Street West  
Town: St. Catharines  
Province: Ontario  
Postal Code: L5S 2C8  
Telephone Number:  
Account:

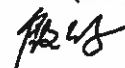
(the "Account")

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 McDougall (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 dated December 1, 2017 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 an unlimited dollar amount.
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.

  
(Initials)



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.

DATED December 1, 2017.

2595543 Ontario Inc.

Per:



Name: Wei Wei

Title: Owner

I have the authority to bind the corporation

## **SCHEDULE "B"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between McDougall, 2595543 Ontario Inc. (The "Dealer") and Wei Wei (the "Guarantor") dated December 1, 2017.

### **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**

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

#### **Safety**

The Dealer's employees must:

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

#### **Security/Robbery Prevention**

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

#### **Critical Equipment**

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

  
(Initials)

### **Emergency Response**

- 1 Post the emergency response plan wall chart on the Premises in a conspicuous place.
- 1 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.
- 1 Have the required equipment and supplies to respond to emergency situations.
- 1 Hold at least two practice drills each year using different emergency situations.
- 1 Document the Dealer's employee training and practice drills.

### **Workplace Hazardous Materials Information System ("WHMIS")**

- 1 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.
- 1 Ensure that all Material Safety Data Sheets for controlled products are current, available and accessible to the Dealer's employees.
- 1 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.
- 1 Ensure that all containers of controlled products are properly labeled.
- 1 Ensure that all fill pipes, gauge pipes and valves are properly tagged.
- 1 Keep an inventory list of controlled products on the Premises in those provinces where it is required.

### **Waste Management**

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

### **Licenses and Permits**


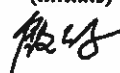
- 1 Have the necessary operating licences and permits to meet regulatory requirements.
- 1 Have on the Premises all manuals required or advisable to operate the service station.

### **Incident Definition and Reporting**

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

### **Training**

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

  
(Initials)  


### **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.

### **Loyalty Programs - Esso Extra and Aeroplan**

Collect, use and disclose information gathered for use by Imperial in connection with the Esso Loyalty Programs only in accordance with applicable laws.

Display all point-of-purchase materials prescribed by Imperial in connection with the Esso Loyalty Programs.

Ask each purchaser of applicable merchandise or services whether he or she has an Esso Loyalty Program 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 Loyalty card, using the Esso extra card and Aeroplan card.

Maintain an adequate supply of merchandise redeemable by holder of Esso extra cards.

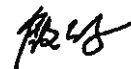
Redeem valid Esso extra card reward certificates presented by retail customers for prescribed merchandise or services.

### **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.



(initials)



### SCHEDULE "C"

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between McDougall, 2595543 Ontario Inc. (The "Dealer") and Wei Wei (the "Guarantor") dated December 1, 2017.

### EQUIPMENT

The following is a list of the Equipment:

Equipment Type	Quantity
Brand Signage (inserts, frames, boxes)	All
Cybern Router	One
_____	_____
_____	_____

NOTE: the parties agree to amend this schedule as required once the Marketing Premises is built and the Branding is complete.

Wei Wei  
(initials)  
Wei Wei

**SCHEDULE "D"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between McDougall, 2595543 Ontario Inc. (The "Dealer") and Wei Wei (the "Guarantor") dated December 1, 2017.

**ACKNOWLEDGEMENT AND CONSENT OF DEALER, LANDLORD AND/OR MORTGAGEE**

TO: MCDUGALL ENERGY INC.

RE: Dealer Sales Agreement dated December 1, 2017 (the "Agreement") among MCDUGALL (the "Distributor"), 2595543 Ontario Inc. (the "Dealer"), and (the Landlord").

Each of the undersigned, being the Dealer, the landlord, the mortgagee or any one or more of the foregoing, of the Premises (as such term is defined in the Agreement) hereby acknowledges that:

1. Distributor will be entitled, in its sole discretion and from time to time, to remove from the Premises the equipment listed on the attached Exhibit I, together with all substitutions and additions (the "Equipment"), which (i) Imperial owns, (ii) will be or has been loaned by Distributor to the Dealer and (iii) will be or is located on the Premises; and
2. there does not now exist, shall not come into existence and shall never exist a security interest in the Equipment in favor of the undersigned, notwithstanding that the Equipment or any part or parts thereof may be attached to or may constitute part of the real property to which the undersigned has an interest.

IN WITNESS WHEREOF the Dealer has executed this Acknowledgment and Consent on the 1 day of December, 20 17.

2595543 Ontario Inc.

Per:

Name: Wei Wei

Title: owner

I have the authority to bind the corporation

Witness \_\_\_\_\_

\_\_\_\_\_  
Landlord

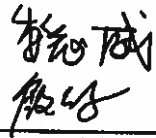
**EXHIBIT I**  
**to a Form of Acknowledgement and Consent of**  
**Dealer, Landlord and/or Mortgagee**

**EQUIPMENT**

<b>Equipment Type</b>	<b>Quantity</b>
<b>Brand Signage (inserts, frames, boxes)</b>	<b>All</b>
<b>Cybera Router</b>	<b>One</b>

_____	_____
_____	_____

NOTE: the parties agree to amend this schedule as required once the Marketing Premises is built and the Branding is complete.

  
\_\_\_\_\_  
(initials)

\_\_\_\_\_  
(landlords initials)



## **SCHEDULE "E"**

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between McDougall, 2595543 Ontario Inc. (The "Dealer") and Wei Wei (the "Guarantor") dated December 1, 2017.

### **CUSTOMER LOYALTY OBLIGATIONS**

#### **1. Participation**

Dealer shall participate in the Esso Extra Win & Earn promotional program (the "Program") offered by Imperial to its Retail Branded 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 Retail Branded 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 Retail Branded Distributor to Dealer shall be credited to Dealer's account with the Retail Branded Distributor on or about the 15th day and on or about the last day of each month. Retail Branded 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 Retail Branded Distributor a promotional program fee (the "Program Fee"), plus applicable taxes (other than income taxes). The Program Fee payable by Dealer to Retail Branded Distributor shall be debited directly from Dealer's account with the Retail Branded Distributor on or about the 15th day and on or about the last day of each month. Imperial may change the 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
Aeroplan	\$0.005 for each point issued



(Initials)

# SCHEDULE "F"

## FACILITY REQUIREMENTS

Attached to and forming part of the MOTOR FUEL SUPPLY AGREEMENT - ESSO-BRANDED MOTOR FUELS between McDougall, 2595543 Ontario Inc. (The "Dealer") and Wei Wei (the "Guarantor") dated December 1, 2017.

Item	Description		"New" & >100K D1 Sites	Min Stds New	Min Stds Renewal Or Upgrade
<b>Weather Canopy</b>  (Canopy required at all D1 & D2 sites only)  (Standards for all other sites with existing canopies)	Fascia	3D	X		
		2D		X	X
	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
<b>Pump/Dispenser</b>		Image 2000 (Blue Graphics for new gasoline dispensers - Red for existing)	X		
		Previous Esso			X
		Pay at the pumps & Speedpass	X		
<b>MID</b>		New Image (Flag Type)	X***		
		Previous Esso		X	X
<b>Painting</b>	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
<b>POS</b>	G-Site		X		
	Operating retail automation system compatible with Imperial's card processing network			X	X

\*\*\*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). Note: Not authorized to use "Tiger Express" or "On The Run" trademarks, or interior/exterior colour schemes and graphics.</li> </ul>
<b>D-2</b>	
<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 Retail Branded Distributor of all changes and the Retail Branded Distributor must comply with these changes for all future applications.

**LETTER OF CONFIRMATION**  
**OF ENVIRONMENTAL COMPLIANCE**

McDougall Energy Inc.  
421 Bay Street, Suite 301  
Sault Ste. Marie, ON  
P6A 1X3

2595543 Ontario Inc. hereby confirms that the service station facility, and operation, located at 179-185 St. Paul St West, St Catharines, On, is in compliance with the following environmental requirements:

- (i) ☐ has a current provincial petroleum retailing license/permit (copy of license/permit attached);
- (ii) ☐ the tankage system is registered, where applicable (copy of registration attached);
- (iii) ☐ the tankage system meets provincial installation and specification standards;
- (iv) ☐ the tankage system was installed by a provincially licensed/approved contractor, where required by law;
- (v) ☐ an approved emergency contingency plan is in place;
- (vi) ☐ is operating in compliance with regulatory operating requirements; and

Dated: 2017/12/01

2595543 Ontario Inc.

Per:  

Name: Wai Wai

Title: Owner

I have the authority to bind the corporation

## **SCHEDULE "C"**

Attached to and forming part of the Motor Fuel Supply Agreement - Esso-Branded Motor Fuels between McDougall, Smart Super Mart Ltd. (The "Dealer"), Ravinderjit Singh Chohan and Satvinder Kaur Chauhan, (the "Guarantors") dated December 1st, 2017.

### **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.

  
\_\_\_\_\_  
(Initials)

### **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.

### **Licenses 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.



(initials)

### **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.

### **Loyalty Programs – Esso Extra and PC Optimum**

- ☐ Collect, use and disclose information gathered for use by Imperial in connection with the Esso Loyalty Programs only in accordance with applicable laws.
- ☐ Display all point-of-purchase materials prescribed by Imperial in connection with the Esso Loyalty Programs.
- ☐ Ask each purchaser of applicable merchandise or services whether he or she has an Esso Loyalty Program 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 Loyalty Program card, using the Esso Extra card and PC Optimum 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 "D"**

Attached to and forming part of the Motor Fuel Supply Agreement - Esso-Branded Motor Fuels between McDougall, Smart Super Mart Ltd. (The "Dealer"), Ravinderjit Singh Chohan and Sarvinder Kaur Chauhan, (the "Guarantors") dated December 1st, 2017.

### **EQUIPMENT**

The following is a list of the Equipment:

<b>Equipment Type</b>	<b>Quantity</b>
<b>Brand Signage (inserts, frames, boxes)</b>	<b>All</b>
<b>MID sign with pole extension,</b>	
<b>Pylon, gas and diesel price changers</b>	<b>One</b>
<b>2Dl Canopy banding</b>	<b>265'</b>
<b>Synergy Signage</b>	<b>All</b>
<b>Illuminates Waves</b>	<b>Two</b>
<b>Number Wedges</b>	<b>Eight</b>
<b>Koalas</b>	<b>Four</b>
<b>Emergency Spill Container</b>	<b>One</b>
<b>Waste and Windshield Washer Units</b>	<b>Four</b>
<b>Pump Toppers</b>	<b>Four</b>
<b>Cybera Router</b>	<b>One</b>
<hr/>	<hr/>
<hr/>	<hr/>

**EXHIBIT 1**  
**to a Form of Acknowledgement and Consent of**  
**Dealer, Landlord and/or Mortgagee**

**EQUIPMENT**

<b>Equipment Type</b>	<b>Quantity</b>
<b>Brand Signage (inserts, frames, boxes)</b>	<b>All</b>
<b>MID sign with pole extension,</b>	
<b>Pylon, gas and diesel price changers</b>	<b>One</b>
<b>2Di Canopy banding</b>	<b>265'</b>
<b>Synergy Signage</b>	<b>All</b>
<b>Illuminates Waves</b>	<b>Two</b>
<b>Number Wedges</b>	<b>Eight</b>
<b>Koalas</b>	<b>Four</b>
<b>Emergency Spill Container</b>	<b>One</b>
<b>Waste and Windsheld Washer Units</b>	<b>Four</b>
<b>Pump Toppers</b>	<b>Four</b>
<b>Cybera Router</b>	<b>One</b>
<hr/>	<hr/>
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## **SCHEDULE "F"**

Attached to and forming part of the Motor Fuel Supply Agreement - Esso-Branded Motor Fuels between McDougall, Smart Super Mart Ltd. (The "Dealer"), Ravinderjit Singh Chohan and Satvinder Kaur Chauhan, (the "Guarantors") dated December 1st, 2017.

### **CUSTOMER LOYALTY OBLIGATIONS**

#### **1. Participation**

Dealer shall participate in the Esso Loyalty promotional program (the "Program") offered by Imperial to its Retail Branded 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 is offered to each retail customer in accordance with the Guidelines,
- ask each customer whether he or she has an Esso Loyalty Program card and if so, whether he or she would like to use it.
- 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 Retail Branded 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 Retail Branded Distributor to Dealer shall be credited to Dealer's account with the Retail Branded Distributor on or about the 15th day and on or about the last day of each month. Retail Branded 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 Retail Branded Distributor a promotional program fee (the "Program Fee"), plus applicable taxes (other than income taxes). The Program Fee payable by Dealer to Retail Branded Distributor shall be debited directly from Dealer's account with the Retail Branded Distributor on or about the 15th day and on or about the last day of each month. Imperial may change the 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 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; and
- (ii) 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:


#### Esso Extra Fees:

Fuel products & services	\$0.007 for each point issued
Convenience store products & services	\$0.007 for each base point issued
Car wash products & services	\$0.007 for each base point issued
Other products & services	\$0.007 for each point issued
Vehicle repair bay products & services	\$0.007 for each point issued

#### PC Optimum Fees:

Fuel products	\$0.0115 for each litre purchased by cardholder
Convenience store products & carwash services	\$0.0115 for each one (\$1.00) dollar spent by cardholder

For greater certainty, each Esso Extra point or base point charged to Dealer is based on each one (\$1.00) dollar sold in conjunction with an Esso Extra card, and each PC Optimum point charged to Dealer is based on each one (1) litre of motor fuel volume purchased and/or each one (\$1.00) dollar of other Backcourt products and services sold in conjunction with a PC Optimum card.

  
(initials)

**SCHEDULE "G"**  
**FACILITY REQUIREMENTS**

Attached to and forming part of the Motor Fuel Supply Agreement - Esso-Branded Motor Fuels between McDougall, Smart Super Mart Ltd. (The "Dealer"), Ravinderjit Singh Chohan and Sarvinder Kaur Chauhan, (the "Guarantors") dated December 1st, 2017.

<b><u>Area</u></b>	<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>Recommended Image</u></b>	<b><u>Minimum Standard</u></b>
<b>Canopy (1)</b>	Fascia	-3D, includes 600mm illuminated Red Frameless Flexface Fascia and 300 non-illuminated white metal Fascia, complete with individually "ESSO" red illuminated letters.	X	
	Fascia	-2D, includes 900mm illuminated Frameless Flexface Fascia, with 600mm high red and 300 mm white, complete with "ESSO" red letters.		X
	Column Cladding	-Wide-side parallel to pump (ie. facing customer); -with Synergy apertures per guidelines	X	
	Column Cladding	-Wide-side perpendicular to dispenser (ie. facing dispenser); -with Synergy apertures per guidelines		X
	(1) Minimum Standard includes canopy and cladding on all columns. Sites without a canopy, or without column cladding, requires Imperial's prior approval.			
<b>Pump/Dispenser</b>	Image	Synergy dispenser image		X
	Payment	Pay at the pump (CRIND)	X	
	Payment	Speedpass+	X	
	Payment	Speedpass at the pump (TRIND)	X	
	Pump islands	Synergy apertures per guidelines		X
<b>Major Identification Sign ("MID") (2)</b>	Type	Flag style, with 3D Esso oval	X	
	Type	Existing frame, with 2D Esso oval		X
	Panels	-Esso oval -Gasoline price		X

		-Synergy (per guidelines)		
	Hierarchy	-Esso oval: in top position -Synergy: either above or below gasoline price		X
	(2) Minimum Standard for MID type, panels, and hierarchy subject to municipal allowances			
Paint	Colour	P - 5 Cambridge White: MID structure and frames, column cladding		X
	Colour	P - 13 Grey: Lighting poles, bollards, promotional sign posts and frames, pump island curbs		X
	Colour	Black: Merchandisers, trash cans, windshield service bucket		X
Point of Sale ("POS")	System	Bulloch		X
	Payment	Speedpass 'mat' (at inside pay-point)		X

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

  
\_\_\_\_\_  
(initials)

## **Appendix 4**

# Listing Agreement

## Seller Designated Representation Agreement

### Authority to Offer for Sale



**Exclusive Listing Agreement**

**EXCLUSIVE**  
*Mm*  
(Seller's Initials)

**BETWEEN:**

**BROKERAGE:** ..... **Avison Young Commercial Real Estate Services, LP** .....

.....(the "Listing Brokerage") Tel. No. .... **416-955-0000** .....

msi Spergel Inc., solely in its capacity as Court-appointed Receiver, without security nor any corporate liability, of all the  
**SELLER:** assets, undertakings, and properties of Smart Super Mart Ltd., .....(the "Seller")

**DESIGNATED REPRESENTATIVE(S):** **Kelly Avison & Graeme White**

(Name of Salesperson/Broker/Broker of Record)

The Designated Representative will be providing services and representation to the Seller and the Brokerage provides services but not representation.

In consideration of the Listing Brokerage listing the real property for sale known as **179-185 St. Paul Street West**

**St. Catharines, ONT. (P.I.N.# 46179-0340)** .....

the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

**commencing at** **9:00 AM** on the **23rd** day of **May**, 20**25**,  
(a.m./p.m.)

**and expiring at** 11:59 p.m. on the **30th** day of **November**, 20**25** (the "Listing Period"),

{ Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Trust in Real Estate Services Act, 2002 (TRESA), **the Listing Brokerage must obtain the Seller's initials.** }

*Mm*  
(Seller's Initials)

to offer the Property for sale at a price of:

Dollars (CDN\$) .... **2,200,000.00** .....

**TWO MILLION TWO HUNDRED THOUSAND**

Dollars

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

**The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the Property.**

*Mm*  
(Seller's Initials)

**Schedule A**, ..... attached hereto forms part of this Agreement, of which **Schedule A** sets out the details with respect to the services, confidentiality and representation of the Brokerage and Designated Representative.

**1. DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Agreement ("Authority" or "Agreement"):

"Seller" includes vendor, a "buyer" includes a purchaser, or a prospective purchaser. "Self-represented assistance" shall mean assistance provided to a self-represented party. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. A "real estate board" includes a real estate association. "Public Marketing" shall have the same meaning as set out in REALTOR® Cooperation Policy as published by the Canadian Real Estate Association.

**2. COMMISSION:** In consideration of the Listing Brokerage listing the Property:

**payable upon the conveyance of legal title to the Property and the waiver of all escrow conditions under the Agreement of Purchase and Sale as further set out in Schedule A**

(i) the Seller agrees to pay the Listing Brokerage a commission of **3.95** % of the sale price of the Property ~~or~~ .....

..... ("total commission") ~~for any valid offer to purchase the Property from any source that is received during the Listing Period, or may be acceptable to the Seller.~~

(ii) the Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay

the co-operating brokerage a commission of **1.75** % of the sale price of the Property .....  
Payment to the co-operating brokerage shall be made by the Listing Brokerage out of the total commission calculated above.

The Seller further agrees that the total commission calculated above shall be payable to the Listing Brokerage even if there is no co-operating brokerage.

The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone

on the Seller's behalf within **90** days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period.

**and a list of prospects is provided to the Seller**

**INITIALS OF LISTING BROKERAGE:**

**INITIALS OF SELLER(S):**

*Mm*  
(Seller's Initials)



# Listing Agreement

## Seller Designated Representation Agreement

### Authority to Offer for Sale

This is a Multiple Listing Service® Agreement



~~OR Exclusive Listing Agreement~~



**BETWEEN:**

**BROKERAGE:** ..... **Avison Young Commercial Real Estate Services, LP** .....

.....(the "Listing Brokerage") Tel. No. .... **416-955-0000** .....

**SELLER:** .....msi Spergel Inc., solely in its capacity as Court-appointed Receiver, without security nor any corporate liability, of all the assets, undertakings, and properties of Smart Super Mart Ltd.,.....(the "Seller")

**DESIGNATED REPRESENTATIVE(S):** **Kelly Avison & Graeme White**

(Name of Salesperson/Broker/Broker of Record)

The Designated Representative will be providing services and representation to the Seller and the Brokerage provides services but not representation.

In consideration of the Listing Brokerage listing the real property for sale known as **179-185 St. Paul Street West**

**St. Catharines, ONT. (P.I.N.# 46179-0340)** .....

.....(the "Property")

the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

commencing at **9:00 AM** on the **5th** day of **June**, 20**25**,  
(a.m./p.m.)

and expiring at **11:59 p.m.** on the **30th** day of **November**, 20**25** (the "Listing Period"),

{ Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Trust in Real Estate Services Act, 2002 (TRESA), **the Listing Brokerage must obtain the Seller's initials.** }



to offer the Property for sale at a price of: Dollars (CDN\$) **2,200,000.00**

**TWO MILLION TWO HUNDRED THOUSAND**

Dollars

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

**The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the Property.**



**Schedule A**, ..... attached hereto forms part of this Agreement, of which **Schedule A** sets out the details with respect to the services, confidentiality and representation of the Brokerage and Designated Representative.

#### 1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"):

"Seller" includes vendor, a "buyer" includes a purchaser, or a prospective purchaser. "Self-represented assistance" shall mean assistance provided to a self-represented party. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. A "real estate board" includes a real estate association. "Public Marketing" shall have the same meaning as set out in REALTOR® Cooperation Policy as published by the Canadian Real Estate Association.

#### 2. COMMISSION: In consideration of the Listing Brokerage listing the Property:

**payable upon the conveyance of legal title to the Property and the waiver of all escrow conditions under the Agreement of Purchase and Sale as further set out in Schedule A**

(i) the Seller agrees to pay the Listing Brokerage a commission of **3.95** % of the sale price of the Property ~~or~~ .....

..... ("total commission") ~~for any valid offer to purchase the Property from any source that is received during the Listing Period, or may be acceptable to the Seller.~~

(ii) the Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay

the co-operating brokerage a commission of **1.75** % of the sale price of the Property ~~or~~ .....  
Payment to the co-operating brokerage shall be made by the Listing Brokerage out of the total commission calculated above.

The Seller further agrees that the total commission calculated above shall be payable to the Listing Brokerage even if there is no co-operating brokerage.

The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone

on the Seller's behalf within **90** days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period.

**and a list of prospects is provided to the Seller**

**INITIALS OF LISTING BROKERAGE:**

**INITIALS OF SELLER(S):**

If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

~~The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.~~

~~Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amount paid to the Listing Brokerage from the deposit by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.~~

All amounts set out as commission are to be paid plus applicable taxes on such commission.

- 3. REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Self-Represented Party assistance. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage listing other properties that may be similar to the Seller's Property without any claim by the Seller of conflict of interest. ~~The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.~~ Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage, said commission to be disbursed in accordance with the Commission Trust Agreement.

**MULTIPLE REPRESENTATION:** The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will require the Seller's written consent to represent both the Seller and the buyer for the transaction.

The Seller understands and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept;
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer, unless otherwise directed in writing by the Seller; and
- the Listing Brokerage shall not disclose to the Seller the terms of any other offer by the buyer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

**The Brokerage shall not be appointed or authorized to be agent for either the Seller or the buyer for the purpose of giving and receiving notices where the Brokerage represents both the Seller and the buyer (multiple representation) or where the buyer or the seller is a self-represented party.**

**MULTIPLE REPRESENTATION AND DESIGNATED REPRESENTATION:** The Seller understands and acknowledges where both the Seller and buyer are represented by a designated representative of the Listing Brokerage, multiple representation will not result, unless that designated representative represents more than one client in the same trade, and will require consent in writing for such multiple representation. In the event of multiple representation and designated representation, the Brokerage duty of disclosure to both the seller and the buyer client is as more particularly set out in the agreement with the respective seller or buyer.

- 4. FINDERS FEES:** ~~The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the Commission as described above.~~
- 5. REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of Commission set out above, payable within five (5) days following the Listing Brokerage's completion of the sale of the Property, ~~payable upon closing and the waiver of all escrow conditions under the Agreement of Purchase and Sale as per Schedule A.~~
- 6. MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. ~~The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period.~~ The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act. The Seller acknowledges the Brokerage in accordance with MLS® Rules and Regulations, and the Canadian Real Estate Association REALTOR® Code of Ethics, this Listing shall be, within three (3) days of Public Marketing, placed on an MLS® System for cooperation with other REALTORS®.
- 7. WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
- 8. INDEMNIFICATION AND INSURANCE:** ~~The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the Commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement and, if provided, the accompanying data form.~~ The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.
- 9. FAMILY LAW ACT:** ~~The Seller hereby warrants that special consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.~~
- 10. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

INITIALS OF LISTING BROKERAGE:

INITIALS OF SELLER(S):

*mm*

**11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of ~~personal~~ information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. ~~The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, agents, brokerages, representatives from any and all claims, suits, actions, losses, costs and legal fees caused by, arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) to the MLS® System.~~ The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may, during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

  
Does

  
Does Not

**12. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

**13. CONFLICT OR DISCREPANCY:** If there is any 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 the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

**14. ELECTRONIC COMMUNICATION:** This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

**15. ELECTRONIC SIGNATURES:** If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time.

**THE LISTING BROKERAGE AND THE DESIGNATED REPRESENTATIVE OF THE BROKERAGE AGREE TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND THE DESIGNATED REPRESENTATIVE OF THE BROKERAGE SHALL REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.**

(Authorized to bind the Listing Brokerage)


(Date)

(Name of Person Signing)

**THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL.** Any representations contained herein or as shown on any accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

   
(Signature of Seller)  

 May 20, 2025  
(Seal) (Date)

(Tel. No.)

