

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

**BETWEEN:**

**BANK OF MONTREAL**

Applicant

- and -

**2380630 ONTARIO INC. and 2386174 ONTARIO INCORPORATED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43, AS AMENDED**

**FIRST REPORT OF ALBERT GELMAN INC.  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

(Dated October 5, 2018)

**I. INTRODUCTION**

1. This first report ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as Receiver appointed pursuant to the Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice [Commercial List] dated July 3, 2018 (the "**Appointment Order**"), without security, over all of the assets, undertakings and properties of 2380630 Ontario Inc. ("**OpCo**") and 2386174 Ontario Incorporated ("**LandCo**") (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors.

2. A copy of the Appointment Order along with the endorsement of Justice McEwen dated July 3, 2018 is attached hereto as **Appendix "A"**.

## **II. PURPOSE OF THIS REPORT**

3. The purpose of this First Report is to:

- a. obtain an order approving this First Report, as well as the activities of the Receiver described herein, including the Receiver's interim statement of receipts and disbursements dated as of October 4, 2018 (defined below as the "**Interim SRD**");
- b. provide information to the Court regarding a purported lease agreement dated May 20, 2018 between LandCo, as landlord, and Petronorth Inc., as tenant, (defined below as the "**Petronorth Lease**") and obtain an order declaring that this lease agreement is null and void and unenforceable for the reasons set out below;
- c. obtain an order approving the fees and disbursements of the Receiver to September 30, 2018;
- d. obtain an order approving the fees and disbursements of the Receiver's counsel, Fred Tayar & Associates Professional Corporation, and its real estate counsel, Meyer, Wassenaar & Banach LLP ("**MWB**"), to September 5, 2018;
- e. obtain an Order providing leave to examine under oath the officers and/or directors of the Debtors in relation to the property and assets of the Debtors, including, in relation to the motor vehicles referenced below; and
- f. obtain an order providing for such further and other relief as this Honourable Court may deem just.

## **III. SCOPE AND TERMS OF REFERENCE**

4. This First Report has been prepared to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. 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 report contrary to the provisions of this paragraph.

5. Unless otherwise noted, all monetary amounts referenced herein are expressed in Canadian dollars.

#### **IV. BACKGROUND**

6. 2380630 Ontario Inc. (defined above as OpCo) is a corporation incorporated under the laws of the province of Ontario on July 12, 2013. Pursuant to a corporate profile report search obtained by the Receiver on May 28, 2018 Haakem Bajwa, Shahid Mahmood and Bushra Mirza are each directors of OpCo and Bushra Mirza is the sole officer of OpCo. A copy of the corporate profile report for OpCo is attached hereto at **Appendix "B"**.

7. 2386174 Ontario Incorporated (defined above as LandCo) is a corporation incorporated under the laws of the province of Ontario on August 29, 2013. Pursuant to a corporate profile report obtained by the Receiver on May 28, 2018 Bushra Mirza is the sole officer and director of LandCo. A copy of the corporate profile report for LandCo is attached hereto at **Appendix "C"**.

8. OpCo carried on business as a convenience store and gas bar located at 2093 Buckhorn Road, Selwyn, Ontario (the "**Buckhorn Property**"). The Buckhorn Property is owned by LandCo. Further details regarding the nature of use of the Buckhorn Property are provided below.

9. The Receiver understands that OpCo ceased operating the convenience store and gas bar several months prior its appointment.

#### **V. BUCKHORN PROPERTY**

10. The Buckhorn Property contains several unique structures, each of which is described below.

- a. a two story commercial building consisting of a convenience store on the first floor and an office/apartment unit on the second floor as well as a gas bar which previously operated under the Esso brand name;
- b. a one storey industrial building with floor space of approximately 8,500 square feet which is leased to an arm's length third party; and,
- c. a one story residential building leased to Rob Glabais.

11. The Buckhorn Property is approximately three acres in size.

#### Convenience Store and Gas Bar

12. The convenience store and gas bar were not in operation at the date of the Receiver's appointment, nor have operations commenced thereafter. As was noted above, the Receiver understands the convenience store and gas bar have not been operating for several months prior to the appointment of the Receiver.