(Signature of Seller)

(Seal)

(Date)

(Tel. No.)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

(Spouse)

(Seal)

(Date)

(Tel. No.)

#### DECLARATION OF INSURANCE

The Salesperson/Broker/Broker of Record Kelly Avison Graeme White

(Name of Salesperson/Broker/Broker of Record)

hereby declares that he/she is insured as required by TRESA.

  
(Signature(s) of Salesperson/Broker/Broker of Record)

#### ACKNOWLEDGEMENT


The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the ..... day of ..... May, 20 25

   
(Signature of Seller)  

May 20, 2025  
(Date)

(Signature of Seller)

(Date)

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## SCHEDULE "A"

TO A LISTING AGREEMENT BETWEEN Avison Young Commercial Real Estate Services, LP ("Listing Brokerage") AND **msi Spergel Inc.** ~~(the "Seller")~~, solely in its capacity as Court-appointed receiver, without security, of all the assets, undertakings and properties of **Smart Super Mart. Ltd.** (the "Debtor" or "Owner"), and without personal or corporate liability ~~(the "Seller")~~; for the real property located at 179-185 St. Paul Street West, St. Catharines, Ontario [PIN# 46179-0340 (LT) ] (the "Property").

---

### 1. Commission/Fees:

- a. Notwithstanding sub-clause 2 of the pre-printed Listing Agreement, in the event that:
- i. the registered first place charge to Royal Bank of Canada ("RBC") is transferred or sold to another party, and the Receiver's appointment is terminated; or
  - ii. in the event the existing Owner or Debtor successfully refinances the Property, and/or redeems the RBC first place charge, on or before the completion date for any potential sale or transfer;

(collectively a "Triggering Event")

and in either Triggering Event scenario, if the Receiver's appointment is terminated, then the following sliding fee structure timeline shall apply, and shall commence on (or be anchored to) the Listing Commencement Date:

### FLAT FEE

### TIMELINE FOR TRIGGERING EVENT TO OCCUR

- a) \$5,000 - within the first 15 days of Listing Commencement Date;
- b) \$10,000 - within 16-45 days of Listing Commencement Date;
- c) \$30,000 - after 45 days of Listing Commencement Date;
- d) Full Fee(\*) - on and after acceptance of an unconditional offer to purchase by the Seller/Receiver, and only subject to Court approval and obtaining an Approval and Vesting Order/AVO.

(\* Full Fee is the commission noted in sub-clause 2 of the pre-printed Listing Agreement).

<b>Seller's Initials</b> <i>Mm</i>	<b>Listing Brokerage's Initials</b>  
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box SIGN 170KU56-4P0RVJZ7

2. Subject to the provision in Paragraph 1 above, the Seller shall only be liable to pay the commission provided for in the Listing Agreement if the purchase is completed that includes, but is not limited to, the conveyance of the Property to a purchaser and the waiver of all escrow conditions. The Listing Brokerage acknowledges that the sale is taking place pursuant to the Court Order of The Honourable Justice Bordin dated January 30<sup>th</sup>, 2025, and that further court approval of the sale ("**Court Approval**") is a pre-condition to completion of the transaction. The Seller cannot guarantee that Court Approval will be obtained. The Listing Brokerage also acknowledges that the purchaser of the Property may include in the agreement of purchase and sale certain conditions which the Seller is required to fulfil prior to closing (collectively, the "**Conditions**") including, without limitation, the delivery of vacant possession. The fulfilment of such Conditions by the Seller cannot be guaranteed. The parties agree that (with the exception of a Triggering Event noted in clause 1 of this Schedule) no commission shall be payable if the transaction is not completed because Court Approval is not obtained or if the Conditions are not met or are impracticable to meet.
3. It is further understood and agreed that the Listing Brokerage shall offer the Property for sale on an "as is, where is" basis and that the Listing Brokerage shall make no representations, warranties, promises or agreements with respect to or in any way connected with the Property, including, without limitation, the title, description, fitness, state, condition, environmental status nor the existence of any work orders or deficiency notices affecting the Property.
4. Notwithstanding any other provision of this Agreement, the Seller makes no representations or warranties regarding the Property, the condition of the Property, the existence of any insurance or its ability to enter into this listing agreement nor does the Seller provide the Listing Brokerage with any indemnification regarding any such matters.
5. The Listing Brokerage assumes no responsibility and the Seller will not hold the Listing Brokerage, representatives of the Listing Brokerage nor any cooperating brokerage liable for, any claim, loss, cost, damage, or injury in connection with or attributable to the Property or its condition, except to the extent caused by the gross negligence or wilful misconduct of the Listing Brokerage or its representatives. The Seller shall acquire and maintain during the term of this Agreement, insurance coverage on such terms and in such amounts as the Seller deems appropriate in respect of the Property, including personal liability insurance against any claims resulting from bodily injury or property damage occurring on or at the Property.

<b>Seller's Initials</b> <i>Mm</i>	<b>Listing Brokerage's Initials</b> 
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boK SIGN 170KJ56-4PXRJZ7


6. Any prospective purchaser shall be requested to use the Seller's Form of Offer, or Schedule, which will be provided by the Listing Brokerage to such prospective purchaser.
7. In the event of any conflict between the provisions of this Schedule "A" and the provisions of the pre-printed portions of the Listing Agreement, the provisions of this Schedule "A" shall override and shall govern and prevail for all purposes.

<u>Seller's Initials</u> <i>Mm</i>	<u>Listing Brokerage's Initials</u>
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box SIGN 170XJ56-4PRVIZ7

## **Appendix 5**



	<b>179-185 St. Paul St W</b> <b>St. Catharines Ontario L2S 2C8</b> St. Catharines 458 - Western Hill Niagara <b>SPIS:</b> N <b>For:</b> Sale <b>Taxes:</b> \$26,014/2024/Annual <b>Last Status:</b> SC <b>DOM:</b> 147							
	<b>List: \$2,200,000 For Sale</b> <b>Commercial/Retail Service Other</b> <b>Occup:</b> Vacant <b>Freestanding:</b> Y <b>SPIS:</b> N <b>Lse Term Mnths:</b> / <b>Holdover:</b> 90 <b>Franchise:</b> <b>Com Cndo Fee:</b> <b>Dir/Cross St:</b> St Paul St W/Merigold St <b>Directions:</b> St Paul St W/Merigold St							
<b>MLS#:</b> X12201533 <b>Sellers:</b> msi Spergel Inc. solely in its capacity as Court-appointed Receiver, without security nor any corporate liability, of all the assets , undertakings and properties of Smart Super Mart Ltd. <b>Contact After Exp:</b> N <b>Possession:</b> Immediate <b>Remarks:</b> Vacant possession on Closing <b>PIN#:</b> 461790340 <b>ARN#:</b> <b>Additional PIN#:</b> <b>Legal:</b> PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372 CITY OF ST. CATHARINES								
<b>Total Area:</b> 0.55 Acres <b>Ofc/Apt Area:</b> <b>Indust Area:</b> <b>Retail Area:</b> 100 % <b>Apx Age:</b> <b>Volts:</b> <b>Amps:</b> <b>Zoning:</b> M1 - Medium Density Mixed Use <b>Truck Level:</b> <b>Grade Level:</b> <b>Drive-In:</b> <b>Double Man:</b> <b>Clear Height:</b> <b>Sprinklers:</b> Part <b>Heat:</b> Other <b>Phys Hdcp-Eqp:</b>	<b>Survey:</b> <b>Lot Size Area:</b> 0.55 <b>Lot/Bldg/Unit/Dim:</b> 158 x 152 Feet Lot <b>Lot Irreg:</b> <b>Bay Size:</b> <b>%Bldg:</b> <b>Washrooms:</b> 0 <b>Water:</b> Municipal <b>Water Supply Type:</b> <b>Sewers:</b> San+Storm <b>A/C:</b> Part <b>Utilities:</b> Y <b>Garage Type:</b> Outside/Surface <b>Park Spaces:</b> #Trl Spc: <b>Energy Cert:</b> <b>Cert Level:</b> <b>GreenPIS:</b>	<b>Soil Test:</b> <b>Out Storage:</b> <b>Rail:</b> <b>Crane:</b> <b>Basement:</b> <b>Elevator:</b> <b>UFFI:</b> <b>Assessment:</b> <b>Chattels:</b> <b>LLBO:</b> <b>Days Open:</b> <b>Hours Open:</b> <b>Employees:</b> <b>Seats:</b> <b>Area Infl:</b> <b>HST Applicable to</b> In Addition To <b>Sale Price:</b>						
<b>Bus/Bldg Name:</b> <b>For Year:</b> <b>Financial Stmt:</b> <b>Actual/Estimated:</b> <table style="width: 100%;"> <tr> <td style="width: 33%;"> <b>Taxes:</b>  <b>Insur:</b>  <b>Mgmt:</b>  <b>Maint:</b> </td> <td style="width: 33%;"> <b>Heat:</b>  <b>Hydro:</b>  <b>Water:</b>  <b>Other:</b> </td> <td style="width: 33%;"> <b>Gross Inc/Sales:</b>  <b>-Vacancy Allow:</b>  <b>-Operating Exp:</b>  <b>=NetIncB4Debt:</b> </td> </tr> <tr> <td colspan="3"> <b>EstValueInv At Cost:</b>  <b>Com Area Upcharge:</b>  <b>% Rent:</b> </td> </tr> </table>			<b>Taxes:</b> <b>Insur:</b> <b>Mgmt:</b> <b>Maint:</b>	<b>Heat:</b> <b>Hydro:</b> <b>Water:</b> <b>Other:</b>	<b>Gross Inc/Sales:</b> <b>-Vacancy Allow:</b> <b>-Operating Exp:</b> <b>=NetIncB4Debt:</b>	<b>EstValueInv At Cost:</b> <b>Com Area Upcharge:</b> <b>% Rent:</b>		
<b>Taxes:</b> <b>Insur:</b> <b>Mgmt:</b> <b>Maint:</b>	<b>Heat:</b> <b>Hydro:</b> <b>Water:</b> <b>Other:</b>	<b>Gross Inc/Sales:</b> <b>-Vacancy Allow:</b> <b>-Operating Exp:</b> <b>=NetIncB4Debt:</b>						
<b>EstValueInv At Cost:</b> <b>Com Area Upcharge:</b> <b>% Rent:</b>								
<b>Client Remks:</b> 179-185 St. Paul Street West, St. Catharines, ON offers a prime opportunity to acquire a vacant gas station and convenience store, with car wash bays, prominently located on a major arterial road leading into downtown St. Catharines. Situated on a 0.55-acre site, the property features a ~3,000 sq. ft. C-Store, existing gas pumps and canopy, and 6-bay open car wash station. Zoned Medium Density Mixed Use, the site supports a wide array of commercial and residential development possibilities, making it ideal for investors, developers, or end-users seeking a high-visibility location with flexible land use potential. Property is being sold "as is, where is" by Court-appointed Receiver, without any representation or warranties by the Seller or Listing Broker. Buyers are advised to perform their own due diligence. All sales are subject to Court approval, and all offers must be on Receiver's form of APS, available in LB's data room. <b>Extras:</b> <b>Inclusions:</b> <b>Exclusions:</b> <b>Rental Items:</b> <b>Showing Requirements:</b> List Salesperson <b>Brkage Remks:</b> Tours only by pre-scheduled appointment via the LA's, and after execution of the NDA. LA's must be present for all tours. <b>Fees only paid upon successful closing.</b>								
<b>AVISON YOUNG COMMERCIAL REAL ESTATE SERVICES, LP Ph: 416-955-0000 Fax: 416-955-0724</b> 222 Bay St #2500 Toronto M5K1J5 <b>KELLY JOHN AVISON, Broker 416-673-4030</b> <b>GRAEME WHITE, Salesperson 647-598-2318 AVISON YOUNG COMMERCIAL REAL ESTATE SERVICES, LP</b> <b>Contract Date:</b> 06/05/2025 <b>Condition:</b> Court Approval <b>Ad:</b> N <b>Expiry Date:</b> 11/30/2025 <b>Cond Expiry:</b> 12/15/2025 <b>Escape:</b>								



<b>Last Update:</b> 10/30/2025	<b>CB Comm:</b> 1.75% only paid on successful closing	<b>Original:</b> \$2,200,000
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179-185 St. Paul St W, St. Catharines  
L2S 2C8

# X12201533



## **Appendix 6**

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT** dated as of the 21<sup>st</sup> day of October, 2025.

BETWEEN:

**MSI SPERGEL INC.**, in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of **SMART SUPER MART LTD.** (the “**Debtor**”) and not in its personal or corporate capacity and without personal or corporate liability.

(the “**Vendor**”)

OF THE FIRST PART

- and -

Shakeel Ahmed (in trust for corporation to be formed)

---

(the “**Purchaser**”)

OF THE SECOND PART

### WHEREAS

- A. Pursuant to the Receivership Order (as defined below), msi Spergel Inc. was appointed receiver to, among other things, market and sell the Purchased Assets (as defined below);
- B. Subject to the Court issuing the Approval and Vesting Order (as defined below), the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, all of the right, title and interest of the Debtor in and to the Purchased Assets on the terms and conditions set out herein.

**IN CONSIDERATION** of the mutual agreements contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the Vendor and the Purchaser, the Vendor and the Purchaser agree as follows:

1. **DEFINITIONS**

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) **"Act"** means, for purposes of Section 22 hereof only, the *Excise Tax Act* (Canada);
- (b) **"Agreement"** means this agreement of purchase and sale, together with the attached schedules;
- (c) **"Approval and Vesting Order"** means an order of the Court substantially in the form of the template Approval and Vesting Order for use on the Commercial List of the Court approving the transaction provided for in this Agreement and ordering that all of the Debtor's right, title and interest in the Purchased Assets be vested in the Purchaser free and clear of encumbrances except for Permitted Encumbrances upon satisfaction by the Purchaser of its obligations under this Agreement, a draft of which is attached hereto as Schedule "D";
- (d) **"Assignment of Contracts"** means an assignment and assumption of the right, title and interest and obligations of the Debtor in the Assumed Contracts to the Purchaser in the form mutually agreed upon between the Vendor and the Purchaser, each acting reasonably;
- (e) **"Assumed Contracts"** shall have the meaning ascribed to it in Section 4 hereof;
- (f) **"Assumed Liabilities"** shall have the meaning ascribed to it in Section 6 hereof;
- (g) **"Buildings"** means the buildings situate on the Lands, including all improvements thereto and all fixtures forming a part thereof;
- (h) **"Business Day"** means any day other than a Saturday or a Sunday or a statutory holiday in the Province of Ontario;
- (i) **"Closing"** shall have the meaning ascribed to it in Section 12 hereof;
- (j) **"Closing Adjustments"** shall have the meaning ascribed to it in Section 10(a) hereof;
- (k) **"Closing Documents"** means the Vendor's closing deliveries and the Purchaser's Closing deliveries together as set forth in Sections 19 and 20 hereof;
- (l) **"Court"** means the Ontario Superior Court of Justice;
- (m) **"Damages"** shall have the meaning ascribed to it in Section 20(g) hereof;

- (n) **“Date of Closing”** shall have the meaning ascribed to it in Section 12 hereof and **“Closing Date”** shall have the same meaning;
- (o) **“Environmental Law”** means the *Ontario Environmental Protection Act*, RSO 1990, c.E19 and the *Canadian Environmental Protection Act*, RSC 1999, m c.33 and each of their respective regulations, as amended;
- (p) **“Excluded Assets”** means the following assets, property, rights and interests of the Debtor:
  - (i) all cash on hand, bank deposits, guaranteed investment certificates, securities and other similar cash or cash equivalent items;
  - (ii) all notes receivable and other debts due or accruing due to the Debtor whether or not related to Gas and Convenience Business;
  - (iii) all prepaid expenses not related to the Gas and Convenience Business;
  - (iv) all income tax refunds, HST refunds and all other tax refunds and amounts that may be due to the Debtor from Canada Revenue Agency or any provincial tax authorities;
  - (v) all corporate records, minute books, tax records and returns, and other records having to do with the corporate organization of the Debtor;
  - (vi) all lottery tickets, lottery terminal and related supplies;
  - (vii) any goods and chattels on the Lands and owned by a third party; and
  - (viii) all information and materials in electronic form of the Debtor not specifically related to or used in connection with the Gas and Convenience Business.
- (q) **“Gas and Convenience Business”** means the “ESSO” gasoline business and related convenience store, including all Inventory and Personal Property owned by the Debtor utilized in relation thereto, operating under a Motor Fuel Supply Agreement between McDougall Energy Inc. and 2595543 Ontario Inc., dated December 1, 2017 as amended and assigned to the Debtor by Agreement dated June 21, 2020 from the Lands known municipally as, 179-185 St. Paul Street West, St. Catharines, Ontario, and **“Business”** shall have the same meaning;

- (r) **“Government Authority”** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the transaction contemplated in this Agreement and/or one or both of the parties hereto and shall include a board or association of insurance underwriters;
- (s) **“Hazardous Materials”** means any substance, material, matter or thing defined or regulated by any Environmental Law, (as defined herein) contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances”, all as defined in, referred to or contemplated in any Environmental Law and, not to limit the generality of the foregoing, includes asbestos, mould, urea formaldehyde foam insulation and mono- or poly-chlorinated biphenyl wastes;
- (t) **“HST”** shall have the meaning ascribed thereto in Section 22 hereof;
- (u) **“ICA”** shall have the meaning ascribed thereto in Section 16(f) hereof;
- (v) **“Inventory”** means all inventories of or relating to or associated with the Gas and Convenience Business and situated on the Lands, including:
  - (i) fuel in underground storage tanks.
- (w) **“Inventory Valuation”** has the meaning ascribed to it in Section 11(c) hereof;
- (x) **“Lands”** means the lands and premises municipally known as 179-185 St. Paul Street West, St. Catharines, Ontario, and legally described on **Schedule “A”** hereto;
- (y) **“Material Damage”** shall have the meaning ascribed to it in Section 14 hereof;
- (z) **“Permitted Encumbrances”** means the encumbrances listed in **Schedule “B”** hereof;
- (aa) **“Personal Property”** means the personal property relating to or associated with the Gas and Convenience Business situated on the Lands and listed on **Schedule “C”** hereof;

- (bb) **Potential Tenancies** means any tenants, if any, which may be located on or residing at the lands pursuant to leases with the Debtor, or any of them, as well as any such leases governing the relationship between such tenants and the Debtor;
- (cc) **Purchase Price** shall have the meaning ascribed thereto in Section 9 hereof;
- (dd) **Purchased Assets** means, collectively:
  - (ii) The Lands;
  - (iii) The Buildings;
  - (iv) The Gas and Convenience Business, including the Personal Property and the Inventory; and,
  - (v) The Rights.

and the interest of the Debtor in same;

- (ee) **Purchaser** means Shakeel Ahmed, in trust for a corporation to be formed;
- (ff) **Purchaser's Solicitor** means (NTD- Purchaser to provide)

- 
- (gg) **Receivership Order** means the order of the Honourable Justice Bordin dated the 30th day of January 2025, including all schedules to it in the receivership proceeding of the Debtor whereby the Vendor was appointed receiver of the assets, undertakings and properties of the Debtor;
  - (hh) **Registry Office** shall have the meaning ascribed to it in Section 13(a) hereof;
  - (ii) **Rights** means the right, title and interest, if any, of the Debtors in all benefits, advantages, licences, guarantees, warranties, indemnities, income, rents and options relating to the Land and the Buildings;
  - (jj) **Motor Fuel Supply Agreement** means the Motor Fuel Supply Agreement between McDougall Energy Inc. and 2595543 Ontario Inc., dated December 1, 2017 as amended and assigned to the Debtor by Agreement dated June 21, 2020 from the Lands known municipally as 179-185 St. Paul Street West, St. Catharines, Ontario;
  - (kk) **TERS** shall have the meaning ascribed to it in Section 13(a) hereof;



- (ll) **“Vendor”** means msi Spergel inc., in its capacity as Court-appointed receiver of the assets, undertakings and properties of the Debtor, and not in its personal or corporate capacity and without personal or corporate liability; and
- (mm) **“Vendor’s Solicitors”** means the firm of Gowling WLG (Canada) LLP.

## 2. **SCHEDULES**

The following Schedule are appended to this Agreement:

Schedule “A”	Legal Description of Lands
Schedule “B”	Permitted Encumbrances
Schedule “C”	Personal Property
Schedule “D”	Approval and Vesting Order (Draft)

## 3. **NATURE OF TRANSACTION**

The Purchaser shall purchase, and the Vendor shall sell all of the right, title and interest, if any, of the Debtor in the Purchased Assets, upon and subject to the terms of this Agreement.

## 4. **ASSUMED CONTRACTS AND APPROVAL OF MCDUGALL ENERGY INC.**

- (a) As soon as practicable prior to the Closing Date, the Purchaser shall provide written notice to the Vendor of those contracts and or licenses which relate to the Gas and Convenience Business, including the Motor Fuel Supply Agreement between the Debtor and McDougall Energy Inc. (**“McDougall”**), which the Purchaser has elected, at its sole discretion but subject to any third party consents as may be required, to assume on Closing, if any (individually, an **“Assumed Contract”** and collectively, the **“Assumed Contracts”**), and such notice shall be deemed to be a provision contained in this Agreement.
- (b) Upon and subject to the terms of this Agreement, the Vendor shall assign to the Purchaser all of the Debtor’s right, title and interest, if any, in and to the Assumed Contracts pursuant to the Assignment of Contracts and the Purchaser shall assume and indemnify and save harmless the Vendor from and against the obligations and liabilities under the Assumed Contracts arising after Closing.
- (c) This Agreement and any document delivered under this Agreement shall not constitute an assignment or attempted assignment of any Assumed Contract

contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third party, or by Court order, and if such consent or Court order has not been obtained, such assignment or attempted assignment would constitute a breach of such Assumed Contract.

- (d) The Purchaser shall be solely responsible for obtaining all third party consents and/or Court orders which are required or desirable for the assignment of the Assumed Contracts. The Vendor shall cooperate with the Purchaser in obtaining such consents or Court orders but the Vendor shall be under no obligation to incur any expense or make any payment required to effect the assignment of the Assumed Contracts. Notwithstanding the foregoing, the Vendor agrees that the Purchaser will get vacant possession of the Property on closing, and the Vendor will arrange to terminate any fuel supply agreements before closing. The Purchaser is purchasing this Property free and clear of any fuel supply agreements or any other leases/agreements, and the Purchaser is not purchasing any inventory and is getting vacant possession. If there are any inventory items left behind they will belong to the Purchaser on closing without payment.
- (e) For the Motor Fuel Supply Agreement with McDougall, the Purchaser acknowledges that:
  - (i) **The Purchaser shall advise the Vendor within ten (10) Business Days from the date of acceptance of this Agreement that it does not want to take any steps to assume the existing Motor Fuel Supply Agreement or negotiate a new form of agreement with McDougall in which case this Agreement shall be null and void, and the Deposit shall be returned to the Purchaser without interest, set-off or deduction. This clause is included solely for the benefit of the Purchaser and may be waived by the Purchaser before the expiry of the 10 Business Day period mentioned in this sub-paragraph. Following the expiry of the 10 Business Day period mentioned in this sub-paragraph, the provisions of the remaining sub-paragraphs in this paragraph 4(e) and paragraph 5 shall govern in addition to all other provisions in this Agreement. The Purchaser hereby advises the Vendor that upon mutual acceptance of this Agreement, the Purchaser does not want to assume any existing fuel supply agreement on closing (including the existing Motor Fuel Supply Agreement with McDougall fuels and further requests the Vendor terminate same on closing.**
  - (ii) McDougall has a right of first refusal under the Motor Fuel Supply Agreement that entitles McDougall to exercise certain rights under

the Motor Fuel Supply Agreement and such rights continue to be reserved for McDougall's benefit;

- (iii) the Vendor makes no representations and warranties about McDougall's willingness to assign the Fuel Supply Agreement to the Purchaser or to accept the Purchaser as a contracting party under any new agreement;
- (iv) McDougall has the right under the Fuel Supply Agreement to undertake due diligence respecting the Purchaser and to refuse to consent to the Purchaser assuming the existing Fuel Supply Agreement or entering into a new agreement;
- (v) if the Purchaser waives by notice in writing to the Vendor the condition in sub-paragraph 4(e)(i) or the deadline mentioned in sub-paragraph 4(e)(i) has passed without any written waiver, then the Purchaser shall immediately pursue negotiations directly with McDougall with respect to the assignment of the existing, or negotiating a new, Fuel Supply Agreement and the Purchaser shall cooperate with McDougall, at its sole expense, with respect to all due diligence as required by McDougall and paragraph 5 of this Agreement shall also apply;
- (vi) Under no circumstances shall the Vendor be liable for any acts or omissions relating in any way, directly or indirectly, to the attempted assignment of the existing Fuel Supply Agreement or negotiation of a new agreement;

5. Any Assumed Contract for which the consent of a third party, or a Court order, is required to effect the assignment and for which such third party consent or Court order has not been obtained as of Closing may be disclaimed by the Vendor in its sole discretion and on commercially reasonable grounds. Despite any other waiver of conditions in this Agreement for the benefit of either or both of the Vendor and Purchaser as may be the case, and subject to the Vendor in its sole discretion deciding to pursue through the Court a disclaimer of an Assumed Contract for which third party consent has been refused, should the Vendor so decide to pursue a disclaimer, then this Agreement shall remain conditional upon the Vendor obtaining a Court order disclaiming any Assumed Contract for which there is a refusal by a third party to provide consent. If the Vendor is unsuccessful in obtaining a disclaimer because the Court refuses to allow a disclaimer, then the Vendor shall not be required to pursue any appeal of such Court decision refusing the disclaimer and this Agreement shall be null and void, and the Deposit shall be returned to the Purchaser without interest, set-off or

deduction. This condition is included solely for the benefit of the Vendor and may be waived by the Vendor at any time by notice in writing to the Purchaser. If the Vendor, in its sole discretion, elects not to pursue such disclaimer with the Court, then it shall provide written notice to the Purchaser and this Agreement shall be null and void, and the Deposit shall be returned to the Purchaser without interest, set-off or deduction. All expenses or damages of any kind incurred by the Purchaser leading up to the cancelation of this Agreement pursuant to this paragraph shall be the exclusive responsibility of the Purchaser and under no circumstances shall the Purchaser seek recovery of such expenses or damages against the Vendor.

#### 6. **ASSUMED LIABILITIES**

Subject to the terms and conditions of this Agreement, the Purchaser agrees that it will, as and from the Closing assume, discharge, perform, pay and fulfill and indemnify and save harmless the Vendor from and against the following obligations and liabilities (collectively, the “**Assumed Liabilities**”):

- (a) all obligations and liabilities under the Assumed Contracts arising after Closing;
- (b) all liabilities and obligations in respect of the Purchased Assets arising or incurred from and after Closing, including, without limitation, all obligations and liabilities relating to the Permitted Encumbrances; and
- (c) If there are any outstanding property tax payable to the town/municipality the Vendor will pay those on closing.

#### 7. **OBLIGATIONS EXCLUDED**

The Purchaser is not assuming and shall not be responsible for any liabilities or obligations of the Debtor other than those liabilities and obligations arising from the Purchased Assets and Assumed Contracts.

#### 8. **EXCLUDED ASSETS**

- (a) The Vendor is not selling, and the Purchaser is not purchasing the Excluded Assets,(as defined herein) all of which are excluded from the Purchased Assets and the purchase and sale hereunder.
- (b) If any of the Excluded Assets or any proceeds thereof shall at any time come into the possession of or under the control of the Purchaser, such assets and/or proceeds shall be held by the Purchaser, in trust for the benefit of the Vendor. Upon the Purchaser becoming aware that it has come into possession of such assets and/or proceeds, the Purchaser shall forthwith so advise the Vendor in

writing of same and shall, if so requested by the Vendor, account and deliver over to the Vendor, at the Vendor's cost, any such assets and/or proceeds.

9. **PURCHASE PRICE**

The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "**Purchase Price**") shall be the sum of [REDACTED].

The Purchase Price shall be paid, accounted for and satisfied as follows:

- (a) **Deposit**: The Purchaser agrees to provide to the Vendor within two (2) business days following mutual acceptance of this Agreement, a deposit by electronic fund transfer from a Schedule "A Canadian bank in the principal amount of [REDACTED] (the "**Deposit**"), which sum shall be held by the Vendor, in trust, as a deposit pending Closing or termination of this Agreement. Subject only to the terms of this Agreement, the Deposit is to be credited on account of the Purchase Price upon the Closing Date of the transaction contemplated in this Agreement. If this Agreement is not completed due to the Purchaser's default, the Vendor, in addition to any other remedies that it may have, shall be entitled to retain the Deposit as liquidated damages and not as a penalty and the Purchaser shall be deemed to have forfeited the Deposit because of such default. If this Agreement is terminated for any reason whatsoever other than the default of the Purchaser, the Deposit shall be returned to the Purchaser forthwith within five (5) Business Days from the termination date, without interest, set-off or deduction. For absolute clarity and without limiting the foregoing, the Purchaser shall not be considered to be in default where the Purchaser is unable to satisfy or waive any of the conditions in its favour in accordance with Section 18 of the Agreement in spite of the Purchaser using reasonable commercial efforts to fulfil or cause to be fulfilled the conditions but provided that it is within the Purchaser's control to do so, including where the representation and warranty contained in Section 18 (a)(iii) is untrue on account of a change in law that occurs between the date of this Agreement and the Closing Date. The requirement to return the Deposit to the Purchaser shall survive the termination of this Agreement.
- (b) **Balance Due at Closing**: The balance of the Purchase Price, net of the Deposit and subject to the adjustments contained in this Agreement, by payment at Closing to the Vendor by way of certified cheque, solicitors trust cheque, bank draft or wire transfer drawn upon one of Canada's chartered banks or other financial institution acceptable to the Vendor.

- (c) **Allocations**: The Vendor and the Purchaser acknowledge and agree that the Purchase Price shall be allocated among each class of Purchased Assets as agreed by the parties hereto on or before Closing, acting reasonably. Such allocation shall be binding and the Purchaser and the Vendor shall each report the purchase and sale of the Purchased Assets for all tax purposes in a manner consistent with such allocation, and will complete and file all tax returns, designations, elections and filings that are necessary or desirable under the Income Tax Act to give effect to such allocations and shall not take any position or action inconsistent with such allocation.

10. **CLOSING AND POST-CLOSING ADJUSTMENTS**

- (a) **Closing Adjustments**: Adjustment shall be made, as of 12:01 a.m. on the Closing Date, for realty taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, utilities, fuel costs, and any other items which are usually adjusted in purchase transactions involving commercial properties in Ontario. The Closing Date shall be for the account of the Purchaser. Save and except the adjustment provide for in Section 11(c) for the value of the Inventory, the Vendor shall not be required to re-adjust after closing any item on or omitted from the statement of adjustments.
- (b) **Reduction in Property Taxes**: The Purchaser acknowledges and agrees that the Vendor shall be entitled to the benefit of any reduction in the property taxes payable with respect to the Lands for the period prior to the Closing Date. To the extent that the Purchaser receives any amounts from the applicable municipality in respect of any reduction of property taxes relating to the period prior to the Closing Date, the Purchaser shall forthwith forward such amounts to the Vendor.

11. **TERMS OF PURCHASE**

- (a) **"As Is, Where Is"**: The Purchaser acknowledges that the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets and such defects as may be revealed in the Vendor's Deliveries. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets that the Purchaser shall have conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and shall have satisfied itself regarding these matters. No representation, warranty or condition expressed or implied, statutory or non-statutory, oral or written has been or will be given by the Vendor as to title, encumbrances, description, fitness for any present or intended purpose or use, the existence or non-existence of Hazardous Materials, compliance or non-compliance with any Environmental Law, on or in relation to the Lands, the

existence, state, nature, identity, extent or effect of any investigations, administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under any Environmental Law in relation to the Lands, merchantability, condition, or quality, cost, state of repair, degree of maintenance, durability or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, all conditions, warranties, or representations expressed or implied pursuant to the *Sale of Goods Act* of Ontario do not apply hereto and have been waived by the Purchaser. The descriptions of the Purchased Assets contained in this Agreement are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the accuracy of such descriptions. Any documentation, materials or information provided by the Vendor to the Purchaser regarding the Purchased Assets, or any part thereof, was provided solely for the convenience of the Purchaser and is not warranted or represented to be complete or accurate and does not form part of this Agreement. The Purchaser shall and shall be deemed to rely entirely on its own inspections and investigations concerning the Purchased Assets. The Purchaser acknowledges that it shall have no recourse to the Vendor with respect to the environmental condition of the Lands and has satisfied itself with respect to same. If the Closing occurs, the Purchaser shall assume all risks relating to the physical condition of the Purchased Assets which existed on or prior to the Closing Date. Neither the Purchaser nor any permitted occupant of the Lands shall have any recourse to the Vendor because of the nature or condition of the Purchased Assets.

This section shall survive and shall not merge on Closing and is deemed incorporated by reference into all Closing Documents and deliveries. The Purchaser further acknowledges that:

- (i) the Vendor makes no representations, warranties, or guarantees as to the viability or profitability of the Gas and Convenience Business;
- (ii) the Vendor makes no representations, warranties, or guarantees as to the assignability of the Motor Fuel Supply Agreement, or any other of the Assumed Contracts, to be assigned to the Purchaser via Court order;
- (iii) the Vendor makes no representations, warranties, or guarantees as to the existence of any Potential Tenancies in relation to the Lands, and has taken no efforts to determine the existence of any such Potential Tenancies. The Purchaser hereby acknowledges and agrees that it shall take title to the said Lands subject to any such



Potential Tenancies. The Purchaser further acknowledges and agrees that all due diligence in relation to any such Potential Tenancies, as well as any action necessary to terminate such Potential Tenancies, if in existence, is the sole responsibility of the Purchaser, and the Vendor has no responsibility in relation to the Potential Tenancies.

- (b) **Title and Other Requisitions:** The Purchaser acknowledges that it shall, at its own expense, examine title to the Lands and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Lands, satisfy itself as to the use of the Lands being in accordance with applicable zoning requirements and satisfy itself that the Buildings may be insured to the satisfaction of the Purchaser. Title to the Lands shall be good and marketable title in fee simple free from all encumbrances save and except Permitted Encumbrances. The Purchaser shall be allowed until the date which is seven (7) days following the date on which this Agreement becomes fully unconditional (the ``**Requisition Date**``), at its own expense, to satisfy itself that on Closing it will acquire title to the Purchased Assets free of any encumbrances other than Permitted Encumbrances and shall provide Vendor's counsel with notice in writing of any valid requisition or objection in respect of encumbrances against the Purchased Assets by no later than 5:00 p.m. (Eastern Standard Time) on the Requisition Date. The Vendor agrees to take reasonable steps and utilize its best efforts to satisfy or comply with any valid requisition. If the Vendor shall, through any cause, be unable to answer or comply with any valid requisition or objection which the Purchaser will not waive, this Agreement shall be at an end (notwithstanding any intervening negotiations or litigation or any attempt to remove or comply with the same) and the full amount of the Deposit shall be returned to the Purchaser forthwith, without interest, set-off or deduction and the Purchaser shall not be entitled to any other compensation of any kind whatsoever with respect to the failure to satisfy or comply with such requisition. The Vendor shall not be required to furnish or produce any survey, abstract, deed, declaration or document or evidence of title except those in its possession.

**[NTD: there is no inventory currently in the store, and any gasoline in the tanks (if applicable) will not be useable]**

12. **DATE OF CLOSING**

Subject to the provisions of Section 14 hereof, the transaction contemplated hereunder shall be completed (the moment of completion shall be referred to as "**Closing**") on the first Business Day following the date upon which the time to appeal the Approval and Vesting Order has expired, or, in the event that an appeal from the Approval and Vesting Order is filed, the first Business Day following the final dismissal of the appeal (the "**Date of Closing**"), unless the parties hereto otherwise agree to such other date in writing.



13. **ELECTRONIC REGISTRATION**

- (a) In the event that the electronic registration system ("**TERS**") is operative in the relevant land registry office (the "**Registry Office**"), the following provisions shall apply:
- (i) The Purchaser shall be obliged to retain a solicitor who is an authorized TERS user, has the necessary computer facilities to complete the transaction via TERS and is in good standing with the Law Society of Ontario to represent the Purchaser in connection with the completion of the transaction and shall authorize such solicitor to enter into the Vendor's Solicitor's standard form of escrow closing agreement or document registration agreement which will establish the procedures and timing for closing this transaction, provided they are in accordance with Law Society guidelines (the "**DRA**").
  - (ii) The delivery and exchange of the Closing Documents:
    - (1) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
    - (2) shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitor shall hold all Closing Documents in escrow and will not be entitled to release them except in strict accordance with the provisions of the DRA.
- (b) The Purchaser expressly acknowledges and agrees that the Vendor will not release the Receiver's Certificate confirming the effectiveness of the Approval and Vesting Order until the balance of funds due on Closing, in accordance with the statement of adjustments, are remitted by wire transfer to the Vendor's Solicitor (or in such other manner as the Vendor or Vendor's Solicitor may direct).
- (c) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser when the Vendor's Solicitor has:
- (i) delivered to the Purchaser's Solicitor all Closing Documents required to be delivered by the Vendor to the Purchaser pursuant to Section 19 hereof;
  - (ii) advised the Purchaser's Solicitor in writing that the Vendor is ready, willing, and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

- (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Vendor's Solicitor without the cooperation or participation of the Purchaser's Solicitor, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Vendor's Solicitor,

without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitor with the Closing Documents, and without any requirement to have an independent witness evidencing the foregoing.

- (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Purchaser upon the Vendor, when the Purchaser's Solicitor has:

- (i) Delivered to the Vendor's Solicitor the balance due at Closing and all Closing Documents required to be delivered by the Purchaser to the Vendor pursuant to Section 20 hereof;
- (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing, and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitor without the cooperation or participation of the Vendor's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Purchaser's Solicitor,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the Closing Documents, and without any requirement to have an independent witness evidencing the foregoing.

- (e) If through no fault of the Purchaser's Solicitor or the Vendor's Solicitors TERS is unavailable on the Closing Date, such that the Purchaser's Solicitor is unable to register the Application for Vesting Order, then the transaction contemplated by this Agreement shall be completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitor forthwith and the parties shall arrange to complete the registration of the Application for Vesting Order as expeditiously as possible, whereupon the escrow shall be released.

In the event of any conflict or inconsistency between the terms of this Section 13 and the terms of the DRA, the terms of this Section 13 shall prevail.

#### 14. **PRE-CLOSING RISK AND POST-DAMAGE ENTITLEMENTS**

The Purchased Assets are and shall remain at the Vendor's risk until Closing. In the event of damage to the Purchased Assets prior to the Closing Date, in excess of five hundred thousand (\$500,000) Dollars, as determined by an independent third party expert appointed by the Vendor ("**Material Damage**"), the Purchaser may, at its option: (a) complete the transaction contemplated by this Agreement without reduction of the Purchase Price, in which event all proceeds of insurance or compensation shall be payable to the Purchaser; and the Purchaser shall accept the amount representing the proceeds of insurance without demanding a guaranteed amount of insurance proceeds, and the Purchaser shall be liable to cover any difference between the proceeds of insurance and the Purchase Price; or (b) rescind this Agreement, and the parties hereto shall have no further rights and remedies against each other and the Deposit shall be returned to the Purchaser forthwith, without interest, set-off or deduction, and the Purchaser shall not be entitled to any other compensation of any kind whatsoever with respect to the failure to close as a result of such loss or damage. The Vendor shall use its best efforts to advise the Purchaser, in writing, within twenty-four (24) hours of the Vendor learning of any Material Damage to the Purchased Assets. The Purchaser shall have five (5) days, or such longer period as the Vendor in its sole and absolute discretion may agree to in writing, from delivery of such notice to advise the Vendor in writing as to its election, if any. In the event that the Purchaser fails to notify the Vendor in writing as to its election within the prescribed time period, the Vendor may terminate this Agreement immediately by providing written notice to the Purchaser and the parties hereto shall have no further rights and remedies against each other and the Deposit shall be returned to the Purchaser forthwith, without interest, set-off or deduction, failing which, the Purchaser shall be deemed to have elected to complete the transaction in accordance with subparagraph (a) above.

#### 15. **VENDOR'S REPRESENTATIONS AND WARRANTIES**

The Vendor represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:

- (a) **Non-Residency**: The Vendor is not now and does not intend to become, prior to Closing, a non-resident of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada) and the Vendor is not now and does not intend to become, prior to Closing, an agent, or a trustee of such non-resident;
- (b) **Receivership Order**: The Receivership Order is in full force and effect; and
- (c) **HST Registration**: The Vendor shall be registered for the purposes of the ETA prior to the Closing and shall provide its registration number to the Purchaser on or prior to the Closing.

16. **PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents and warrants to the Vendor that, as at the date hereof and as of the Closing Date:

- (a) **Corporate Matters Regarding Purchaser:** the Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of Ontario or any other province of Canada or federally and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement; neither the execution of this Agreement nor the performance (such performance shall include, without limitation, the exercise of any of the Purchaser's rights and compliance with each of the Purchaser's obligations hereunder) by the Purchaser of the transaction contemplated hereunder will violate:
- (i) the Purchaser's articles of incorporation and by-laws;
  - (ii) any agreement to which the Purchaser is bound or is a party;
  - (iii) any judgement or order of a court of competent authority or any Government Authority; or
  - (iv) any applicable law;
- and the Purchaser has duly taken, or has caused to be taken, all requisite corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder;
- (b) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid, and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
- (c) there are no orders or proceedings pending before any Government Authority, or threatened to be brought by or before any Government Authority by or against the Purchaser, affecting the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby by the Purchaser;
- (d) the Purchaser has made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the cash portion of the Purchase Price to the Vendor on Closing;
- (e) the Purchaser will be responsible for and will remit to or reimburse, as applicable, all taxes, including (without limitation) land transfer tax, levies or the like that arise from the sale of the Purchased Assets unless otherwise specified in this Agreement;

- (f) **Investment Canada Act (Canada)**: either (i) the Purchaser is not a “non-Canadian”, as defined in the *Investment Canada Act* (Canada) (“ICA”); or (ii) if the Purchaser is a “non-Canadian”, this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain Investment Canada Approval within ten (10) days thereafter;
- (g) the Purchaser acknowledges that it is responsible for conducting its own searches and investigations of the current and past uses of the Purchased Assets;
- (h) the Purchaser acknowledges the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted;
- (i) the Purchaser is satisfied with the Purchased Assets and all matters and things connected therewith or in any way related thereto;
- (j) the Purchaser is relying entirely upon its own investigations and inspections in entering into this Agreement;
- (k) **Brokers**: the Purchaser has not engaged any broker or other agent in connection with the transaction provided for in this Agreement and, accordingly, there is no commission, fee or other remuneration payable to any broker or agent who purports or may purport to have acted for the Purchaser
- (l) **HST Registration**: the Purchaser shall be registered for the purposes of the ETA prior to the Closing and shall provide its registration number to the Vendor on or prior to the Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

17. **CONDITIONS OF CLOSING IN FAVOUR OF THE VENDOR**

(a) The Vendor's obligations contained in this Agreement shall be subject to the fulfilment at or prior to Closing, of each of the following conditions:

- (i) **Representations and Warranties**: each of the Purchaser's representations and warranties contained in this Agreement shall be true at and as of the date hereof and each of such representations and warranties shall continue to be true as at Closing;
- (ii) **Covenants/Agreements**: the Purchaser shall have complied with each, and every covenant/agreement made by it herein and required to be completed at or prior to Closing;
- (iii) **No Legal Action**: no action or proceeding shall be pending or threatened by any person to enjoin, restrict, or prohibit the completion of the transaction contemplated by this Agreement or the right of the Purchaser to own the Purchased Assets after the time of Closing and no Order restraining or prohibiting Closing shall have been made by the Court;
- (iv) **Approval and Vesting Order**: the Vendor shall have obtained the Approval and Vesting Order;
- (v) **No Stay or Appeal**: The Approval and Vesting Order shall not have been stayed, varied, or vacated and shall be in full force and effect and no appeal of the Approval and Vesting Order shall have been commenced and be outstanding; and
- (vi) **Corporate Steps and Proceedings**: All necessary corporate steps and proceedings shall have been taken by the Purchaser to permit the Purchaser's execution of this Agreement and performance of each of the Purchaser's obligations hereunder.

For greater certainty, each of the conditions contained in this Section 17(a) have been inserted for the benefit of the Vendor.

(b) The Vendor covenants to use reasonable commercial efforts to fulfil or cause to be fulfilled the condition contained in Section 17(a)(v) and the Purchaser covenants to use its reasonable commercial efforts to fulfil or cause to be fulfilled

the conditions contained in Section 17 hereof prior to Closing which are under the Purchaser's control.

- (c) In the event that any of the foregoing conditions shall not be fulfilled, in whole or in part, at or prior to Closing, the Vendor may, in its absolute and unfettered discretion, terminate this Agreement by written notice to the Purchaser without penalty or liability whatsoever to the Vendor, subject to the provisions of Section 9(a) hereof with respect to the Deposit, and otherwise without cost or other compensation and each of the Vendor and the Purchaser shall be released from their respective obligations and liabilities hereunder.

18. **CONDITIONS OF CLOSING IN FAVOUR OF THE PURCHASER**

- (a) The Purchaser's obligations contained in this Agreement shall be subject to the fulfilment, at or prior to Closing, of each of the following conditions:
  - (i) **Representations and Warranties:** each of the Vendor's representations and warranties contained in this Agreement shall be true at and as of the date hereof and each of such representations and warranties shall continue to be true as at Closing;
  - (ii) **Covenants/Agreements:** the Vendor shall have complied with each, and every covenant/agreement made by it herein and required to be completed at or prior to Closing;
  - (iii) **No Legal Action:** no action or proceeding shall be pending or threatened by any person to enjoin, restrict, or prohibit the completion of the transaction contemplated by this Agreement or the right of the Purchaser to own the Purchased Assets after the time of Closing and no Order restraining or prohibiting Closing shall have been made by the Court; and
  - (iv) **Approval and Vesting Order:** the Purchaser shall have received the Approval and Vesting Order; and
  - (v) **No Stay or Appeal:** the Approval and Vesting Order shall not have been stayed, varied, or vacated and shall be in full force and effect and no appeal of the Approval and Vesting Order shall have been commenced and be outstanding.

For greater certainty, each of the conditions contained in this Section 18(a) have been inserted for the benefit of the Purchaser.



- (b) The Vendor covenants to use reasonable commercial efforts to fulfil or cause to be fulfilled all the conditions contained in section 18 which are under the Vendor's control.
- (c) In the event that any of the foregoing conditions shall not be fulfilled at or prior to Closing, the Purchaser may, in its absolute and unfettered discretion, terminate this Agreement by written notice to the Vendor without any penalty or liability whatsoever to the Purchaser, subject to the provisions of Section 9(a) hereof with respect to the Deposit, and otherwise without cost or other compensation and each of the Vendor and the Purchaser shall be released from their respective obligations hereunder.

19. **VENDOR'S CLOSING DELIVERIES**

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

- (a) **Approval and Vesting Order**: a copy of the issued and entered Approval and Vesting Order;
- (b) **Statement of Adjustments**: a statement of adjustments prepared in accordance with Section 7 hereof, to be delivered not less than two (2) Business Days prior to Closing;
- (c) **Vendor's Certificate**: the Vendor's Certificate setting out that each of the Vendor's representations and warranties contained in this Agreement are true as of Closing and that each of the conditions in Section 17 have been fulfilled, performed, or waived as of the Closing;
- (d) **Direction Regarding Funds**: a direction from the Vendor designating the party or parties to which the balance of the Purchase Price described in Subsection 9(b) hereof shall be paid; in the event that the Vendor designates more than one party then it shall also designate amounts payable to each of the parties;
- (e) **Keys, etc.**: all keys, security cards and access codes for the Buildings in the Vendor's possession;
- (f) **ETA Election**: the ETA Election, if applicable;
- (g) **Receiver's Certificate**: the Receiver's Certificate as provided for in the Approval and Vesting Order;
- (h) **Certificate Re: Appeals**: a certificate of the Vendor certifying that except as disclosed in the Certificate, the Vendor has not been served with any notice of appeal with respect to the Receivership Order or the Approval and Vesting



Order, or any notice of any application, motion or proceeding seeking to set aside or vary the Receivership Order or Approval and Vesting Order or to enjoin, restrict or prohibit the transaction provided for in this Agreement.

- (i) **Non-Residence Certificate**: the Vendor's certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada) and is not the agent nor trustee of a "non-resident";
- (j) **Receipt**: a receipt from the Vendor for the Purchase Price; and
- (k) **Further Documentation**: such further documentation relating to the completion of this Agreement as may be reasonably required by the Purchaser or the Purchaser's Solicitor, provided that such further documentation is in a form satisfactory to the Vendor, taking into consideration the fact that the Vendor is selling the Purchased Assets as Receiver.

## 20. **PURCHASER'S CLOSING DELIVERIES**

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

- (a) **Undertaking To Re-Adjust**: the Purchaser's undertaking to re-adjust any item on or omitted from the statement of adjustments, subject to the limitation contained in Subsection 10(a) hereof;
- (b) **Purchaser's Certificate**: the Purchaser's certificate setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing and that each of the conditions in section 18 have been fulfilled, performed, or waived as of the Time of Closing;
- (c) **Directors' Resolution**: a certified copy of a resolution of the board of directors of the Purchaser authorizing the execution of this Agreement and performance of each of the Purchaser's obligations hereunder;
- (d) **Property Tax Reduction**: such directions, acknowledgments and other documents as may be necessary or desirable to ensure that the benefit of any reduction in the property taxes payable with respect to the Lands for the period prior to the Closing Date is received by the Vendor;
- (e) **Taxes**: payment or evidence of payment of applicable federal and provincial taxes or alternatively, the ETA Election, if applicable, or appropriate self-assessment or exemption documentation;
- (f) **HST Indemnity**: the indemnity provided for under Subsection 22(d) hereof;

- (g) **Certificate of Incumbency:** a certificate of incumbency setting out the names and specimen signatures of each of the directors and officers of the Purchaser;
- (h) **Environmental Indemnity:** an environmental indemnity indemnifying and holding the Vendor harmless from any and all damages, claims, actions, losses, costs, liabilities or expenses (collectively “**Damages**”) suffered or incurred by the Vendor, directly or indirectly, as a result of or in connection with any of the following, and without restricting the generality of the foregoing, which include Damages incurred in addressing an administrative order by a Government Authority or in addressing a notice, investigation or other process which could reasonably be anticipated to result in such an order:
  - (i) the presence or release of any Hazardous Materials in, on or under the Lands or the threat of a release;
  - (ii) the presence of any Hazardous Materials in, on or under properties adjoining or proximate to the Lands;
  - (iii) any other environmental matters relating to the Lands;
  - (iv) the breach by the Purchaser or those for whom it is responsible at law of any Environmental Law applicable to the Lands; or,
  - (v) the release or threatened release of any Hazardous Materials owned, managed, generated, disposed of, controlled, or transported by or on behalf of the Purchaser.
- (i) **Balance Due at Closing:** the balance of the Purchase Price described in Subsection 9(b) hereof;
- (j) **Assignment of Contracts:** the Assignment of Contracts; and,
- (k) **Further Documentation:** any other documentation relative to the completion of this Agreement as may reasonably be required by the Vendor or the Vendor’s Solicitors.

21. **PLANNING ACT (ONTARIO)**

The Purchaser acknowledges that the parcels forming the Lands have merged pursuant Part VI of the *Planning Act* (Ontario), and that the Vendor has no obligation to seek any form of consent, validation, rectification, or any other form of relief at law or equity in relation to such merger, which shall be the Purchaser’s sole obligation.

This Agreement shall be effective to create an interest in the Buildings or Lands for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing

or, if a Court orders the completion of the Transaction notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario).

## 22. **HARMONIZED GOODS AND SERVICES TAX**

- (a) **Application of HST to this Agreement:** If the transaction contemplated hereunder shall be subject to Harmonized sales tax ("**HST**") levied pursuant to the Excise Tax Act (the "**ETA**"), then HST shall be in addition to and not included in the Purchase Price, shall be payable by the Purchaser and shall be collected and remitted in accordance with the Act.
- (b) **HST Registration:** The Purchaser is registered for the purposes of the ETA, and its HST number is \_(TBC)\_\_\_\_\_ or shall be registered as of Closing.
- (c) **Self-Assessment:** If part or all the said transaction is subject to HST then, where applicable, the Purchaser shall have the option of furnishing the Vendor with appropriate exemption certificates and/or self-assessment indemnification documentation in the form satisfactory to the Vendor. If available, the Vendor agrees to execute an election pursuant to s. 167(1) of the ETA to have the sale of the Purchased Assets take place without the requirement for the collection or remittance of HST to the extent possible (the "**ETA Election**"). In such case, the Purchaser agrees to file such election in accordance with the provisions of the ETA.
- (d) **HST Indemnity:** The Purchaser shall indemnify and save harmless the Vendor from all claims, liabilities, penalties, interest, costs, and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

## 23. **POSSESSION**

The Vendor shall remain in possession of the Purchased Assets until the time of Closing. Upon the completion of the transaction, the Vendor shall yield up possession of the Purchased Assets to the Purchaser and the Purchaser shall take possession of the Purchased Assets where situate. Title to the Purchased Assets shall not pass to the Purchaser until the completion of the transaction provided for herein and the Receiver's Certificate has been delivered to the Purchaser. The Vendor shall be entitled, but shall not be obligated, to remove from the Buildings any chattels, books, records, documents, or other personal property situate in the Buildings which does not form part of the Purchased Assets. Any original books and records of the Debtor which remain on the Lands at Closing shall be retained by the Purchaser and made available to the Vendor for inspection for a period of six (6) years after the Closing or such longer period as may be required by applicable laws.

24. **NOTICE**

Any notice given hereunder shall be in writing and delivered or communicated by facsimile or electronic transmission to:

in the case of the Purchaser to:

\_\_\_\_\_  
Attention: Shakeel Ahmed\_\_\_\_\_

Tel. \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

and with a copy to the Purchaser's Solicitor:

~~Aneel Ahmad Kamran~~  
~~AAK LAW OFFICE~~  
~~116-2550 Argentia road Mississauga~~  
~~Ontario L5N 5R1 Tel;647-704-2010 Fax~~  
~~416-981-7444~~  
\_\_\_\_\_

and in the case of the Vendor to:

msi Sperge Inc., in its capacity as  
Court-Appointed Receiver of  
Smart Super Mart Ltd.

1100-200 Yorkland Blvd.,

Toronto, ON M2J5C1

Attention: Philip H. Gennis

mail: [pgennis@spergel.ca](mailto:pgennis@spergel.ca)

Tel. & Telecopier:(416) 498-4325

with a copy to the Vendor's Solicitors at:

Gowling WLG (Canada) LLP  
1600-1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1G5450

Attention: Rachel Moses

Email: [rachel.moses@gowlingwlq.com](mailto:rachel.moses@gowlingwlq.com)

Tel: 416-862-3630

Fax: 416-862-7661

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission unless such notice is delivered or transmitted outside of usual business hours, in which event the notice shall be deemed to have been delivered or transmitted on the next Business Day. A party may change its address and/or telecopier machine number by providing notice in accordance with this Section 24.

25. **WAIVER OF CONDITIONS**

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting party without prejudice to the benefiting party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the Closing of the transaction contemplated hereunder by a party hereof shall be deemed to be a waiver by such party of compliance with any condition inserted for its benefit and not satisfied at Closing.

26. **SEVERABILITY**

If any provision contained in this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons/entities or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

27. **DIVISION/HEADINGS**

The division of this Agreement into Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

28. **ENTIRE AGREEMENT**

This Agreement and the schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Purchased Assets. Each of the

parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement, or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement.

29. **CUMULATIVE REMEDIES**

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity, or statute.

30. **INTERPRETATION**

This Agreement shall be read with all changes of gender and number as required by the context.

31. **REFERENCES TO STATUTES**

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph, or paragraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

32. **TIME OF ESSENCE**

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

33. **CANADIAN FUNDS**

All references to dollar amounts contained in this Agreement shall be deemed to refer to Canadian funds.

34. **TENDER**

Any tender of notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by a negotiable cheque certified by a Canadian chartered bank, or by an official bank draft drawn upon one of Canada's five largest chartered banks.

35. **FURTHER ASSURANCES**

Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration, therefore, co-operate with and take such additional actions as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement. Provided that upon the discharge of the Vendor as receiver, the Vendor's obligation under this paragraph shall be at an end and the Vendor shall have no continuing obligation under this Agreement as confirmed in this paragraph.

36. **CONFIDENTIALITY**

The Purchaser and its agents, advisors and authorized representatives shall maintain in strict confidence, until closing, all information and materials delivered or made available pursuant to this Agreement, except as may reasonably be disclosed by the Purchaser:

- (a) to facilitate the procurement of financing for the Purchased Assets;
- (b) to enforce any of its rights/remedies hereunder;
- (c) to enforce any of its other rights/remedies, if any, pursuant to common law, equity, or statute; or
- (d) to comply with laws requiring disclosure.

If the transaction contemplated in this Agreement is, for any reason whatsoever, not completed, then the Purchaser shall, upon request from the Vendor, promptly return to the Vendor all materials delivered hereunder and deliver to the Vendor all copies of materials made available hereunder.

37. **NON-BUSINESS DAYS**

In the event that any date specified, or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

38. **DOCUMENTATION PREPARATION AND REGISTRATION**

The Purchaser shall prepare or cause to be prepared the land transfer tax affidavit to be attached to the Application for Vesting Order. Each of the parties shall deliver draft documentation to the other not less than five (5) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in the form and have substance satisfactory to the Vendor and the Purchaser, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the transaction contemplated in this Agreement. Except as

otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay their respective legal and other professional/consultant fees and disbursements incurred by each of them, directly or indirectly, in connection with this Agreement.

39. **LAND TRANSFER TAXES AND SALES TAXES**

The Purchaser shall pay on or prior to Closing all applicable federal and provincial taxes eligible in connection with the transaction hereunder including, without limitation, HST and land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)).

40. **GOVERNING LAWS**

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario and each of the parties irrevocably attorns to the Courts of the Province of Ontario as the exclusive forum for the resolution of any matter under this Agreement.

41. **ASSIGNMENT AND ENUREMENT**

The Purchaser shall not assign part or all of its interest under this Agreement without the prior written consent of the Vendor, which consent may be arbitrarily withheld. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

42. **NON-REGISTRATION OF AGREEMENT**

The Purchaser acknowledges that this Agreement is personal to the Purchaser and that this Agreement, or any monies paid hereunder, do not create an interest in the Lands and the Purchaser further acknowledges that upon any breach of this Agreement by the Vendor, the Purchaser has an adequate remedy in damages only. The Purchaser agrees that it will not register or cause or permit to be registered this Agreement and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Lands, and the Purchaser shall be deemed to be in default under this Agreement if it makes any registration or causes or permits any registration to be made on title to the Lands prior to the Closing.

43. **VENDOR'S CAPACITY**

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-appointed receiver of the Debtor relating to the Purchased Assets pursuant to the Receivership Order and that the Vendor shall have no personal or corporate liability under or because of this Agreement. Any claim against the Vendor



shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as receiver of the Debtor and the Purchased Assets, and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

44. **FURTHER ASSURANCES**

Each of the parties shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other parties hereto may reasonably require from time to time after Closing at the expense of the requesting party for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Provided that upon the discharge of the Vendor as receiver, the Vendor's obligations under this paragraph shall be at an end and neither the Vendor as receiver nor msi Spergel Inc. shall have any continuing obligation under this paragraph.

45. **WAIVER, AMENDMENT**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

46. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

47. **COUNTERPARTS**

This Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document and will become effective when one or more counterparts have been signed by all the parties and delivered to each of the other parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the reference date set out above and accepted on the date of the last signature, and only one of which need be produced for any purpose. This Agreement may be executed by electronic means (including via DocuSign) without the necessity of that party delivering an originally executed copy thereof.

48. **TIME FOR ACCEPTANCE**

The offer to purchase comprising this Agreement shall be irrevocable by the Vendor and open for acceptance by the Purchaser until 5:00 o'clock p.m. on the 23<sup>rd</sup> day of October, 2025 after which time, if not accepted and notice of such acceptance communicated to the Vendor, then the said offer to purchase shall be null and void and of no further force and effect. This Agreement may be accepted by giving a copy thereof to the Purchaser with the Vendor's acceptance endorsed thereon personally or by facsimile or other electronic transmission. If accepted prior to the expiration hereof, this Agreement shall constitute a binding contract between the parties to purchase and sell the Purchased Assets on the terms and conditions set forth herein and is not subject to any conditions precedent.

**DATED** as of the date first mentioned above.

By: Shakeel Ahmed 10/22/2025

Name: Shakeel Ahmed

Title: Buyer

I have authority to bind the Corporation

The Vendor hereby accepts the foregoing offer to purchase and its terms and agrees with the Purchaser to duly complete the transaction contemplated thereunder.

**DATED** at Toronto, Ontario this 21st day of October, 2025.

msi Spergel Inc., in its capacity as Court-Appointed Receiver of the assets, undertakings and properties of Smart Super Mart Ltd. and not in its personal or corporate capacity and without personal or corporate liability

By:

Mukul Manchanda

box SIGN 17KKJJ56-13763Z3Z

Name: Mukul Manchanda

Title: Managing Partner

I have authority to bind the Corporation.

**SCHEDULE 'A' - LEGAL DESCRIPTION**

PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372;  
CITY OF ST CATHARINES (PIN 46179-0340 (LT))

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## Schedule “B” – PERMITTED ENCUMBRANCES

1. Any undetermined or inchoate liens and charges incidental to the Purchased Assets;
2. The reservations, limitations, provisos, conditions, restrictions, and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
3. The provisions of governing municipal by-laws;
4. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
5. Any defects or minor encroachments which might be revealed by an up-to-date survey of the Lands;
6. Any right of expropriation conferred upon, reserved to or vesting in HisMajesty the King in Right of Canada and Ontario;
7. Any registered restrictions or covenants that run with the Lands provided that same have been complied with in all material respects;
8. Any easements, rights of way or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Lands;
9. Any agreements with municipal, utilities or public authorities provided that same have been complied with in all material respects;
10. The following instruments registered on title to the Lands in the Halton (#20) Land Registry Office:

PIN 46179-0340 (LT)

Registration Number RO493091	Date 1985/03/04	Instrument Type NOTICE ZONING REGULATIONS
30R15372	2019/19/03	REFERENCE PLAN

## **SCHEDULE 'C' – PERSONAL PROPERTY**

**SCHEDULE “D” - APPROVAL AND VESTING ORDER**

**(Draft to Follow)**



**Form 570**

for use in the Province of Ontario

# Amendment to Agreement of Purchase and Sale - Commercial

**BETWEEN:****BUYER:** Shakeel Ahmed (in trust for corporation to be formed)**AND****SELLER:** msi Spergel Inc. solely in its capacity as Court-appointed Receiver of all the assets, undertakings and properties of Smart Super Mart Ltd.

RE: Agreement of Purchase and Sale - Commercial (Agreement) between the Seller and Buyer, dated the 21 day of October, 2025,

concerning the property known as 179-185 St. Paul St W, ON

St. Catharines On L2S 2C8 as more particularly described in the aforementioned Agreement.

**The Buyer and Seller herein agree to the following amendment(s) to the aforementioned Agreement:****Delete:****Buyer:** Shakeel Ahmed (in trust for corporation to be formed)**Insert:****Buyer:** Ahmed Petroleum Services Inc**INITIALS OF BUYER(S):**

SA

**INITIALS OF SELLER(S):**

mm



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**IRREVOCABILITY:** This Offer to Amend the Agreement shall be irrevocable by ..... **Buyer** ..... until ..... **5** .....  
 (Seller/Buyer) (a.m./p.m.) **X**  
 on the **19** day of **December**, 20**25**, after which time, if not accepted, this Offer to Amend the Agreement shall be null and void.

For the purposes of this Amendment to Agreement, "Buyer" includes purchaser and "Seller" includes vendor.  
 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 solicitors who are hereby expressly appointed in this regard.



**All other Terms and Conditions in the aforementioned Agreement to remain the same.**

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:


..... (Witness)	<i>Shakeel Ahmed</i> ..... (Buyer/Seller/Authorized Signing Officer)	 12/10/2025 (Seal) (Date)
..... (Witness)	..... (Buyer/Seller/Authorized Signing Officer)	 ..... (Seal) (Date)

I, the Undersigned, agree to the above Offer to Amend the Agreement.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:  
 msi Spergel Inc., solely as Court-Appointed Receiver of Smart Super Mart Ltd.

..... (Witness)	<i>Mukul Manchanda</i> box SIGN ..... 17KKJ156-1X9QX28L (Buyer/Seller/Authorized Signing Officer)	 Dec 11, 2025 (Seal) (Date)
..... (Witness)	..... (Buyer/Seller/Authorized Signing Officer)	 ..... (Seal) (Date)

The undersigned spouse of the Seller hereby consents to the amendment(s) hereinbefore set out.

..... (Witness)	..... (Spouse)	 ..... (Seal) (Date)
--------------------	-------------------	--

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed

and written was finally accepted by all parties at ..... this **11th** day of **December**, 20**25**  
 (a.m./p.m.)  
*Mukul Manchanda*  
 box SIGN ..... 17KKJJ56-1X9QX28L  
 (Signature of Seller or Buyer)

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.

<i>Mukul Manchanda</i> box SIGN ..... 17KKJJ56-1X9QX28L (Seller)	Dec 11, 2025 (Date)
..... (Seller)	..... (Date)
Address for Service .....	
..... (Tel. No.)	
Seller's Lawyer .....	
Address .....	
Email .....	
..... (Tel. No.)	..... (Fax. No.)

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.

..... (Buyer)	..... (Date)
..... (Buyer)	..... (Date)
Address for Service .....	
..... (Tel. No.)	
Buyer's Lawyer .....	
Address .....	
Email .....	
..... (Tel. No.)	..... (Fax. No.)



## **Appendix 7**

## Enquiry Result

File Currency: 11DEC 2025



All Pages ▾



Show All Pages

**Note: All pages have been returned.**

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	SMART SUPER MART LTD.								
<b>File Currency</b>	11DEC 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	758898387	1	2	1	3	27DEC 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
758898387		01	001		20191227 1446 1530 8046	P PPSA	5		
<b>Individual Debtor</b>									
	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>									
	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	SMART SUPER MART LTD.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	213 EDENBROOK HILL DRIVE				BRAMPTON	ON	L7A 2V4		
<b>Individual Debtor</b>									
	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>									
	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>									
	<b>Secured Party / Lien Claimant</b>								
	ROYAL BANK OF CANADA								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	36 YORK MILLS ROAD, 4TH FLOOR				TORONTO	ON	M2P 0A4		
<b>Collateral Classification</b>									
	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>									
	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>									
	<b>General Collateral Description</b>								

<b>Registering Agent</b>	<b>Registering Agent</b>			
	CANADIAN SECURITIES REGISTRATION SYSTEMS			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

CONTINUED

<b>Type of Search</b>	Business Debtor				
<b>Search Conducted On</b>	SMART SUPER MART LTD.				
<b>File Currency</b>	11DEC 2025				
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>
	758898387	1	2	2	3
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>					
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>
		001	1		20241205 0811 1532 2689
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>
	758898387			B RENEWAL	5
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>	
	<b>Business Debtor Name</b>				
	SMART SUPER MART LTD.				
<b>Other Change</b>	<b>Other Change</b>				
<b>Reason / Description</b>	<b>Reason / Description</b>				
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
<b>Assignor Name</b>	<b>Assignor Name</b>				
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>		<b>V.I.N.</b>

<b>General Collateral Description</b>	<b>General Collateral Description</b>			
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>			
	D + H LIMITED PARTNERSHIP			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	2 ROBERT SPECK PARKWAY, 15TH FLOOR	MISSISSAUGA	ON	L4Z 1H8

END OF FAMILY

<b>Type of Search</b>	Business Debtor						
<b>Search Conducted On</b>	SMART SUPER MART LTD.						
<b>File Currency</b>	11DEC 2025						
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>
	789170067	2	2	3	3	09DEC 2028	

**FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN**

<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>
789170067		001	1		20221209 0847 5064 5124	P PPSA	06

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>

<b>Business Debtor</b>	<b>Business Debtor Name</b>	<b>Ontario Corporation Number</b>
	SMART SUPER MART LTD.	
	<b>Address</b>	<b>City</b>
	213 EDENBROOK HILL DRIVE	BRAMPTON
	<b>Province</b>	<b>Postal Code</b>
	ON	L7A 2V4

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>
	18MAY1972	RAVINDERJIT	S	CHOHAN

<b>Business Debtor</b>	<b>Business Debtor Name</b>	<b>Ontario Corporation Number</b>
	<b>Address</b>	<b>City</b>
	213 EDENBROOK HILL DRIVE	BRAMPTON
	<b>Province</b>	<b>Postal Code</b>
	ON	L7A 2V4

<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>			
	NISSAN CANADA INC.			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	5290 ORBITOR DRIVE	MISSISSAUGA	ON	L4W 4Z5

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
	X				X	X	39665	27NOV2028	

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>
	2021	NISSAN	ROGUE	5N1AT3ABXMC838128

<b>General Collateral Description</b>	<b>General Collateral Description</b>

Registering Agent				
	ESC CORPORATE SERVICES LTD.			
	Address	City	Province	Postal Code
	445 KING STREET WEST, SUITE 400	TORONTO	ON	M5V 1K4

LAST PAGE

Note: All pages have been returned.

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## **Appendix 8**



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ROYAL BANK OF CANADA**

Applicants

- and -

**SMART SUPER MART LTD.**

Respondents

**AFFIDAVIT OF PHILIP GENNIS**  
(sworn December 12, 2025)

I, **PHILIP GENNIS**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Licensed Insolvency Trustee with msi Spergel inc. ("**Spergel**"), the Court-Appointed Receiver (in such capacity, the "**Receiver**") of Smart Super Mart Ltd. ("**SMAR**") and as such have knowledge of the matters to be deposed herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.
2. The Receiver was appointed, without security, of all of the assets, undertakings and properties of the Debtors by Order of the Honourable Mr. Justice Bordin of the Ontario Superior Court of Justice made January 30, 2025.
3. In connection with the receivership of SMAR for the period up to and including October 31, 2025 fees of \$33,380.29 (inclusive of HST and disbursements) were charged by Spergel as detailed in the billing summary and time dockets attached

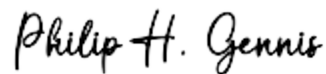
hereto as **Exhibit "1"** to this my Affidavit. This represents 79.45 hours at an effective rate of \$371.72 per hour.

4. The hourly billing rates detailed in this Affidavit are comparable to the hourly rates charged by Spergel for services rendered in relation to similar proceedings.
5. This Affidavit is made in support of a motion to, *inter alia*, approve the receipts and disbursements of the Receiver and its accounts.
6. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at the City )  
of Toronto, in the Province of )  
Ontario, this 12th day of December )  
2025. )



\_\_\_\_\_  
A Commissioner, etc. )



\_\_\_\_\_  
**PHILIP GENNIS**

Barbara Eileen Sturge,  
a Commissioner, etc. for mst Spergel inc.  
and Spergel & Associates Inc.  
Expires September 21, 2028

**This is Exhibit “1” of the Affidavit of**

**PHILIP GENNIS**

**Sworn before me on this 12<sup>th</sup> day of December 2025**



**A Commissioner, Etc.**

Barbara Eileen Sturge,  
a Commissioner, etc. for msi Spengel inc.  
and Spengel & Associates Inc.  
Expires September 21, 2028



**SPERGEL**

**msi Spergel inc.**, Licensed Insolvency Trustees  
Head Office: 200 Yorkland Blvd., Suite 1100  
Toronto, ON., M2J 5C1  
T: 416 497 1660 • F: 416 494 7199  
**www.spergel.ca**

December 11, 2025

**DRAFT**

**Invoice #: 1289**

Smart Super Mart Ltd.

## INVOICE

**RE: Smart Super Mart Ltd.**

**FOR PROFESSIONAL SERVICES RENDERED** in the period up to and including October 31, 2025, in connection with the Court-appointed receivership proceedings.

Professional Services	Hours	Hourly Rate	Total
Mukul Manchanda, CPA, CIRP, LIT	16.70	\$500.00	\$8,350.00
Philip H. Gennis, LL.B., CIRP, LIT	22.55	\$500.00	\$11,275.00
Gillian Goldblatt, CPA, CA, CIRP, LIT	0.80	\$400.00	\$320.00
Paula Amaral	12.40	\$325.00	\$4,030.00
Dharam Tiwana	24.20	\$215.00	\$5,203.00
Manocher Sarabi	1.50	\$150.00	\$225.00
Cassandra Glover	1.30	\$100.00	\$130.00
Total Professional Services	79.45	\$371.72	\$29,533.00
HST			\$3,839.29

Reimbursable Expenses	Total
PPSA Search	\$8.00
Total Reimbursable Expenses	\$8.00

<b>Total</b>	<b>\$33,380.29</b>
HST Registration #R103478103 (AASMAR-R)	

**SPERGEL**

**msi Spergel inc.**, Licensed Insolvency Trustees  
 Head Office: 200 Yorkland Blvd., Suite 1100  
 Toronto, ON., M2J 5C1  
 T: 416 497 1660 • F: 416 494 7199  
**www.spergel.ca**

December 11, 2025

**DRAFT****Invoice #: 1289**

Smart Super Mart Ltd.

**INVOICE****INVOICE RECONCILIATION PAGE**

Date	Staff	Memo	Hours	B-Rate	Amount
<b>Professional Services</b>					
2025-01-30	MMA	Received Endorsement and email exchange with T. Hogan, C. McInnes, T. Masterson, R. Moses regarding taking possession of asset and contact information for the principal of the debtor.	0.20	\$500.00	\$100.00
2025-01-30	PAM	Receive endorsement and coordinate taking possession with Lockit and D.Tiwana.	0.30	\$325.00	\$97.50
2025-02-03	PAM	Attend premises to take possession, change locks, review books and records on site, assess third party items, inventory and status of utilities.	6.00	\$325.00	\$1,950.00
2025-02-03	DTI	Review applicant record, prepare door notices, prepare for site visit. travel to St. Catharines, meet with rep from Lockit, take possession of property.	6.50	\$215.00	\$1,397.50
2025-02-03	MMA	Time spent previously but not recorded including review of the application record, factum, reply materials, discussion with counsel and RBC. Receipt and review of the Receivership Order. Provided instructions to staff to take possession of the property. Review of email exchanges with property manager, locksmith, insurance broker and dealt with other ancillary matter.	4.60	\$500.00	\$2,300.00
2025-02-04	DTI	Prepare letters to major banks to locate and freeze accounts, prepare CRA authorization forms and fax requesting account access, update contact information, open RT0002 account, prepare notice and statement of receiver, send signed notices to OSB, CRA secured creditors.	4.20	\$215.00	\$903.00
2025-02-05	DTI	Mail Notice and Statement of Receiver, prepare letters to utility companies for new connections.	1.00	\$215.00	\$215.00
2025-02-06	MMA	Receipt and review of email from debtor regarding financing.	0.10	\$500.00	\$50.00
2025-02-06	DTI	Correspondence with Alectra, resolve address issues and account issues, prove company on property title is in receivership, set up new account.	1.50	\$215.00	\$322.50
2025-02-06	PAM	Receive email from Lockit with details of site inspection and save to drive.	0.10	\$325.00	\$32.50
2025-02-07	PAM	Provide P. Gennis information on receivership including debtor correspondence and order.	0.20	\$325.00	\$65.00

Barrie 705 722 5090 • Brampton 905 874 4905 • Downsview 416 633 1444 • Hamilton 905 527 2227 • London 519 902 2722 • Mississauga 905 602 4143  
 Oshawa 905 721 8251 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Toronto 416 778 8813 • Vaughan 647 288 7636  
 Saskatchewan 306 341 1660 • British Columbia 604 365 7434



December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-02-07	PGE	<i>Receipt and review of Receivership Order and email from Counsel for Debtor regarding possible refinancing;</i>	0.20	\$500.00	\$100.00
2025-02-12	PGE	<i>Emails requesting LOE's for appraisal and environmental reports;</i>	0.50	\$500.00	\$250.00
2025-02-13	MMA	<i>Inquiry email to RBC for insurance certificate and information. Attended and responded to calls from appraisers, listing brokers and other stakeholders regarding the property and status of the receivership. Receipt and review of a quotation to conduct Phase II ESA from A&amp;A. Receipt and review of the fuel agreement, environmental reports, federated insurance and financials from the debtor.</i>	2.50	\$500.00	\$1,250.00
2025-02-13	PAM	<i>Email debtor to follow up on requested information. Receive and review information provided.</i>	0.30	\$325.00	\$97.50
2025-02-13	PGE	<i>Receipt and return of LOE from A&amp;A Environmental; email to Debtor following up on request for documents; internal email exchange regarding registration on title; receipt and review of documents provided by Debtor;</i>	0.50	\$500.00	\$250.00
2025-02-14	PGE	<i>Email from Antec appraisers; email from Colliers Appraisers; internal email exchange with MM regarding quotes for appraisals and environmental assessment; telephone discussions with appraisers; execution of LOE for Antec appraisal engagement;</i>	0.50	\$500.00	\$250.00
2025-02-14	MMA	<i>Email exchanges with Antec regarding appraisal of the property.</i>	0.20	\$500.00	\$100.00
2025-02-21	PAM	<i>File review with team to discuss insurance coverage and status of receivership.</i>	0.30	\$325.00	\$97.50
2025-02-21	PAM	<i>Receive email from debtor with financial information and save to drive.</i>	0.10	\$325.00	\$32.50
2025-02-21	PGE	<i>Execution and transmittal of LOE for Colliers appraisal;</i>	0.10	\$500.00	\$50.00
2025-02-24	PGE	<i>Execution and transmittal of LOE for Colliers appraisal; email to Colliers requesting PDF of LOE; execution and transmittal of LOE for Antec appraisal; email requests to Avison Young and CBRE requesting listing proposals;</i>	0.50	\$500.00	\$250.00
2025-02-25	DTI	<i>Contact Federated Insurance to inquire about reinstating insurance policy, review correspondence from legal counsel and debtor.</i>	1.00	\$215.00	\$215.00
2025-02-25	PAM	<i>Discuss property with P.Gennis for purpose of obtaining listing proposals. Request payout statement as per debtor's request.</i>	0.30	\$325.00	\$97.50



December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-02-25	PGE	Email from CBRE regarding potential listing; email exchange with Receiver's Counsel regarding possible refinancing by Debtor; execute and transmittal of LOE for Phase 2 Environmental Assessment; email exchange and telephone discussion with City of St. Catharines regarding tax arrears on property;	0.75	\$500.00	\$375.00
2025-02-26	MMA	Email exchanges with Paula and Philip regarding call from City of St. Catharines and their tax sale extension agreement.	0.20	\$500.00	\$100.00
2025-02-26	PGE	Email from Kelly Avison responding to request for listing proposal; further telephone discussion with city of St. Catharines tax department and follow-up email with respect to Stay of Proceedings;	0.30	\$500.00	\$150.00
2025-02-27	PGE	Email exchange regarding insurance coverage;	0.10	\$500.00	\$50.00
2025-02-28	PAM	Email Lawrie Insurance copy of receivership order and request insurance quote on property.	0.20	\$325.00	\$65.00
2025-02-28	DTI	Follow ups with Federated regarding insurance policy.	0.20	\$215.00	\$43.00
2025-03-03	PGE	Email from Lawrie Insurance with request for information on building;	0.10	\$500.00	\$50.00
2025-03-04	PGE	Email to Colliers requesting PDF copy of LOE; receipt of signed PDF of LOE; email from Antec Appraisers and internal email to PA requesting response; further email from Antec Appraisers requesting additional information with respect to the real property;	0.50	\$500.00	\$250.00
2025-03-06	PGE	Email exchange with Steve Scott at A&A Environmental;	0.20	\$500.00	\$100.00
2025-03-07	PAM	Review anticipated expenses and prepare projected budget. Prepare invoice and receiver borrowing certificate.	0.50	\$325.00	\$162.50
2025-03-07	DTI	Multiple e-mails with Local coin regarding ATM, review rental agreement, inquire about agreement and if any outstanding payments, correspond with Lockit to see availability for pickup.	1.20	\$215.00	\$258.00
2025-03-07	GGO	Receive and review bank reconciliation.	0.10	\$400.00	\$40.00
2025-03-07	PGE	Email exchange with Antec Appraisals; receipt and review of listing proposal from CBRE;	0.25	\$500.00	\$125.00
2025-03-11	DTI	Prepare information file for C. Lawrie for insurance quote.	1.00	\$215.00	\$215.00
2025-03-11	PGE	Email exchange with Chad Brownlee at Lawrie Insurance;	0.10	\$500.00	\$50.00
2025-03-11	PAM	Email exchange with insurance company to confirm coverage.	0.10	\$325.00	\$32.50
2025-03-12	DTI	Correspondence with T. Brown regarding insurance policy.	0.50	\$215.00	\$107.50



December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-03-13	MMA	Review of advance invoice to RBC, receiver certificate, and projected budget.	0.30	\$500.00	\$150.00
2025-03-13	PAM	Discussion with Lockit Security regarding construction nearby site and access to property by company working in the area.	0.20	\$325.00	\$65.00
2025-03-14	MMA	Email sent to RBC providing projected budget, invoice, and other documents.	0.10	\$500.00	\$50.00
2025-03-17	DTI	Multiple e-mails and phone calls with LocalCoin and Lockit, to facilitate secure removal of ATM, follow up on status of COI with Federated Insurance, correspond with P.Gennis regarding insurance.	2.20	\$215.00	\$473.00
2025-03-17	PGE	Internal emails regarding status of insurance coverage;	0.25	\$500.00	\$125.00
2025-03-17	PAM	Email exchanges regarding status of insurance policy. Email exchanges regarding coordination of the removal of the ATM machine.	0.20	\$325.00	\$65.00
2025-03-18	PGE	Email exchange with Lawrie Insurance regarding status of coverage; internal email confirming reinstatement of insurance policy previously cancelled;	0.25	\$500.00	\$125.00
2025-03-20	PAM	Coordinate payment of insurance and provide proof of payment.	0.10	\$325.00	\$32.50
2025-03-24	PGE	Email exchange with CBRE;	0.20	\$500.00	\$100.00
2025-03-25	PGE	Receipt and review of Listing Proposal from Avison Young; telephone discussion with Kelly Avison in this regard;	0.30	\$500.00	\$150.00
2025-03-26	PAM	Discussion with Lockit regarding use of property by others, liability and next steps to secure property.	0.20	\$325.00	\$65.00
2025-03-26	PGE	Review of draft appraisal from Colliers; telephone discussion with Colliers appraiser;	0.50	\$500.00	\$250.00
2025-03-27	DTI	Correspond with Insurance regarding balance due, COI with msi Spergel as an additional insured.	0.20	\$215.00	\$43.00
2025-03-27	PAM	Receive updated payment schedule for insurance and submitted for processing.	0.10	\$325.00	\$32.50
2025-04-02	PGE	Receipt and review of appraisal from Colliers valuation; email exchange with appraiser; email exchange with Steve Scott at A&A Environmental regarding ETA for report;	0.50	\$500.00	\$250.00
2025-04-07	GGO	Receive and review bank reconciliation.	0.10	\$400.00	\$40.00





December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-04-07	PGE	<i>Receipt and review of draft appraisal from Antec and email request for final version;</i>	0.30	\$500.00	\$150.00
2025-04-09	PGE	<i>Receipt and review of final appraisal report from Antec Appraisers; follow up email to A&amp;A Environmental regarding Phase 2 Assessment;</i>	0.30	\$500.00	\$150.00
2025-04-11	PGE	<i>Email exchange with A&amp;A Environmental regarding Phase 2 findings; receipt and review of clean Phase 2 Assessment</i>	0.30	\$500.00	\$150.00
2025-04-14	MSR	<i>Prepared cheque requisition and coordinating with banking department.</i>	0.20	\$150.00	\$30.00
2025-04-14	CGL	<i>Administrative work including facilitating payment for environmental appraisals.</i>	0.20	\$100.00	\$20.00
2025-04-15	MMA	<i>Email exchange with C. McInnes (RBC) regarding proceeding with the Avison Young appraisal and listing agreement, and closing BDA account. Receipt and review of email exchange with R. Moses (Foglers) regarding Phase 2 Environmental Report and property listing.</i>	0.70	\$500.00	\$350.00
2025-04-15	PGE	<i>Email exchange with MMA regarding listing of property for sale; email to Kelly Avison requesting Listing Agreement and MLS Data From; internal email exchange regarding inventory in store and fuel in tanks; email exchange with Receiver's Counsel;</i>	0.40	\$500.00	\$200.00
2025-04-16	MMA	<i>Email exchange with Spergel team regarding McDougall Energy and fuel supply agreement.</i>	0.40	\$500.00	\$200.00
2025-04-16	PGE	<i>email request for PPSA search; review of search results; review of Fuel Supply Agreement with McDougall Energy; discussion with Listing Broker regarding impact of Fuel Supply Agreement;</i>	0.75	\$500.00	\$375.00
2025-04-21	PGE	<i>Receipt and review of Listing Agreement and Schedule;</i>	0.50	\$500.00	\$250.00
2025-04-28	PGE	<i>Email to Receiver's Counsel requesting registration of Receivership Order on title to Real property;</i>	0.10	\$500.00	\$50.00
2025-04-29	PGE	<i>Email to Receiver's Counsel with Listing Agreement and Schedule attached requesting review and comments; telephone discussion with GC for McDougall Energy and follow up email to same;</i>	1.20	\$500.00	\$600.00
2025-04-30	PGE	<i>Email to Receiver's Counsel enclosing a copy of Application Record and McDougall Fuel Supply Agreement as requested; receipt and review of Document evidencing registration on title;</i>	0.25	\$500.00	\$125.00



December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-05-01	MMA	Email exchanges with C. McInnes (RBC) regarding cancellation of Standby Letter of Credit. Attended and responded to various calls.	0.60	\$500.00	\$300.00
2025-05-01	PAM	Email exchange regarding fuel agreement and status of line of credit,	0.10	\$325.00	\$32.50
2025-05-05	PAM	Email from banking team advising of letter of credit with fuel supplier.	0.10	\$325.00	\$32.50
2025-05-06	PGE	Receipt and review of comments from Receiver's Counsel on draft APS and Listing Agreement; email to Avison Young regarding fuel supply agreement and need to include reference in both the listing and the Form of APS; telephone discussion with Counsel for McDougall Energy regarding Fuel Supply Agreement; telephone discussion with Kely Avison in this regard;	1.50	\$500.00	\$750.00
2025-05-07	DTI	Review outstanding amounts due, prepare and get approval for cheque requisitions to be processed.	1.70	\$215.00	\$365.50
2025-05-07	MMA	Receipt and review of email exchange with K. Avison (Avison Young) regarding fuel supply agreements and review. Telephone discussion with K. Avison regarding same.	1.10	\$500.00	\$550.00
2025-05-07	PGE	Email exchange with Kelly Avison regarding listing and sale documents; email exchange with Receiver's Counsel regarding revisions to APS;	0.50	\$500.00	\$250.00
2025-05-08	PGE	Email exchange with Kelly Avison regarding revisions to Listing Agreement; email exchange with Receiver's Counsel regarding the ATA for the revised clause relative to the fuel supply agreement;	0.25	\$500.00	\$125.00
2025-05-09	PGE	Receipt and review of revised clause 4 and 5 in the draft APS to better deal with the fuel supply agreement; incorporation of revised clauses into draft APS; email to Kelly Avison attaching revised sale documents;	0.75	\$500.00	\$375.00
2025-05-09	CGL	Review and revise the Agreement of Purchase and Sale document.	0.50	\$100.00	\$50.00
2025-05-12	DTI	Reviewed report from inspector's site visit, upload pictures to shared drive. Correspond with G. Dal Colle and A. Chon to obtain wire instructions from for payment processing.	0.30	\$215.00	\$64.50
2025-05-12	MMA	Receipt and review of email exchange with R. Moses regarding revised APS.	0.20	\$500.00	\$100.00



December 11, 2025

## DRAFT

**Invoice #: 1289**

Smart Super Mart Ltd.

### INVOICE

2025-05-12	PGE	<i>Receipt and review of correspondence from Counsel for McDougall Energy regarding fuel supply agreement; telephone discussion with Receiver's Counsel in this regard; email exchange with Receiver's Counsel;</i>	0.30	\$500.00	\$150.00
2025-05-14	GGO	<i>Receive and review bank reconciliation.</i>	0.10	\$400.00	\$40.00
2025-05-15	MSR	<i>Email, received, reviewed and responded, regarding payment confirmation for environmental consultant fee.</i>	0.20	\$150.00	\$30.00
2025-05-20	MMA	<i>Review and sign payables.</i>	0.10	\$500.00	\$50.00
2025-05-20	PGE	<i>Email from Kelly Avison with Listing Agreement as amended by Counsel attached;</i>	0.20	\$500.00	\$100.00
2025-05-20	CGL	<i>Administrative work including facilitating payables.</i>	0.20	\$100.00	\$20.00
2025-05-21	MSR	<i>Coordinating with banking department regarding payments to be processed.</i>	0.10	\$150.00	\$15.00
2025-05-23	PAM	<i>Receive and review email from Lockit Security and save to drive.</i>	0.10	\$325.00	\$32.50
2025-05-23	PGE	<i>Email sending fully executed Listing Agreement to Kelly Avison'</i>	0.10	\$500.00	\$50.00
2025-05-26	PGE	<i>Email from Receiver's Counsel regarding issues with terminating Fuel Supply Agreement with McDougall Energy; email to Listing Broker regarding purchaser issues with McDougall FSA; responding email from Listing Broker;</i>	0.50	\$500.00	\$250.00
2025-05-26	MMA	<i>Receipt and review of email exchange with counsel regarding fuel supply agreements.</i>	0.20	\$500.00	\$100.00
2025-05-27	PGE	<i>Email from Receiver's Counsel enclosing updated parcel register; forwarding email from Listing Broker to Receiver's Counsel; telephone discussion with Receiver's Counsel regarding the need for changes to the APS; email forwarding draft APS to Counsel for further revisions;</i>	0.75	\$500.00	\$375.00
2025-05-27	MMA	<i>Receipt and review of email exchange with counsel regarding fuel supply agreements and parcel registers.</i>	0.20	\$500.00	\$100.00



December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-05-28	PGE	Email from Receiver's Counsel enclosing updated parcel register; forwarding email from Listing Broker to Receiver's Counsel; telephone discussion with Receiver's Counsel regarding the need for changes to the APS; email forwarding draft APS to Counsel for further revision; email from Kelly Avison regarding signback of highest bidder offer; internal email to MMA regarding unconditional offer; email to Kelly Avison confirming his recommendation to go back to unconditional purchaser with price increase;	1.25	\$500.00	\$625.00
2025-05-29	PGE	Email to listing broker with revised APS for use in marketing property;	0.10	\$500.00	\$50.00
2025-05-31	PGE	Email exchange with Kelly Avison regarding documents to be included in data room;	0.25	\$500.00	\$125.00
2025-06-03	PGE	Email exchange with Kelly Avison responding to request for realty tax information; transmittal of Clean Phase 2 Report to Avison; review of appraisal for realty tax information and transmittal of same to Kelly Avison;	0.30	\$500.00	\$150.00
2025-06-04	PGE	Emails from Kelly Avison with questions related to property just listed;	0.25	\$500.00	\$125.00
2025-06-05	PGE	Receipt and review of copy of email to Kelly Avison;	0.10	\$500.00	\$50.00
2025-06-06	DTI	Review outstanding bills, investigate issue with Aletra bills, contact Aletra and set up online access to view bills, work with Aletra to rectify account issues.	0.40	\$215.00	\$86.00
2025-06-06	PAM	Receive site inspection report from Lockit Security and save to drive.	0.10	\$325.00	\$32.50
2025-06-06	MSR	mails, received, reviewed scanned and saved in drive.	0.10	\$150.00	\$15.00
2025-06-09	DTI	Review site visit inspection report and pictures, upload visit to shared drive.	0.10	\$215.00	\$21.50
2025-06-09	GGO	Receive and review bank reconciliation.	0.10	\$400.00	\$40.00
2025-06-11	MMA	Review and approve payables.	0.30	\$500.00	\$150.00
2025-06-13	MSR	Review of receivership activities with colleagues for the file and received instructions to review GL and if necessary, prepare the budget.	0.20	\$150.00	\$30.00
2025-06-16	MSR	Email received and reviewed. Coordinating with Banking department to process payments of invoices.	0.20	\$150.00	\$30.00
2025-06-16	DTI	Review site inspection report, upload to shared drive.	0.10	\$215.00	\$21.50



December 11, 2025

## DRAFT

**Invoice #:** 1289

Smart Super Mart Ltd.

### INVOICE

2025-06-16	PAM	<i>Review requisitions prepared by others and approve for further processing.</i>	0.50	\$325.00	\$162.50
2025-06-20	PAM	<i>Receipt and review email from Lockit Security with update on weekly site visits.</i>	0.10	\$325.00	\$32.50
2025-06-23	DTI	<i>Review site inspection report, upload report to shared drive.</i>	0.10	\$215.00	\$21.50
2025-06-30	DTI	<i>Review site inspection report from Lockit. Upload report to shared drive.</i>	0.10	\$215.00	\$21.50
2025-07-04	PAM	<i>Receipt and review email from Lockit Security with update on site visit.</i>	0.10	\$325.00	\$32.50
2025-07-07	MMA	<i>Review and sign payables.</i>	0.30	\$500.00	\$150.00
2025-07-07	CGL	<i>Administrative work including facilitating payables.</i>	0.20	\$100.00	\$20.00
2025-07-09	PAM	<i>Receive request for payout statement from debtor and forward to legal counsel.</i>	0.20	\$325.00	\$65.00
2025-07-11	GGO	<i>Receive and review bank reconciliation.</i>	0.10	\$400.00	\$40.00
2025-07-17	PAM	<i>Receipt and review email from Lockit Security with site update.</i>	0.10	\$325.00	\$32.50
2025-07-18	MMA	<i>Review and approve payables.</i>	0.30	\$500.00	\$150.00
2025-07-22	PAM	<i>Review status of utilities, insurance. Request payout statement as per debtor's request.</i>	0.20	\$325.00	\$65.00
2025-07-30	DTI	<i>Review correspondence from Federated Insurance.</i>	0.30	\$215.00	\$64.50
2025-07-31	DTI	<i>Multiple e-mail exchanges with Federated insurance regarding property, updates to property.</i>	0.60	\$215.00	\$129.00
2025-07-31	PAM	<i>Receipt and review emails related to renewal of insurance.</i>	0.10	\$325.00	\$32.50
2025-08-05	DTI	<i>Review correspondence with Federated Insurance, review other amounts outstanding for property, prepare cheque requisitions. Review site inspection report, upload to shared drive.</i>	1.00	\$215.00	\$215.00
2025-08-05	PAM	<i>Receive and review email from Lockit Security with property update.</i>	0.10	\$325.00	\$32.50
2025-08-05	PAM	<i>Review and approve requisitions prepared by M.Manocher.</i>	0.30	\$325.00	\$97.50
2025-08-06	PGE	<i>Email to Kelly Avison requesting update on sales activity' email from City of St. Catharines regarding impending tax sale;</i>	0.25	\$500.00	\$125.00
2025-08-08	GGO	<i>Receive and review bank reconciliation.</i>	0.10	\$400.00	\$40.00
2025-08-08	PGE	<i>Receipt and review of progress report from Avison Young;</i>	0.20	\$500.00	\$100.00

**SPERGEL**

**msi Spergel inc.**, Licensed Insolvency Trustees  
 Head Office: 200 Yorkland Blvd., Suite 1100  
 Toronto, ON., M2J 5C1  
 T: 416 497 1660 • F: 416 494 7199  
**www.spergel.ca**

December 11, 2025

**DRAFT****Invoice #: 1289**

Smart Super Mart Ltd.

**INVOICE**

2025-08-08	PAM	Receipt and review email from the City of St. Catherines regarding in paid taxes and discuss with P. Gennis.	0.20	\$325.00	\$65.00
2025-08-12	PGE	Email from listing broker with "low-ball" offer attached together with recommendations relative thereto; telephone discussion with Kelly Avison at AY Real Estate Brokers;	0.25	\$500.00	\$125.00
2025-09-03	PAM	Discuss tax arrears on property with P. Gennis and email property tax department update on receivership. Review file and prepare update requested by M.Manchanda.	0.60	\$325.00	\$195.00
2025-09-03	PGE	Email exchange with update on file; email to tax department for city regarding stay of proceedings;	0.30	\$500.00	\$150.00
2025-09-03	MMA	Email exchanges with RBC regarding file update and coordinating a call to discuss.	0.30	\$500.00	\$150.00
2025-09-04	MMA	Call with C. McInnes (RBC) to discuss file.	0.50	\$500.00	\$250.00
2025-09-05	PGE	Receipt and review of offer sent directly by Purchaser's Agent; offer being dealt with by listing broker (AY);	0.50	\$500.00	\$250.00
2025-09-06	PGE	Email from listing broker;	0.10	\$500.00	\$50.00
2025-09-08	PGE	Email from listing broker regarding enquiry from selling broker on one offer being considered;	0.10	\$500.00	\$50.00
2025-09-09	MMA	Email exchanges with P. Gennis regarding property offers.	0.20	\$500.00	\$100.00
2025-09-09	PGE	Email to MMA regarding broker enquiry;	0.10	\$500.00	\$50.00
2025-09-12	GGO	Receive and review bank reconciliation.	0.10	\$400.00	\$40.00
2025-09-16	MMA	Email exchange with P. Gennis regarding offers and current conditions of property, review of offer.	0.60	\$500.00	\$300.00
2025-09-16	PGE	Follow-up email from listing broker and transmittal of same to MMA for discussion with Bank; email from MMA confirming that offer had been forwarded to RBC for review;	0.20	\$500.00	\$100.00
2025-09-22	MMA	Email exchanges with C. McInnes (RBC) regarding offer. Review of offer document.	0.60	\$500.00	\$300.00
2025-09-22	PGE	Further email from Kelly Avison and transmittal of same to MMA; email from MMA confirming call to Bank; telephone discussion with Kelly Avison;	0.30	\$500.00	\$150.00
2025-09-30	PGE	Further email exchange with Kelly Avison re-sending offer from Fouzia Shahzadi; telephone discussion with Kelly Avison; email to MMA regarding offer;	0.30	\$500.00	\$150.00

Barrie 705 722 5090 • Brampton 905 874 4905 • Downsview 416 633 1444 • Hamilton 905 527 2227 • London 519 902 2722 • Mississauga 905 602 4143  
 Oshawa 905 721 8251 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Toronto 416 778 8813 • Vaughan 647 288 7636  
 Saskatchewan 306 341 1660 • British Columbia 604 365 7434





December 11, 2025

**DRAFT**

**Invoice #: 1289**

Smart Super Mart Ltd.

## INVOICE

2025-10-01	PAM	Sept 9 - Receipt and review email from real estate agent with details on offer to purchase property.	0.10	\$325.00	\$32.50
2025-10-01	PGE	Receipt and review of additional offer to purchase; email exchange with MMA regarding obtaining Bank approval for offer price;	0.30	\$500.00	\$150.00
2025-10-02	PGE	Email from MMA regarding bank request to counter offer the second offer; email exchange with listing broker; receipt of revised offer from listing broker;	0.30	\$500.00	\$150.00
2025-10-06	MMA	Receipt and review of email from Avison Young regarding draft sign back on offer.	0.20	\$500.00	\$100.00
2025-10-06	PGE	Receipt of further offer on ppty;	0.25	\$500.00	\$125.00
2025-10-14	PAM	Receipt and review email from Lockit Security with site inspection update.	0.10	\$325.00	\$32.50
2025-10-15	GGO	Receive and review bank reconciliation.	0.10	\$400.00	\$40.00
2025-10-16	MMA	Email exchanges with C. McInnes (RBC) regarding accepting offer.	0.30	\$500.00	\$150.00
2025-10-16	PGE	email exchange with MMA regarding offer and transmittal to Bank for consideration; review of email from listing broker regarding offer on property;	0.50	\$500.00	\$250.00
2025-10-20	MSR	mails received and reviewed.	0.20	\$150.00	\$30.00
2025-10-21	MMA	Receipt and review of email exchanges with J. Gardner (Putman Investments) regarding loading inventory and interest and with counsel regarding cost of continuing operations. Email exchanges with P. Gennis regarding APS.	0.70	\$500.00	\$350.00
2025-10-21	PGE	Email exchange with listing broker regarding Shakeel APS; email from bank agreeing to Avison recommendation; receipt of APS executed by MMA;	0.25	\$500.00	\$125.00
2025-10-22	MMA	Receipt and review of email exchanges with Gowling team regarding AVO.	0.70	\$500.00	\$350.00
2025-10-22	PGE	Receipt of fully executed APS; transmittal to Receiver's Counsel;	0.25	\$500.00	\$125.00
2025-10-24	MSR	Review of file and coordinating with banking department regarding remaining EFT's to be processed.	0.30	\$150.00	\$45.00
2025-10-24	PGE	Email exchange with listing broker regarding receipt of deposit; internal emails regarding deposit;	0.30	\$500.00	\$150.00
2025-10-28	PAM	Receipt and review email from Lockit Security with update on site inspection.	0.10	\$325.00	\$32.50



**SPERGEL**

**msi Spergel inc.**, Licensed Insolvency Trustees  
Head Office: 200 Yorkland Blvd., Suite 1100  
Toronto, ON., M2J 5C1  
T: 416 497 1660 • F: 416 494 7199  
**www.spergel.ca**

December 11, 2025

**DRAFT**

**Invoice #: 1289**

Smart Super Mart Ltd.

## INVOICE

2025-10-28	CGL	<i>Administrative work including facilitating payables.</i>	0.20	\$100.00	\$20.00
<b>Professional Services Total:</b>			<b>79.45</b>		<b>\$29,533.00</b>
<b>Reimbursable Expenses</b>					
2025-05-20	EMA				\$8.00
<b>Reimbursable Expenses Total:</b>			<b>1.00</b>		<b>\$8.00</b>



## **Appendix 9**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

SMART SUPER MART LTD.

Respondent

**AFFIDAVIT OF RACHEL MOSES**  
(sworn December 17, 2025)

I, **RACHEL MOSES**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

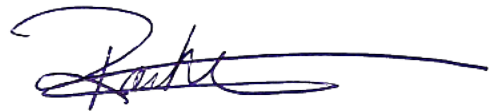
1. I am a lawyer with the law firm of Gowling WLG (Canada) LLP ("**Gowling**").
2. By Order of the Honourable Justice Bordin of the Ontario Superior Court of Justice on January 20, 2025 (the "**Appointment Order**"), msi Sergel Inc. was appointed as receiver (the "**Receiver**") of the assets, undertakings and properties of Smart Super Mart Ltd. ("**Debtor**").
3. Pursuant to the Appointment Order, the Receiver retained Gowling to provide advice and services in respect of the receivership.
4. Attached as [Exhibit "A"](#) is a copy of Gowling's invoice dated October 20, 2025 with respect to the fees and disbursements incurred for the period April 28, 2025 to September 5, 2025.

5. Attached as Exhibit "B" is a copy of and Gowling's invoice dated December 8, 2025 with respect to the fees and disbursements incurred for the period October 22, 2025 to November 28, 2025.
6. Attached as Exhibit "C" is a copy of and Gowling's invoice dated December 16, 2025 with respect to the fees and disbursements incurred for the period December 10, 2025 to December 15, 2025.
7. Gowling's fees and disbursements for the period April 28, 2025 to December 15, 2025 are summarized in the invoices rendered to the Receiver. The invoices are a fair and accurate description of the services provided, and the disbursements incurred.
8. The total amount being claimed for the work performed by Gowling for the period April 28, 2025 to December 15, 2025 is \$14,859.00 for fees, \$118.20 for disbursements and \$1,936.44 for HST for a total of \$16,913.64.
9. This affidavit is sworn in support of the Receiver's Report and for no other purpose.

**SWORN** by Rachel Moses of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on December 17, 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits  
(or as may be)  
**Carol Liu (LSO# 84938G)**



**RACHEL MOSES**

This is **Exhibit "A"** referred to in the Affidavit of Rachel Moses sworn before me at the City of Toronto, in the Province of Ontario, on December 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read "Carol Ann", is written above a horizontal line.

Commissioner for Taking Affidavits  
(or as may be)

# Invoice

MSI Spergel Inc.  
ATTN: Mukul Manchanda  
200 Yorkland Boulevard  
Suite 1100  
Toronto ON M2J 5C1

October 20, 2025  
INVOICE: 20596838

Our Matter: G10047010 / 182919  
RE: Smart Super Mart Ltd.

		<b>HST (13.0%)</b>
<b>Fees for Professional Services</b>	<b>\$5,387.50</b>	\$700.38
Disbursements (Taxable)	36.65	
Disbursements (Non-Taxable)	<u>81.55</u>	
<b>Total Disbursements</b>	<b>118.20</b>	4.76
Total Fees and Disbursements	5,505.70	
Total Taxes	705.14	705.14
<b>Total Invoice</b>	<b>6,210.84</b>	
<b>Please remit balance due:</b>	<b>In Canadian Dollars</b>	<b>\$6,210.84</b>

## Important Notice: Please Read

### Please make all payments by wire transfer or electronic funds transfer (EFT)

Our complete banking details are on the remittance copy (last page) of this invoice. If you have any questions, please contact [Account Confirmation@gowlingwlg.com](mailto:Account Confirmation@gowlingwlg.com)

Rachel Moses

Signed for & on behalf of Gowling WLG (Canada) LLP

Our services are provided in accordance with our Terms of Business ([www.gowlingwlg.com/Terms of Business](http://www.gowlingwlg.com/Terms of Business)), subject to any other written engagement agreement entered into between the parties.

**GOWLING WLG (CANADA) LLP**  
1 First Canadian Place, 100 King Street West,  
Suite 1600, Toronto, Ontario, M5X 1G5, Canada  
GST/HST: 11936 4511 RT

T +1 (416) 862 7525  
**gowlingwlg.com**

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at [www.gowlingwlg.com/legal](http://www.gowlingwlg.com/legal)

October 20, 2025  
INVOICE: 20596838

**MSI Spergel Inc.**  
**Our Matter: G10047010**  
**Smart Super Mart Ltd.**

## PROFESSIONAL SERVICES

2025-04-28	Communication from P. Gennis re registration of Receivership Order on title Rachel Moses	0.10	600.00/hr	60.00
2025-04-29	Review draft application for registration of court order and contents of order to verify property description; electronically sign e-reg application and advise clerk; Sylvia Adriano	0.30	600.00/hr	180.00
2025-04-29	Engaged re instructions to register Court Order on title to real property Rachel Moses	0.20	600.00/hr	120.00
2025-04-29	Receipt and review of email correspondence from R. Moses; review court order; obtain file number; preparation of e-reg documentation for court order; email correspondence to S. Adriano re registration of court order; attend to registration; email correspondence to R. Moses and S. Adriano re completion of registration; Catherine E. Ridout	0.80	295.00/hr	236.00
2025-04-30	Communications with P. Gennis re Receiver's Form of Offer and Schedule "A" and to revise same; communication to P. Gennis re registration of Receivership Order on title Rachel Moses	0.90	600.00/hr	540.00
2025-05-01	Engaged re Receiver's Form of Offer Rachel Moses	0.20	600.00/hr	120.00
2025-05-02	Communications with T. Hogan and M. Manchanda re consent to lift stay re non-renewal of Letter of Credit Rachel Moses	0.20	600.00/hr	120.00
2025-05-02	Review of and revisions to agreement of purchase and sale, listing agreement and Schedule A to listing agreement re. Smart Super Mart including review of Gas Supply Agreement and assignment of same to purchaser Bart Sarsh	2.70	475.00/hr	1,282.50
2025-05-05	Review file to answer query re registration of receivership order on title Carol Liu	0.10	330.00/hr	33.00
2025-05-06	Review offer documents for listing and communications with P. Gennis re same Rachel Moses	0.50	600.00/hr	300.00

Terms: payment due within 30 days of invoice date  
Interest at the rate of 3.0% per annum will be charged on all amounts not paid within 30 days of invoice date  
Errors and omissions excluded

October 20, 2025  
INVOICE: 20596838

2025-05-06	Communication from C. McInnes re issuance on non-renewal letter to MacDougall in connection with LC			
	Rachel Moses	0.10	600.00/hr	60.00
2025-05-07	Communications with B. Sarsh and P. Gennis re offer letter			
	Rachel Moses	0.20	600.00/hr	120.00
2025-05-07	Review of email form listing broker on both properties including further copy of Listing Agreement and reply email re. call to discuss same			
	Bart Sarsh	0.40	475.00/hr	190.00
2025-05-08	Teams call with P. Gennis and B. Sarsh re offer agreement and Fuel Supply Company			
	Rachel Moses	0.20	600.00/hr	120.00
2025-05-08	Review of emails with McDougall including updated listing information and Teams call with P. Gennis to discuss strategy and next steps			
	Bart Sarsh	0.60	475.00/hr	285.00
2025-05-09	Drafting of revised clause in Agreement of Purchase and Sale re. McDougall Energy and third party consent including ability to end agreement; report to P. Gennis on same			
	Bart Sarsh	0.80	475.00/hr	380.00
2025-05-12	Communications with P. Gennis re fuel supply agreement and selling real property			
	Rachel Moses	0.20	600.00/hr	120.00
2025-05-26	Communications with P. Gennis re updated title search and fuel agreement			
	Rachel Moses	0.10	600.00/hr	60.00
2025-05-26	Title Search			
	Yasmin Rahim	0.30	245.00/hr	73.50
2025-05-26	Review of email from P. Gennis re. options with Fuel Supply Agreement and respond to same with recommendations; direction to request updated parcel register			
	Bart Sarsh	0.30	475.00/hr	142.50
2025-05-27	Review of updated parcel register and report to P. Gennis on same			
	Bart Sarsh	0.20	475.00/hr	95.00
2025-05-27	Phone call with P. Gennis and email reporting on conditions for disclaimer and options re. same			
	Bart Sarsh	0.50	475.00/hr	237.50

Terms: payment due within 30 days of invoice date  
Interest at the rate of 3.0% per annum will be charged on all amounts not paid within 30 days of invoice date  
Errors and omissions excluded

October 20, 2025  
INVOICE: 20596838

2025-05-28	Drafting of revisions to paras. 4-5 of agreement re. purchaser not assuming McDougall Fuel Supply Agreement			
	Bart Sarsh	0.70	475.00/hr	332.50
2025-09-05	Communications from N. Gahia and G. White re purchase offer for 179-185 St. Paul Street			
	Rachel Moses	0.30	600.00/hr	180.00
<b>Total Fees for Professional Services</b>				<b><u>\$5,387.50</u></b>

## DISBURSEMENTS

### Taxable Costs

TeraView (Ontario) Online Searches & Registration - Taxable	\$36.65
<b>Total Taxable Disbursements</b>	<b><u>\$36.65</u></b>

### Non-Taxable Costs

TeraView (Ontario) Online Searches & Registration - Agency	\$81.55
<b>Total Non-Taxable Disbursements</b>	<b><u>\$81.55</u></b>



October 20, 2025  
INVOICE: 20596838

## Remittance Copy

Client: 182919 MSI Spergel Inc.  
Matter: G10047010  
RE: Smart Super Mart Ltd.

Amount Due: \$6,210.84 CAD

---

### PAYMENT BY WIRE TRANSFER:

Bank Name: **Canadian Imperial Bank of Commerce**  
Bank Address: 84 Bank Street, Ottawa, ON K1P 5N4  
Institution Number: **0010**  
Transit Code: **00186**

Beneficiary Account Name: **Gowling WLG (Canada) LLP**  
Beneficiary Address: 160 Elgin Street, Suite 2600, Ottawa, ON K1P 1C3  
Beneficiary Account Number: CDN Account: **4102916**  
USD Account: **0221015**

Clearing Code / Routing Number: **CC001000186**  
(some systems may not accept a leading 'CC')

Pay by Swift MT 103 Direct to SwiftCode: **CIBCCATTXXX**

**ADDITIONAL MANDATORY INFO:** Invoice number(s)/Payment details

For accurate and timely processing, email a copy of your payment confirmation to **[payments.ca@gowlingwlg.com](mailto:payments.ca@gowlingwlg.com)**

Questions related to EFT registration and banking, including intermediary details, please contact  
**[Account.Confirmation@gowlingwlg.com](mailto:Account.Confirmation@gowlingwlg.com)**

### PAYMENT BY Interac E-TRANSFER:

Please send payment to **[payments.ca@gowlingwlg.com](mailto:payments.ca@gowlingwlg.com)**  
Include the **invoice numbers/payment details** in the notes section of the Interac e-transfer. This will result in an automatic deposit to our account and no password is required.

**PAYMENT BY CHEQUE:** Gowling WLG (Canada) LLP  
PO Box 466, STN D  
Ottawa, ON K1P 1C3  
Canada

Please return this page with your payment payable to Gowling WLG (Canada) LLP

If you receive another email or other electronic communication purporting to be from our firm changing details of the above payment information, please do not act on the communication but contact us immediately, as it is unlikely to be genuine and may be an attempted fraud.

This is **Exhibit “B”** referred to in the Affidavit of Rachel Moses sworn before me at the City of Toronto, in the Province of Ontario, on December 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read "Carol Ann", written over a horizontal line.

Commissioner for Taking Affidavits  
(or as may be)

# Invoice

MSI Spergel Inc.  
ATTN: Mukul Manchanda  
200 Yorkland Boulevard  
Suite 1100  
Toronto ON M2J 5C1

December 8, 2025  
INVOICE: 20630345

Our Matter: G10047010 / 182919  
RE: Smart Super Mart Ltd.

		<b>HST (13.0%)</b>
<b>Fees for Professional Services</b>	<b>\$2,843.00</b>	\$369.59
Total Fees	2,843.00	
Total Taxes	369.59	369.59
<b>Total Invoice</b>	<b>3,212.59</b>	
<b>Please remit balance due:</b>	<b>In Canadian Dollars</b>	<b>\$3,212.59</b>

## Important Notice: Please Read

### **Please make all payments by wire transfer or electronic funds transfer (EFT)**

Our complete banking details are on the remittance copy (last page) of this invoice. If you have any questions, please contact [Account.Confirmation@gowlingwlg.com](mailto:Account.Confirmation@gowlingwlg.com)

Rachel Moses

Signed for & on behalf of Gowling WLG (Canada) LLP

Our services are provided in accordance with our Terms of Business ([www.gowlingwlg.com/TermsOfBusiness](http://www.gowlingwlg.com/TermsOfBusiness)), subject to any other written engagement agreement entered into between the parties.

**GOWLING WLG (CANADA) LLP**  
1 First Canadian Place, 100 King Street West,  
Suite 1600, Toronto, Ontario, M5X 1G5, Canada  
GST/HST: 11936 4511 RT

T +1 (416) 862 7525  
[gowlingwlg.com](http://gowlingwlg.com)

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at [www.gowlingwlg.com/legal](http://www.gowlingwlg.com/legal)

December 8, 2025  
INVOICE: 20630345

**MSI Spergel Inc.**  
**Our Matter: G10047010**  
**Smart Super Mart Ltd.**

## PROFESSIONAL SERVICES

2025-10-22	Communication from K. Avis re purchase and sale of 179-185 St. Paul Street West, St. Catharines			
	Rachel Moses	0.20	600.00/hr	120.00
2025-11-04	Communications with T. Hogan and P. Gennis re R. Chohan and intention buy back gas station from the Receiver			
	Rachel Moses	0.20	600.00/hr	120.00
2025-11-04	Emails with court office re. available hearing dates			
	Bart Sarsh	0.30	475.00/hr	142.50
2025-11-06	Communications with M. Manchanda, T. Hogan and B. Sarsh re debtor's right to redeem despite the Receiver's offer with purchaser			
	Rachel Moses	0.20	600.00/hr	120.00
2025-11-06	Review file re motion for approval and vesting order and requirement of report; diarize reminder dates for motion date, when materials need to be filed and motion confirmation submitted; email to P. Gennis re Receiver's report;			
	Becky Pearson	0.30	245.00/hr	73.50
2025-11-06	Review of email exchange between T. Hogan and counsel for debtor; emails with M. Manchanda and P. Gennis re. purchase and sale transaction; review of Agreement of Purchase and Sale to identify conditions precedent for closing and report on same; emails and phone call with T. Hogan re. redemption request; email to counsel for debtor re. receiver's position on redemption			
	Bart Sarsh	2.00	475.00/hr	950.00
2025-11-07	Email exchange re motion date; email to P. Gennis re new motion date; update reminder dates for motion date, when materials need to be filed and motion confirmation submitted;			
	Becky Pearson	0.40	245.00/hr	98.00
2025-11-07	Emails with B. Pearson and P. Gennis re. scheduling receiver's motion			
	Bart Sarsh	0.40	475.00/hr	190.00
2025-11-26	Draft outlines of notice of motion, approval and vesting order, factum, motion record and service list;			
	Becky Pearson	3.50	245.00/hr	857.50

December 8, 2025  
INVOICE: 20630345

2025-11-28	Draft outlines of affidavit re counsel's fees, motion confirmation, endorsement sheet and participant information form;			
	Becky Pearson	0.70	245.00/hr	171.50
<b>Total Fees for Professional Services</b>				<b><u>\$2,843.00</u></b>

December 8, 2025  
INVOICE: 20630345

## Remittance Copy

Client: 182919 MSI Spergel Inc.  
Matter: G10047010  
RE: Smart Super Mart Ltd.

Amount Due: \$3,212.59 CAD

---

### PAYMENT BY WIRE TRANSFER:

Bank Name: **Canadian Imperial Bank of Commerce**  
Bank Address: 84 Bank Street, Ottawa, ON K1P 5N4  
Institution Number: **0010**  
Transit Code: **00186**

Beneficiary Account Name: **Gowling WLG (Canada) LLP**  
Beneficiary Address: 160 Elgin Street, Suite 2600, Ottawa, ON K1P 1C3  
Beneficiary Account Number: CDN Account: **4102916**  
USD Account: **0221015**

Clearing Code / Routing Number: **CC001000186**  
(some systems may not accept a leading 'CC')

Pay by Swift MT 103 Direct to SwiftCode: **CIBCCATTXXX**

**ADDITIONAL MANDATORY INFO:** Invoice number(s)/Payment details

For accurate and timely processing, email a copy of your payment confirmation to **[payments.ca@gowlingwlg.com](mailto:payments.ca@gowlingwlg.com)**

Questions related to EFT registration and banking, including intermediary details, please contact  
**[Account.Confirmation@gowlingwlg.com](mailto:Account.Confirmation@gowlingwlg.com)**

### PAYMENT BY Interac E-TRANSFER:

Please send payment to **[payments.ca@gowlingwlg.com](mailto:payments.ca@gowlingwlg.com)**  
Include the **invoice numbers/payment details** in the notes section of the Interac e-transfer. This will result in an automatic deposit to our account and no password is required.

**PAYMENT BY CHEQUE:** Gowling WLG (Canada) LLP  
PO Box 466, STN D  
Ottawa, ON K1P 1C3  
Canada

Please return this page with your payment payable to Gowling WLG (Canada) LLP

If you receive another email or other electronic communication purporting to be from our firm changing details of the above payment information, please do not act on the communication but contact us immediately, as it is unlikely to be genuine and may be an attempted fraud.

This is **Exhibit "C"** referred to in the Affidavit of Rachel Moses sworn before me at the City of Toronto, in the Province of Ontario, on December 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read "Carol Ann", is written above a horizontal line.

Commissioner for Taking Affidavits  
(or as may be)

# Invoice

MSI Spergel Inc.  
ATTN: Mukul Manchanda  
200 Yorkland Boulevard  
Suite 1100  
Toronto ON M2J 5C1

December 16, 2025  
INVOICE: 20636655

Our Matter: G10047010 / 182919  
RE: Smart Super Mart Ltd.

		<b>HST (13.0%)</b>
<b>Fees for Professional Services</b>	<b>\$6,628.50</b>	\$861.71
Total Fees	6,628.50	
Total Taxes	861.71	861.71
<b>Total Invoice</b>	<b>7,490.21</b>	
<b>Please remit balance due:</b>	<b>In Canadian Dollars</b>	<b>\$7,490.21</b>

## Important Notice: Please Read

### **Please make all payments by wire transfer or electronic funds transfer (EFT)**

Our complete banking details are on the remittance copy (last page) of this invoice. If you have any questions, please contact [Account Confirmation@gowlingwlg.com](mailto:Account Confirmation@gowlingwlg.com)

Rachel Moses

Signed for & on behalf of Gowling WLG (Canada) LLP

Our services are provided in accordance with our Terms of Business ([www.gowlingwlg.com/Terms of Business](http://www.gowlingwlg.com/Terms of Business)), subject to any other written engagement agreement entered into between the parties.

**GOWLING WLG (CANADA) LLP**  
1 First Canadian Place, 100 King Street West,  
Suite 1600, Toronto, Ontario, M5X 1G5, Canada  
GST/HST: 11936 4511 RT

T +1 (416) 862 7525  
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December 16, 2025  
INVOICE: 20636655

**MSI Spergel Inc.**  
**Our Matter: G10047010**  
**Smart Super Mart Ltd.**

## PROFESSIONAL SERVICES

2025-12-10	Communications with P. Gennis re registration of receivership order on title to real property Rachel Moses	0.10	600.00/hr	60.00
2025-12-10	Review of and revisions to First Report; emails with P. Gennis re. confidential appendices Bart Sarsh	2.70	475.00/hr	1,282.50
2025-12-10	Phone call from P. Gennis to discuss McDougall fuel supply agreement and court hearing; email to counsel for McDougall re. same Bart Sarsh	0.50	475.00/hr	237.50
2025-12-11	Engaged re security vet for Receiver's Report Rachel Moses	0.20	600.00/hr	120.00
2025-12-11	Receipt and review of email from B Pearson requesting a tax certificate; completing and submitting request for a tax certificate; email to B Pearson confirming order placed; Jennifer Paquette	0.10	245.00/hr	24.50
2025-12-11	Download Confidential Appendices for First Report of Receiver; receipt of email from P. Gennis with Amendment to Agreement of Purchase and Sale (buyer's name); Revise notice of motion and factum and draft order; email exchange with J. Paquette re request for tax certificate; receipt of tax certificate; provide update to K. Strong re AVO motion; Becky Pearson	1.50	245.00/hr	367.50
2025-12-11	Finalizing Confidentiality Undertakings; emails with D. Shunock re. same; emails with P. Gennis and directions to B. Pearson re. fee affidavits and motion materials; emails with R. Rice re. security review and directions re. same Bart Sarsh	1.40	475.00/hr	665.00
2025-12-12	Review of and revisions to factum for motion Bart Sarsh	2.80	475.00/hr	1,330.00
2025-12-15	Revise and compile counsel fee affidavit; review Receiver's draft first report; review and revise notice of motion, factum, motion record index, and approval, vesting, distribution and discharge order; Becky Pearson	3.20	245.00/hr	784.00
2025-12-15	Finalizing receiver's report to court, appendices, fee affidavit and Notice of Motion			

December 16, 2025

INVOICE: 20636655

Bart Sarsh	3.70	475.00/hr	1,757.50
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<b>Total Fees for Professional Services</b>			<b><u>\$6,628.50</u></b>
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December 16, 2025  
INVOICE: 20636655

Matter: G10047010 / 182919  
RE: Smart Super Mart Ltd.

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**OUTSTANDING INVOICE SUMMARY FOR THIS MATTER:**

<b>Date</b>	<b>Bill Number</b>	<b>Remaining Balance</b>
December 8, 2025	20630345	\$3,212.59
<b>Outstanding Balance:</b>	<b>In Canadian Dollars</b>	<b><u>\$3,212.59</u></b>

\* Current invoice 20636655 not included in this summary

December 16, 2025  
INVOICE: 20636655

## Remittance Copy

Client: 182919 MSI Spergel Inc.  
Matter: G10047010  
RE: Smart Super Mart Ltd.

Amount Due: \$7,490.21 CAD

---

### PAYMENT BY WIRE TRANSFER:

Bank Name: **Canadian Imperial Bank of Commerce**  
Bank Address: 84 Bank Street, Ottawa, ON K1P 5N4  
Institution Number: **0010**  
Transit Code: **00186**

Beneficiary Account Name: **Gowling WLG (Canada) LLP**  
Beneficiary Address: 160 Elgin Street, Suite 2600, Ottawa, ON K1P 1C3  
Beneficiary Account Number: CDN Account: **4102916**  
USD Account: **0221015**

Clearing Code / Routing Number: **CC001000186**  
(some systems may not accept a leading 'CC')

Pay by Swift MT 103 Direct to SwiftCode: **CIBCCATTXXX**

**ADDITIONAL MANDATORY INFO:** Invoice number(s)/Payment details

For accurate and timely processing, email a copy of your payment confirmation to **[payments.ca@gowlingwlg.com](mailto:payments.ca@gowlingwlg.com)**

Questions related to EFT registration and banking, including intermediary details, please contact  
**[Account.Confirmation@gowlingwlg.com](mailto:Account.Confirmation@gowlingwlg.com)**

### PAYMENT BY Interac E-TRANSFER:

Please send payment to **[payments.ca@gowlingwlg.com](mailto:payments.ca@gowlingwlg.com)**  
Include the **invoice numbers/payment details** in the notes section of the Interac e-transfer. This will result in an automatic deposit to our account and no password is required.

**PAYMENT BY CHEQUE:** Gowling WLG (Canada) LLP  
PO Box 466, STN D  
Ottawa, ON K1P 1C3  
Canada

Please return this page with your payment payable to Gowling WLG (Canada) LLP

If you receive another email or other electronic communication purporting to be from our firm changing details of the above payment information, please do not act on the communication but contact us immediately, as it is unlikely to be genuine and may be an attempted fraud.

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

Court File No. CV-24-00086229-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**AFFIDAVIT OF RACHEL MOSES**

(sworn December 17, 2025)

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, ON L8P 4Z5

Tel: 905-528-8208

**Bart Sarsh (LSO 59208N)**

Tel: 905-540-3242

Email: [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver msi Spergel Inc.

File No. G10047010

## **Appendix 10**

District of	Mississauga
Division No.	09
Estate No.	32-159535

**In the matter of the Receivership of  
Smart Super Mart Ltd.  
of the City of St. Catharines, in the Province of Ontario**

Receiver's Interim Statement of Receipts and Disbursements  
As at November 30, 2025

**RECEIPTS**

1	<b>Miscellaneous</b>		
	Receiver Borrowing from Secured Creditor	\$	70,000.00
<b>TOTAL RECEIPTS</b>			<b><u>70,000.00</u></b>

**DISBURSEMENTS**

2.	<b>Federal and Provincial taxes</b>		
	HST on Ascend License Fee		42.25
	HST on Legal Fees		794.44
	HST paid on Disbursements exclusive of fees		4,378.45
			<b><u>5,215.14</u></b>
3.	<b>Miscellaneous</b>		
	Appraisal Fees		9,225.00
	Ascend License Fee		325.00
	Bank Charges		136.20
	Environmental Consultants Fees		15,900.00
	Filing Fees		80.42
	Insurance		17,593.46
	Legal fees/disbursements		6,115.70
	Travel		184.32
	Security		5,090.00
	Utilities		426.73
			<u>55,076.83</u>
<b>TOTAL DISBURSEMENTS</b>			<b><u>60,291.97</u></b>
Net Receipts over Disbursements			<b><u>9,708.03</u></b>
			<b>E&amp;OE</b>

## **Appendix 11**



**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO: 001

AMOUNT: \$70,000.00

1. **THIS IS TO CERTIFY** that msi Spergel inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2668144 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior court of Justice (Commercial List) (the "**Court**") dated the 4<sup>th</sup> day of August, 2023 (the "**Order**") made in an action having court file number CV-24-00086229-0000, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$70,000.00, being part of the total principal sum of \$150,000.00 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 after the date hereof at a notional rate per annum equal to the rate of 1.5 per cent above the prime commercial lending rate of The Royal Bank of Canada 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 7<sup>th</sup> day of March, 2024.

**msi Spergel inc.**, solely in its capacity as  
Receiver of Smart Super Mart Ltd., and not in  
its corporate or personal capacity.

Per:

---

Name: Mukul Manchanda, CPA, CIRP, LIT  
Title: Managing Partner

## **Appendix 12**

PROPERTY DESCRIPTION: PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372; CITY OF ST. CATHARINES

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

DIVISION FROM 46179-0128

PIN CREATION DATE:

2020/01/22

OWNERS' NAMES

SMART SUPER MART LTD.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2020/01/22 **						
**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: 2003/09/22 **						
RO493091	1985/03/04	NOTICE				C
REMARKS: ZONING REGULATIONS						
NR467567	2017/12/04	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** KBEAR CAR WASH INC.	2595543 ONTARIO INC.	
NR467568	2017/12/04	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2595543 ONTARIO INC.	BANK OF MONTREAL	
NR482365	2018/06/01	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2595543 ONTARIO INC.	SMART SUPER MART LTD.	
30R15372	2019/03/18	PLAN REFERENCE				C
NR528337	2019/11/27	NOTICE		*** DELETED AGAINST THIS PROPERTY *** BANK OF MONTREAL	SMART SUPER MART LTD.	
NR529711	2019/12/11	NOTICE		THE CORPORATION OF THE CITY OF ST. CATHARINES		C
NR547085	2020/07/22	NOTICE		THE REGIONAL MUNICIPALITY OF NIAGARA		C

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR547244	2020/07/23	TRANSFER	\$3,675,000	2595543 ONTARIO INC.	SMART SUPER MART LTD.	C
		REMARKS: PLANNING ACT STATEMENTS.				
NR547245	2020/07/23	CHARGE	\$2,135,000	SMART SUPER MART LTD.	ROYAL BANK OF CANADA	C
NR547246	2020/07/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** SMART SUPER MART LTD.		
		REMARKS: NR482365.				
NR549271	2020/08/17	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
		REMARKS: NR467568.				
NR552895	2020/09/25	DISCHARGE INTEREST		*** COMPLETELY DELETED *** BANK OF MONTREAL		
		REMARKS: NR528337.				
NR647338	2023/07/26	CERTIFICATE		THE CORPORATION OF THE CITY OF ST. CATHARINES		C
NR670511	2024/07/12	NOTICE		THE CORPORATION OF THE CITY OF ST. CATHARINES		C
NR689620	2025/04/29	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	MSI SPERGEL INC.	

## **Appendix 13**

December 19, 2025

**BY EMAIL:** [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca) and [pgennis@spergel.ca](mailto:pgennis@spergel.ca)

**Bart Sarsh\***

\*Bart Sarsh Professional Corporation

Direct +1 905 540 3242

Bart.Sarsh@gowlingwlg.com

File no. G10048026

msi Spergel inc.  
Attention: Mukul Manchanda and Phillip Gennis  
200 Yorkland Blvd., Suite 1100  
Toronto, Ontario  
M2J 5C1

Dear Mr. Manchanda and Mr. Gennis:

Re: Validity and Enforceability of Security Granted by Smart Super Mart Ltd. to Royal Bank of Canada

---

We understand that msi Spergel Inc. has been appointed as the receiver and manager (the “**Receiver**”) of Smart Super Mart Ltd. (the “**Credit Party**”) pursuant to an order of the Ontario Superior Court of Justice dated January 30, 2025.

You have asked us to provide you with an opinion in connection with the Security Documents (as defined below) granted to the Royal Bank of Canada (the “**Lender**”) by the Credit Party.

## **EXAMINATION OF DOCUMENTS**

### **Loan Documents**

In giving the opinions set out in this letter, we have examined:

- (a) the letter of agreement dated as of June 18, 2021, as amended by amending agreements dated January 19, 2022 and November 2, 2022, between the Credit Party, as borrower, and the Lender, as lender (collectively, the “**Loan Agreement**”);
- (b) the general security agreement executed on January 11, 2020, granted by the Credit Party in favour of the Lender (the “**GSA**”); and
- (c) the charge / mortgage in the principal amount of \$2,135,000 granted by the Credit Party in favour of the Lender registered against title to the lands and premises municipally known as 179 - 185 St. Paul Street West, St. Catharines, Ontario (the “**Mortgaged Property**”) and more particularly described in Schedule D hereto, on July 23, 2020 in the Land Registry Office for the Lands Title Division of Niagara North (LRO #30) (the “**LRO**”) as Instrument No. NR547245 (the “**Mortgage**”).

The documents listed in sub-paragraphs (a) – (c) are referred to collectively as the “**Loan Documents**”. The documents referred to in (b) – (c) are referred to as the “**Security Documents**”.

**GOWLING WLG (CANADA) LLP**  
One Main Street West  
Hamilton, ON L8P 4Z5 Canada

**T +1 905 540 8208**  
**F +1 905 528 5833**  
**[gowlingwlg.com](http://gowlingwlg.com)**

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### **Other Documents Examined**

For the purposes of the opinions expressed below, we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied, without independent verification or investigation, on all statements as to matters of fact contained in the certificates, documents and records we examined, including, among other searches:

- (a) Ontario Personal Property Security Registration System Enquiry Response Certificates with a file currency date of December 15, 2025, with respect to the Credit Party;
- (b) Ontario Corporate Profile Report with respect to the Credit Party, with a file currency date of December 15, 2025; and
- (c) a parcel register for the Mortgaged Property issued by the LRO with a file currency date of December 17, 2025 (the “PIN”).

### **SEARCHES AND REGISTRATIONS**

We have conducted or caused to be conducted searches current as of the dates indicated in the attached Schedule B at the public offices maintained by governmental agencies specified in Schedule B, for the filings, registrations or recordings against the Credit Party set out in that schedule. The registrations by the Lender are summarized in Schedule C.

### **Defined Terms**

Unless otherwise defined in this letter, capitalized terms have the following meanings:

“**Collateral**” means the personal property described in the Security Documents as being subject to the security interests created by the Security Documents;

“**PPSA**” means the *Personal Property Security Act* (Ontario).

### **ASSUMPTIONS AND RELIANCES**

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry, that:

- (a) with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and all documents submitted to us as copies conform to the authentic original documents;
- (b) the indices and records in all filing systems maintained in all public offices where we have searched or inquired or have caused searches or inquiries to be conducted are accurate and current, and all certificates and information issued or provided under those searches or inquiries are and remain accurate and complete;



- (c) the Credit Party has rights in its Collateral, value has been given to the Credit Party by the Lender; and there is no agreement between the Credit Party and the Lender to postpone the time for attachment of the security interests created by the Security Documents;
- (d) the Collateral does not include “consumer goods”, as defined in the PPSA;
- (e) there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation (direct or indirect, absolute or contingent) owing by the Credit Party to the Lender;
- (f) that the Credit Party: (i) was at the time of authorization, execution and delivery of the Security Documents, and is now, validly constituted and existing under the laws pursuant to which it was constituted; (ii) had the corporate power and authority to execute, deliver and perform its obligations under the Loan Documents; (iv) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Loan Documents; and (v) has duly executed and delivered the Loan Documents;
- (g) the Loan Documents have not been amended, restated, replaced, terminated or released, and remain in full force and effect;
- (h) there are no: (i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning any or all of the Loan Documents, or the principal obligations for which the Security Documents were granted; or (ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Credit Party of the Security Documents, or the security interests created under the Security Documents or the principal obligations with respect to which the Security Documents are granted; which are not apparent from a review of the Security Documents and which would or might affect the validity or enforceability of the Security Documents;
- (i) that the execution and delivery by the Credit Party of the Loan Documents, and the performance by the Credit Party of its rights and obligations under the Loan Documents did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Credit Party or any other agreement to which the Credit Party is a party, or its articles, by-laws, or any shareholders agreement;
- (j) the execution, delivery and performance of obligations under the Loan Documents by the Credit Party did not and do not constitute a preference or a transfer at under value under sections 95 or 96 of the *Bankruptcy and Insolvency Act* (Canada), or a preference, fraudulent preference, conveyance at under value or fraudulent conveyance under any provincial or other legislation relating to those issues;
- (k) the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps that have, or that could or would have, altered, diminished, suspended or otherwise affected

the terms, conditions of enforceability of the Loan Documents or the indebtedness, liabilities and obligations secured by the Security Documents or any of them; and

- (l) the Lender did not know and did not have any reason to believe at any time that the creation of the security interests created by the Security Documents were in contravention of any agreement by which the Credit Party or its property or assets were bound, if there was such a contravention.

## **LAWS ADDRESSED**

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the province of Ontario (the “**Opinion Province**”). Without limiting the generality of the immediately preceding sentence, we express no opinion with respect to:

- (a) the laws of any other jurisdiction, to the extent that those laws may govern any aspect of the Security Documents or govern the validity, perfection, effect of perfection or non-perfection, priority or enforcement of the security interests created by the Security Documents, as a result of the application of the conflict of laws rules of the Opinion Province; or
- (b) whether, under the conflict of laws rules of the Opinion Province, the laws of the Opinion Province would govern the validity, perfection, effect of perfection or non-perfection, priority or enforcement of the security interests created by the Security Documents.

## **OPINIONS**

Based upon the foregoing, and subject to the qualifications and limitations stated in this letter and further subject to the comments contained in Schedule A, we are of the opinion that:

1. Each Loan Document constitutes a legal, valid and binding obligation of the Credit Party party thereto under the laws of the Opinion Province, enforceable against it in accordance with its terms.
2. The Security Documents create in favour of the Lender valid security interests in any Collateral in which the Credit Party now has rights, and is sufficient to create valid security interests in favour of the Lender in any Collateral in which the Credit Party later acquires rights when those rights are acquired, in each case to secure payment and performance of the indebtedness, liabilities and obligations described in the Security Documents as being secured by them.
3. Registration has been made in all public offices provided for under the laws of Ontario where registration is necessary to perfect in Ontario the security interests created by the Security Documents in the Collateral in favour of the Lender.
4. The Mortgage has been duly registered in the LRO as a first mortgage against the Mortgaged Property on July 23, 2020, as Instrument No. NR547245.

## QUALIFICATIONS AND LIMITATIONS

The opinions in this letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Loan Documents are subject to, and may be limited by, applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.
2. The enforceability of the obligations of the Credit Party under the Loan Documents is subject to, and may be limited by, general equitable and legal principles, including those relating to the conduct of parties such as reasonableness and good faith in the performance of contracts, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments, to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and to the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.
3. We express no opinion on provisions of the Loan Documents that:
  - (a) state that amendments or waivers of or with respect to the Loan Documents that are not in writing will be ineffective;
  - (b) purport to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;
  - (c) limit rights of set-off otherwise than in accordance with applicable law; or
  - (d) purport to bind or affect, or confer a benefit upon, persons who are not parties to the Loan Documents.
4. The enforceability of provisions of the Loan Documents that:
  - (a) purport to sever any provision that is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Loan Document; or
  - (b) stipulate or limit the level of damages to which a party is entitled;
  - (c) is subject to the discretion of a court.
5. We express no opinion on the enforceability of provisions of the Loan Documents that:
  - (a) purport to exculpate a person or its agent from liability, or limit liability, in respect of acts or omissions that may be illegal, fraudulent or involve wilful misconduct;
  - (b) grant an irrevocable power of attorney in favour of the Lender;

- (c) create an obligation to pay interest, as defined in the *Criminal Code* (Canada), in an amount or at a rate prohibited by the *Criminal Code* (Canada);
  - (d) have the effect of increasing the charge on any arrears of principal or interest beyond the rate of interest payable on principal money not in arrears, contrary to section 8 of the *Interest Act* (Canada);
  - (e) may be interpreted by a court as an unenforceable penalty and not as a genuine pre-estimate of damages; or
  - (f) are inconsistent with or contrary to any provision of the Loan Agreement.
6. The enforceability of any indemnity contained in the Loan Documents may be limited by applicable law to the extent that it directly or indirectly relates to liabilities imposed on the Lender by law for which it would be contrary to public policy to require the Credit Party to indemnify the Lender. Rights of contribution and exculpation may also be limited by applicable law or public policy.
7. The enforceability of provisions of the Loan Documents that require the Credit Party to pay or indemnify the Lender for its costs and expenses in connection with judicial proceedings is subject to the discretion of a court to determine by whom and to what extent those costs and expenses should be paid.
8. We express no opinion regarding the existence of, or the right, title or interest of any person to, any Collateral. There is no title registry system in the Opinion Province with respect to personal property, and no office of public record in which the title to personal property situate in the Opinion Province may be examined.
9. We express no opinion regarding the ranking or priority of the security interests created by the Security Documents or other interests expressed to be created by the Security Documents.
10. The Lender may be required to give the Credit Party a reasonable time to satisfy any demand for payment or performance of its obligations under any of the Loan Documents before exercising any rights or remedies under the Loan Documents.
11. The failure to exercise a right of action under any of the Loan Documents within generally applicable limitation periods may act as a bar to the enforcement of those rights after that time, and the enforceability of any provision of the Loan Documents that purports to impose a specific redemption period is subject to the discretion of the court.
12. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts that does not comply with that Act is ineffective against the Crown, and other than an assignment contemplated by section 220(6) of the *Income Tax Act* (Canada) is ineffective as between the assignor and assignee. Consequently, the Lender would not have a valid security interest in federal Crown debts unless the *Financial Administration Act* (Canada) is complied with. We also express no opinion as to the necessity or desirability of having given notices or obtained consents or

acknowledgements in respect of the security interest created by the Security Documents under the *Financial Administration Act* (Alberta).

13. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock under the *Canada Transportation Act*, vessels registered under the *Canada Shipping Act, 2001*, property governed by the *Plant Breeders' Rights Act* (Canada), the *Industrial Design Act* (Canada) or the *Integrated Circuit Topography Act* (Canada), and patents, trademarks and copyright. To the extent that security interests are created by the Security Documents in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property or as to the filing or registration of any security interests in that property.
14. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security Documents by the Lender or by a person on its behalf, whether that enforcement involves the operation of the business of the Credit Party or any Collateral or a sale, transfer or disposition of the Collateral.
15. The PPSA imposes certain obligations on secured creditors that cannot be varied by contract. Furthermore, the PPSA may also affect the enforcement of certain rights and remedies contained in the Security Documents to the extent that those rights and remedies are inconsistent with or contrary to any applicable statutes.
16. A receiver or receiver-manager appointed under the Security Documents may, for certain purposes, be treated by a court as the agent of the Lender and not solely the agent of the Credit Party, and the Lender may not be deemed to be acting as the agent and attorney of the Credit Party in making that appointment, despite any agreement to the contrary. We express no opinion as to any provision of the Security Documents that purports to relieve the Lender from liability for any acts or omissions of any receiver or receiver-manager appointed by it or absolve any receiver or receiver-manager from liability for its acts or omissions.
17. We express no opinion as to any security interest purported to be created by the Security Documents in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application, or against any Collateral to which the PPSA does not apply.
18. We express no opinion regarding any security interest created by the Security Documents with respect to any Collateral that is transformed in such a way that it is not identifiable or traceable, or any proceeds of Collateral that are not identifiable or traceable.
19. We express no opinion as to the validity of the security interests created by the Security Documents in:
  - (a) any Collateral consisting of a receivable (other than a receivable subject to section 40(4) of the PPSA), licence, approval, privilege, franchise, permit, lease or agreement

(collectively, “**Special Property**”) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of the assignment or grant, a consent, approval or other authorization or registration that has not been made or given;

- (b) permits, quotas or licences, that are held by or issued to the Credit Party; or
  - (c) growing crops.
20. The enforceability of the security interests created by the Security Documents in accounts or chattel paper as against each account debtor (“**Account Debtor**”) of the Credit Party is subject to notice of the security interests and a direction to pay to the Lender being given to each Account Debtor, the terms of the contract between the Credit Party and the Account Debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of the Account Debtor against the Credit Party accruing before the Account Debtor has knowledge of the security interests. Further, those security interests will not be binding upon an Account Debtor to the extent that the debt or account is paid or otherwise discharged before notice of the security interests is given to the Account Debtor, together with a direction to pay the debt or account to the Lender.
21. The financing statements registered under the PPSA to perfect the security interests do not list motor vehicles (as defined in the PPSA) by vehicle identification number, and accordingly a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the security interests if the buyer or lessee bought or leased them without knowledge of the security interests.
22. Notwithstanding that the security interests created by the Security Documents have been perfected by registration under the PPSA, the security interests:
- (a) will be defeated by certain claimants obtaining control of investment property, or delivery but not control of a certificated security (as each term is described in the PPSA), in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);
  - (b) subject to the PPSA will be defeated by certain claimants obtaining control of electronic chattel paper (as defined in the PPSA) in the circumstances described in the PPSA;
  - (c) in instruments, tangible chattel paper, documents of title or money, as those terms are defined in the PPSA will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and
  - (d) in goods (as defined in the PPSA) will be defeated by certain claimants to whom the Credit Party sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.
23. We express no opinion as to the enforceability of any provision of the Security Documents that stipulates that the Lender or its agent will not have any obligations under or be deemed to be a mortgagee in possession of any leases, agreements, documents or instruments included in the

Collateral if the Lender or its agent has taken steps to enforce the Security Documents in respect of that Collateral. A court may deem the Lender or its agent to be in care, control and management of that Collateral despite the absence of clear and unequivocal action by the Lender or its agent assuming, and depriving the Credit Party of, care, control and management of that Collateral.

24. We have not conducted any searches or investigations with respect to the Mortgaged Property other than reviewing the PIN for the Mortgaged Property and our opinion is subject to any information or encumbrances which might have been disclosed in the course of investigations or inspections of the Mortgaged Property but which investigations and inspections were not, in fact, undertaken for the purposes of this opinion, including any unregistered easements, rights-of-way, leases or other unregistered interests, liens or claims not disclosed by the PIN and any title defects, irregularities, zoning violations, easements, encroachments, rights-of-way or other discrepancies in title or possession.

This opinion is solely for the benefit of its addressees in connection with the Security Documents. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Sincerely,

Gowling WLG (Canada) LLP



Bart Sarsh\*  
BS:nn



## SCHEDULE A

### COMMENTS ON SECURITY DOCUMENTS

We note the following specific comments on the documents provided to Gowling WLG (Canada) LLP:

1. Standard Charge Terms: As part of our review, we were provided a copy of the Standard Charge Terms 20015. We note that the Standard Charge Terms 20015 have not been executed by the Credit Party. We were not provided with an Acknowledgement re Standard Charge Terms 20015 executed by the Credit Party. We have no reason to believe such Standard Charge Terms 20015 or Acknowledgement re Standard Charge Terms 20015 were not signed, and have assumed this was validly signed for the purposes of this opinion.
2. Authorization and Direction: As part of our review, we have not been provided a copy of an acknowledgment and direction executed by the Credit Party in respect of the Mortgage. We have no reason to believe such acknowledgment and direction was not signed, and have assumed this was validly signed for the purposes of this opinion.



**SCHEDULE B**  
**SUMMARY OF SEARCH RESULTS**

See attached.

## **SEARCH SUMMARY**

### **SUPER SMART MART LTD.**

We conducted the following searches against Super Smart Mart Ltd. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

#### **1. Ontario Corporation Profile Report as of December 16, 2025**

<b>Registered Office Address:</b>	213 Edenbrook Hill Drive, Brampton, Ontario, L7A 2V4, Canada
<b>Incorporation Date:</b>	May 29, 2018
<b>Ontario Corporation Number:</b>	2637978
<b>Jurisdiction:</b>	Ontario
<b>Status:</b>	Active
<b>Number of Directors:</b>	2
<b>Directors:</b>	Satvinder Kaur Chauhan Ravinderjit Singh Chohan
<b>Number of Officers:</b>	2
<b>Officers:</b>	Ravinderjit Singh Chohan – President Satvinder Kaur Chauhan – Vice-President
<b>Current Business Name:</b>	N/A
<b>Expired Business Names:</b>	N/A
<b>Corporate Name History:</b>	SMART SUPER MART LTD. Effective Date: May 29, 2018

#### **2. Bank Act (Ontario) as of December 16, 2025**

Bank Act Security Registry (BASR) Confirmation Letter re *Bank Act* Security – Section 427 dated December 16, 2025, has been obtained reflecting that there were no registrations of Notices of Intention against Smart Super Mart Ltd.

#### **3. Execution Act (Ontario) as of December 16, 2025**

Regional Municipality of Niagara-North (St. Catharines) – Nil.

Regional Municipality of Peel (Brampton) – Nil.

#### **4. Bankruptcy and Insolvency Act (Canada) current to December 12, 2025**

The following registration appears against Smart Super Mart Ltd.:

<b>BIA Estate Number:</b>	32-159535
<b>BIA Estate Name:</b>	Smart Super Mart Ltd.
<b>Province:</b>	Ontario

<b>Address:</b>	178-185 St. Paul St. West, St. Cathrines, Ontario, L2S2C8
<b>Estate Type:</b>	Receivership
<b>Date of Processing:</b>	2025-01-30
<b>Total Liabilities:</b>	\$0
<b>Total Assets:</b>	\$0
<b>Responsible Person:</b>	Mukul Manchanda
<b>Appointed Licensed Insolvency Trustee or Administrator:</b>	MSI SPERGEL INC
<b>Address:</b>	200 Yorkland Blvd, Suite 1100, Toronto, Ontario, M2J 5C1
<b>Telephone</b>	416-498-4314
<b>Fax</b>	416-494-7199

5. ***Personal Property Security Act (Ontario)***

Please see Exhibit "A" (attached)

**EXHIBIT "A"****SUMMARY OF PPSA SEARCHES**

**Name of Debtor:** SMART SUPER MART LTD.  
**File Currency Date:** December 15, 2025

SECURED PARTY		REFERENCE FILE NUMBER REGISTRATION NUMBER  REGISTRATION PERIOD	ADDITIONAL DEBTORS	COLLATERAL CLASSIFICATION/DESCRIPTION	FINANCING CHANGE STATEMENTS
1.	Royal Bank of Canada	758898387 20191227 1446 1530 8046 5 years	Nil.	Inventory, Equipment, Accounts, Other, Motor Vehicle	20241205 0811 1532 2689 Renewal, 5 years
2.	Nissan Canada Inc.	789170067 20220705 1221 1590 0019 6 years	Ravinderjit S Chohan (DOB May 18, 1972) at the same address	Inventory, Other (included) (Amount 39665), Motor Vehicle  Year Make: 2021 Model: NISSAN ROGUE V.I.N.: 5N1AT3ABXMC838128	Nil.

## SCHEDULE C

### LENDER REGISTRATIONS

#### **PPSA REGISTRATIONS**

**Name of Debtor:** SMART SUPER MART LTD.

SECURED PARTY		REFERENCE FILE NUMBER REGISTRATION NUMBER REGISTRATION PERIOD	ADDITIONAL DEBTORS	COLLATERAL CLASSIFICATION/DESCRIPTION	FINANCING CHANGE STATEMENTS
1.	Royal Bank of Canada	758898387 20191227 1446 1530 8046 5 years	Nil.	Inventory, Equipment, Accounts, Other, Motor Vehicle	20241205 0811 1532 2689 Renewal, 5 years

#### **LRO REGISTRATIONS**

1. Charge / mortgage in the principal amount of \$2,135,000 granted by the Credit Party in favour of the Lender registered against title to the Mortgaged Property on July 23, 2020, in the LRO as Instrument No. NR547245.

**SCHEDULE D****DESCRIPTION OF MORTGAGED PROPERTY**

Certain lands and premises municipally known as **179-185 St. Paul Street West, St. Catharines, Ontario**, and legally described as follows:

**PIN 46179-0340 (LT):**

PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372; CITY OF ST. CATHARINES

## **Confidential Appendix 1**

## **Confidential Appendix 2**



## **Confidential Appendix 3**

## **Confidential Appendix 4**

## **Confidential Appendix 5**

## **Confidential Appendix 6**

## **Confidential Appendix 7**

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	THURSDAY, THE 15 <sup>TH</sup>
	)	
JUSTICE	)	DAY OF JANUARY, 2026

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by msi Spergel Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Smart Super Mart Ltd. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Ahmed APS**") between the Receiver as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name of the purchaser to Ahmed Petroleum Services Inc. ("**Ahmed**" or the "**Purchaser**") and appended to the Report of the Receiver dated December 19, 2025 (the "**First Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Ahmed APS including the real property described at Schedule E (the

"**Purchased Assets**"), was heard this day at 45 Main Street East, Hamilton, Ontario by video conference.

**ON READING** the Notice of Motion, the First Report, the Appendices and Confidential Appendices to the First Report, the Receiver's Factum, and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for the Royal Bank of Canada, counsel for the Purchaser, and with no one else appearing for any other person on the service list, although duly served as appears from the affidavits of service, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for the service, filing and confirmation of the motion, the Motion Record and Factum are abridged and validated and that this motion is properly returnable today and dispenses with any further or other service on any other person.

### **CAPITALIZED TERMS**

2. **THIS COURT ORDERS** that capitalized terms not defined herein derive their meaning from the First Report.

### **SEALING OF CONFIDENTIAL APPENDICES**

3. **THIS COURT ORDERS** that Confidential Appendices 1-7 to the First Report are sealed pending the completion of the Transaction or further Order of this Court.

### **APPROVAL OF TRANSACTION AND VESTING ORDER**

4. **THIS COURT ORDERS** that the First Report and the activities and conduct of the Receiver as set out in the First Report with respect to the Transaction with the Purchaser are approved provided, however, that only the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.



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

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Ahmed APS and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Bordin dated January 30, 2025; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North (No. 30) of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver for

an Application for Vesting Order, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule E hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

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

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

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

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

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

#### **DISCLAIMER OF FUEL SUPPLY AGREEMENT**

12. **THIS COURT ORDERS** that the Fuel Supply Agreement entered into between the Debtor and McDougall Energy Inc. dated June 21, 2020 is disclaimed such that none of the parties to that agreement have any further or other rights under it.

#### **GENERAL**

13. **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.

14. **THIS COURT ORDERS** that that this Order and all of its provisions shall take effect as of 12:01 am on the date of this Order and shall be immediately enforceable without the need for further entry or filing notwithstanding Rule 59.05. In accordance

with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or application for leave to appeal is brought to an appellate court.

Date of issuance .....  
(to be completed by registrar) \_\_\_\_\_  
(Signature of judge, officer or registrar)

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

Court File No. CV-24-00086229-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Bordin of the Ontario Superior Court of Justice (the "**Court**") dated January 30, 2025, msi Spergel Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Smart Super Mart Ltd. (the "**Debtor**").

B. Pursuant to an Order of the Court dated January 15, 2026, the Court approved the agreement of purchase and sale between the Receiver, as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name of the purchaser to Ahmed Petroleum Services Inc. ("**Ahmed**" or the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections

17-18 of the Ahmed Agreement of Purchase and Sale ("**Ahmed APS**") have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Ahmed APS;
2. The conditions to Closing as set out in sections 17-18 of the Ahmed APS have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**msi SPERGEL INC., in its capacity as Receiver of the undertaking, property and assets of Smart Super Mart Ltd., and not in its personal capacity**

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

## **Schedule B – Purchased Assets**

As defined in paragraph 1(dd) of the Ahmed APS

**Schedule C – Claims to be deleted and expunged from title to Real Property**

REGISTRATION NUMBER	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
NR547245	2000/07/23	Charge	\$2,135,000	Smart Super Mart Ltd.	Royal Bank of Canada
NR647338	2023/07/26	Certificate		The Corporation of the City of St. Catharines	
NR670511	2024/07/12	Notice		The Corporation of the City of St. Catharines	
NR689620	2025/04/29	Apl Court Order		Ontario Superior Court of Justice	msi Spergel Inc.



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

**(unaffected by the Vesting Order)**

1. Any undetermined or inchoate liens and charges incidental to the Purchased Assets.
2. The reservations, limitations, provisos, conditions, restrictions, and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
3. The provisions of governing municipal by-laws;
4. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
5. Any defects or minor encroachments which might be revealed by an up-to-date survey of the Lands;
6. Any right of expropriation conferred upon, reserved to or vesting in His Majesty the King in Right of Canada and Ontario;
7. Any registered restrictions or covenants that run with the Lands provided that same have been complied with in all material respects;
8. Any easements, rights of way or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Lands;
9. Any agreements with municipal, utilities or public authorities provided that same have been complied with in all material respects;
10. The following instruments registered on title to the Lands in the Niagara North (#30) Land Registry Office:

REGISTRATION NUMBER	DATE	INSTRUMENT TYPE
RO493091	1985/03/04	Notice Zoning Regulations
30R15372	2019/03/18	Reference Plan
NR529711	2019/12/11	Notice registered by The Corporation of the City of St. Catharines
NR547085	2022/07/22	Notice registered by The Regional Municipality of Niagara

## **Schedule E – Legal Description of Lands**

PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS  
PART 2 30R15372; CITY OF ST. CATHARINES; PIN 46179-0340 (LT)

ROYAL BANK OF CANADA

Applicant

-and-

SMART SUPER MART LTD.

Court File No. CV-24-00086229-0000

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**APPROVAL AND VESTING ORDER**

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, Ontario L8P 4Z5

Tel : 905-540-3242

**Bart Sarsh (LSO No. 59208N)**

Tel: 905-540-3242

Email : [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO No. 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver, msi Spergel Inc.

File No. G10047010

# TAB 4

~~Revised: January 21, 2014~~

Court File No. — CV-24-00086229-0000

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

THE HONOURABLE )  
JUSTICE \_\_\_\_\_ )  
DAY OF \_\_\_\_\_ )

\_\_\_\_\_ DAY THURSDAY, THE \_\_\_\_\_ 15<sup>TH</sup>  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ 20 JANUARY, 2026

BETWEEN:

ROYAL BANK OF CANADA

~~PLAINTIFF~~ Applicant

Plaintiff

- and -

~~DEFENDANT~~

SMART SUPER MART LTD.

DefendantRespondent

## APPROVAL AND VESTING ORDER

**THIS MOTION**, made by ~~[RECEIVER'S NAME]~~ msi Spergel Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of ~~[DEBTOR]~~ Smart Super Mart Ltd. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "~~Sale Agreement~~Ahmed APS") between the Receiver and ~~[NAME OF PURCHASER]~~ (as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name

of the purchaser to Ahmed Petroleum Services Inc. ("Ahmed" or the "Purchaser")  
dated [DATE] and appended to the Report of the Receiver dated [DATE] December 19,  
2025 (the "First Report"), and vesting in the Purchaser the Debtor's right, title and  
interest in and to the assets described in the Sale Agreement Ahmed APS including the  
real property described at Schedule E (the "**Purchased Assets**"), was heard this day at  
330 University Avenue, Toronto 45 Main Street East, Hamilton, Ontario by video  
conference.

**ON READING** the Report Notice of Motion, the First Report, the Appendices and  
Confidential Appendices to the First Report, the Receiver's Factum, and on hearing the  
submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING],  
no one counsel for the Debtor, counsel for the Royal Bank of Canada, counsel for the  
Purchaser, and with no one else appearing for any other person on the service list,  
although properly duly served as appears from the affidavit of [NAME] sworn  
[DATE] affidavits of service, filed<sup>†</sup>:

## **SERVICE**

1. THIS COURT ORDERS that the time for the service, filing and confirmation of  
the motion, the Motion Record and Factum are abridged and validated and that this  
motion is properly returnable today and dispenses with any further or other service on  
any other person.

## **CAPITALIZED TERMS**

2. THIS COURT ORDERS that capitalized terms not defined herein derive their  
meaning from the First Report.

## **SEALING OF CONFIDENTIAL APPENDICES**

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

3. THIS COURT ORDERS that Confidential Appendices 1-7 to the First Report are sealed pending the completion of the Transaction or further Order of this Court.

#### APPROVAL OF TRANSACTION AND VESTING ORDER

4. THIS COURT ORDERS that the First Report and the activities and conduct of the Receiver as set out in the First Report with respect to the Transaction with the Purchaser are approved provided, however, that only the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

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

6. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the ~~Sale Agreement~~ [Ahmed APS] and listed on Schedule B hereto<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from

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

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

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

any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Bordin dated ~~[DATE]~~January 30, 2025; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

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



8. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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

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

- (a) the pendency of these proceedings;

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

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

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

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

#### **DISCLAIMER OF FUEL SUPPLY AGREEMENT**

12. ~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the Bulk Sales Act (Ontario).~~ that the Fuel Supply Agreement entered into between the Debtor and McDougall Energy Inc. dated June 21, 2020 is disclaimed such that none of the parties to that agreement have any further or other rights under it.

#### **GENERAL**

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

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

14. **THIS COURT ORDERS** that that this Order and all of its provisions shall take effect as of 12:01 am on the date of this Order and shall be immediately enforceable without the need for further entry or filing notwithstanding Rule 59.05. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or application for leave to appeal is brought to an appellate court.

Date of issuance .....

(to be completed by registrar)

\_\_\_\_\_  
(Signature of judge, officer or registrar)

=====

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

Court File No. CV-24-00086229-0000

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

B E T W E E N:

ROYAL BANK OF CANADA

~~PLAINTIFF~~ Applicant

~~Plaintiff~~

- and -

SMART SUPER MART LTD.

~~DEFENDANT~~ Respondent

~~Defendant~~

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Bordin of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER], [NAME OF RECEIVER]~~ January 30, 2025, msi Spergel Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of ~~[DEBTOR]~~ Smart Super Mart Ltd. (the "**Debtor**").

B. Pursuant to an Order of the Court dated ~~[DATE]~~ January 15, 2026, the Court approved the agreement of purchase and sale ~~made as of [DATE OF AGREEMENT]~~ (the "**Sale Agreement**") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~

~~(the "~~, as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name of the purchaser to Ahmed Petroleum Services Inc. ("**Ahmed**" or the "**Purchaser**"") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 17-18 of the ~~Sale~~Ahmed Agreement of Purchase and Sale ("Ahmed APS") have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the ~~Sale Agreement~~Ahmed APS;
2. The conditions to Closing as set out in ~~section~~ sections 17-18 of the ~~Sale Agreement~~Ahmed APS have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

- 2 -

~~[NAME OF RECEIVER]~~msi SPERGEL  
INC., in its capacity as Receiver of the  
undertaking, property and assets of  
~~[DEBTOR]~~Smart Super Mart Ltd., and not  
in its personal capacity

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

Name:

Title:

## **Schedule B – Purchased Assets**

As defined in paragraph 1(dd) of the Ahmed APS

**Schedule C – Claims to be deleted and expunged from title to Real Property**

<u>REGISTRATION NUMBER</u>	<u>DATE</u>	<u>INSTRUMENT TYPE</u>	<u>AMOUNT</u>	<u>PARTIES FROM</u>	<u>PARTIES TO</u>
<u>NR547245</u>	<u>2000/07/23</u>	<u>Charge</u>	<u>\$2,135,00</u> <u>0</u>	<u>Smart Super</u> <u>Mart Ltd.</u>	<u>Royal</u> <u>Bank of</u> <u>Canada</u>
<u>NR647338</u>	<u>2023/07/26</u>	<u>Certificate</u>		<u>The</u> <u>Corporation</u> <u>of the City of</u> <u>St.</u> <u>Catharines</u>	
<u>NR670511</u>	<u>2024/07/12</u>	<u>Notice</u>		<u>The</u> <u>Corporation</u> <u>of the City of</u> <u>St.</u> <u>Catharines</u>	
<u>NR689620</u>	<u>2025/04/29</u>	<u>Apl Court</u> <u>Order</u>		<u>Ontario</u> <u>Superior</u> <u>Court of</u> <u>Justice</u>	<u>msi</u> <u>Spergel</u> <u>Inc.</u>



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

**(unaffected by the Vesting Order)**

1. Any undetermined or inchoate liens and charges incidental to the Purchased Assets.
2. The reservations, limitations, provisos, conditions, restrictions, and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
3. The provisions of governing municipal by-laws;
4. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
5. Any defects or minor encroachments which might be revealed by an up-to-date survey of the Lands;
6. Any right of expropriation conferred upon, reserved to or vesting in His Majesty the King in Right of Canada and Ontario;
7. Any registered restrictions or covenants that run with the Lands provided that same have been complied with in all material respects;
8. Any easements, rights of way or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Lands;
9. Any agreements with municipal, utilities or public authorities provided that same have been complied with in all material respects;
10. The following instruments registered on title to the Lands in the Niagara North (#30) Land Registry Office:

<u>REGISTRATION NUMBER</u>	<u>DATE</u>	<u>INSTRUMENT TYPE</u>
<u>RO493091</u>	<u>1985/03/04</u>	<u>Notice Zoning Regulations</u>
<u>30R15372</u>	<u>2019/03/18</u>	<u>Reference Plan</u>
<u>NR529711</u>	<u>2019/12/11</u>	<u>Notice registered by The Corporation of the City of St. Catharines</u>
<u>NR547085</u>	<u>2022/07/22</u>	<u>Notice registered by The Regional</u>

		<a href="#"><u>Municipality of Niagara</u></a>
--	--	--

**Schedule E – Legal Description of Lands**

PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS  
PART 2 30R15372; CITY OF ST. CATHARINES; PIN 46179-0340 (LT)

Court File No. CV-24-00086229-0000	
<u>ROYAL BANK OF CANADA</u>	<u>SMART SUPER MART LTD.</u>
<u>Applicant</u>	<u>Respondent</u>
	<u><b>ONTARIO</b></u> <u><b>SUPERIOR COURT OF JUSTICE</b></u>  <u>PROCEEDING COMMENCED AT</u> <u>HAMILTON</u>
	<u><b>APPROVAL AND VESTING ORDER</b></u>
	<u><b>GOWLING WLG (CANADA) LLP</b></u> <u>1 Main Street West</u> <u>Hamilton, Ontario L8P 4Z5</u>  <u>Tel : 905-540-3242</u>  <u><b>Bart Sarsh (LSO No. 59208N)</b></u> <u>Tel: 905-540-3242</u> <u>Email : bart.sarsh@gowlingwlg.com</u>  <u><b>Rachel Moses (LSO No. 42081V)</b></u> <u>Tel: 416-862-3630</u> <u>Email: rachel.moses@gowlingwlg.com</u>  <u>Lawyers for the Receiver, msi Spergel Inc.</u>  <u>File No. G10047010</u>

<b>Summary report:</b> <b>Litera Compare for Word 11.11.0.158 Document comparison done on</b> <b>2025-12-21 12:58:26 PM</b>	
<b>Style name:</b> Firm Standard	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> U:\bpearson\02 - Precedents\Bankruptcy & Insolvency\Model Orders\Model Approval and Vesting Order.doc	
<b>Modified DMS:</b> iw://gowlingwlg-ca.cloudmanage.com/active_ca/91975047/1 - Draft Approval and Vesting Order (word) - Receiver - msi Spergel - 15-JAN-2026.doc	
<b>Changes:</b>	
<u>Add</u>	103
<del>Delete</del>	94
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	4
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	201

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	THURSDAY, THE 15 <sup>TH</sup>
	)	
JUSTICE	)	DAY OF JANUARY, 2026

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

**APPROVAL, DISTRIBUTION AND DISCHARGE ORDER**

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

- (a) if necessary, abridging the time for service, filing and confirmation of the motion materials or, in the alternative, dispensing with service,
- (b) approving the activities of the Receiver as set out in the First Report of the Receiver;
- (c) approving the fees and disbursements of the Receiver and its counsel;

- (d) approving the distribution of the remaining proceeds available in the estate of the Debtor;
- (e) discharging msi Spergel Inc. as Receiver of the undertaking, property and assets of the Debtor; and
- (f) releasing msi Spergel Inc. from any and all liability, as set out in paragraph 9 of this Order

was heard this day at 45 Main Street East, Hamilton, Ontario by video conference.

**ON READING** the Notice of Motion, the First Report, the Appendices and Confidential Appendices to the First Report, the Receiver's Factum, and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for the Royal Bank of Canada, counsel for the Purchaser, and with no one else appearing for any other person on the service list, although duly served as appears from the affidavits of service, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for the service, filing and confirmation of the motion, the Motion Record and Factum are abridged and validated and that this motion is properly returnable today and dispenses with any further or other service on any other person.

### **CAPITALIZED TERMS**

2. **THIS COURT ORDERS** that capitalized terms not defined herein derive their meaning from the First Report.

### **REPORT AND ACTIVITIES OF THE RECEIVER**

3. **THIS COURT ORDERS** that the First Report and the activities and conduct of the Receiver as set out in the First Report are approved provided, however, that only



the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements as of November 30, 2025 as detailed at Appendix 10 of the First Report are approved.

#### **FEE APPROVAL**

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out at Appendices 8 and 9, respectively, of the First Report and is hereby approved, and authorizes payment of such fees and disbursements.

#### **FEE ACCRUAL**

6. **THIS COURT ORDERS** that Fee Accrual as detailed at paragraph 35 of the First Report is approved and authorized to be paid.

#### **DISTRIBUTION**

7. **THIS COURT ORDERS** that the Proposed Distribution as detailed at paragraph 44 of the First Report is approved and authorized to be paid.

#### **DISCHARGE**

8. **THIS COURT ORDERS** that upon payment of the amounts detailed in this Order, and upon the Receiver filing a certificate certifying that it has completed the other activities described in the First Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals,

protections and stays of proceedings in favour of msi Spergel Inc. in its capacity as Receiver.

9. **THIS COURT ORDERS AND DECLARES** that msi Spergel Inc. and its affiliates, partners, directors employees, advisors, agents, counsel and controlling persons are hereby released and discharged from any and all liability with respect to any and all losses, claims, damages or liability of any nature of kind to any person in connection with or as a result of performing their duties with respect to this receivership proceeding, save and except for any gross negligence or willful misconduct on the Receiver's part as determined by this Court.

#### **GENERAL**

10. **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.

11. **THIS COURT ORDERS** that that this Order and all of its provisions shall take effect as of 12:01 am on the date of this Order and shall be immediately enforceable without the need for further entry or filing notwithstanding Rule 59.05. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or application for leave to appeal is brought to an appellate court.

Date of issuance .....  
(to be completed by registrar)

\_\_\_\_\_  
(Signature of judge, officer or registrar)

ROYAL BANK OF CANADA

Applicant

-and-

SMART SUPER MART LTD.

Court File No. CV-24-00086229-0000

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**APPROVAL, DISTRIBUTION  
AND DISCHARGE ORDER**

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, Ontario L8P 4Z5

Tel : 905-540-3242

**Bart Sarsh (LSO No. 59208N)**

Tel: 905-540-3242

Email : [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO No. 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver, msi Spergel Inc.

File No. G10047010

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

Court File No. CV-24-00086229-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**MOTION RECORD**  
**(Receiver's Motion for Approval and Vesting Order  
and Approval, Distribution and Discharge Order)**

**GOWLING WLG (CANADA) LLP**

1 Main Street West  
Hamilton, ON L8P 4Z5

Tel: 905-528-8208

**Bart Sarsh (LSO 59208N)**

Tel: 905-540-3242

Email: [bart.sarsh@gowlingwlg.com](mailto:bart.sarsh@gowlingwlg.com)

**Rachel Moses (LSO 42081V)**

Tel: 416-862-3630

Email: [rachel.moses@gowlingwlg.com](mailto:rachel.moses@gowlingwlg.com)

Lawyers for the Receiver msi Spergel Inc.

File No. G10047010