13. The Receiver was provided with what is alleged to be a written lease of the convenience store and gas bar dated May 20, 2018 between LandCo as landlord and Petronorth Inc. as tenant. Further details regarding this agreement are discussed below.

#### Industrial Building

14. The industrial building is currently subject to a lease agreement dated October 3, 2016 originally between 9618732 Canada Inc. operating as Morris Chemicals and LandCo. We are advised by a representative of Da-Lee Dust Control Ltd ("Da-Lee"), that the lease was subsequently assigned to it in or around April, 2018, however, the written sublease agreement was never executed by the parties.

15. Da-Lee continues to carry on business from the Buckhorn Property. Da-Lee stores large volumes of calcium chloride (a salt used to de-ice and dry roads) at the

Buckhorn Property which it deploys on municipal roads in the surrounding area to improve road conditions. The calcium chloride is stored in above-ground tanks.

16. Da-Lee commenced paying rent to the Receiver in August, 2018. The original lease agreement has a term of three years with a five year option to renew. It is a net lease with annual increases of the rent of \$100 per year. The current rent is \$3,100 per month plus HST.

17. Da-Lee and the Debtors are not "related persons" as that term is defined in the BIA. However, the Receiver will not be in a position to determine if the rent amount is fair market rent until it has received its independent appraisal of the Buckhorn Property. That said, the Receiver has no reason to suspect the rent amount pursuant to the lease agreement is materially different than fair market rent.

#### Residential Building

18. The residential building consists of a one storey brick veneered building with a carport and outdoor swimming pool. According to a previous appraisal, the building is approximately 1,715 square feet in size. The Receiver has observed that the swimming pool appears to be in disrepair.

19. The Receiver has requested a copy of the lease agreement from the residential tenant but has not received a copy to date. The Receiver understands from discussions with the tenant that he has lived in the dwelling for several years.

20. The residential tenant commenced paying rent to the Receiver in August 2018 in the amount of \$1,600 per month.

#### **VI. ACTIONS AND ACTIVITIES OF THE RECEIVER**

21. The actions and activities of the Receiver since the date of the Appointment Order are set out below.

#### Possession and Control of the Buckhorn Property

22. On July 4, 2018, the Receiver registered the Appointment Order on title to the Buckhorn Property.

23. The Receiver attended at the Property on July 4, 2018, at which time it met with representatives of Da-Lee, the industrial tenant, as well as the residential tenant. During its attendance the Receiver inspected and photographed the property.

24. Forthwith after its appointment, the Receiver engaged an independent third party to conduct ongoing security inspections of the Buckhorn Property and report to the Receiver at least twice per week.

25. As discussed in more detail below, the Court's July 3, 2018 Endorsement precluded the Receiver from entering into a listing agreement prior to August 2, 2018. The intent behind this delay was to provide the Debtor with the opportunity to source alternative financing to use to pay the indebtedness owed to the Applicant. As a result of this, and believing that the Debtor was undertaking good faith efforts to refinance the Property, the Receiver wrote to counsel to the Debtor and advised that it would provide representatives of the Debtor with keys to the convenience store and gas bar that had been changed by the Receiver. The Receiver provided keys to Mohammad Bajwa.

26. On July 31, 2018 the security company advised the Receiver that there was a break in at the convenience store. The security company filed a police report on that date. The Receiver is not aware that any property belonging to the Debtors had been stolen or damaged as a result of the break in.

27. The Receiver advised the Debtors' counsel of the break in and suggested they inspect the property to ensure nothing of material value had been stolen or damaged. No response was received from the Debtor or its counsel.

28. In the Court's Endorsement dated July 3, 2018, Mr. Justice McEwen wrote, among other things, that:

"The Respondents do not oppose [the application to appoint a receiver] with one condition being inserted that is that the marketing [to sell the Buckhorn Property] referred to in paragraph 3(k) shall

not begin until 30 days from the date of this order. To be clear, the Receiver can solicit listing agreements during the 30 days but cannot execute any such agreement during the 30 day period. The rest of the terms of the order are reasonable in the circumstances.”

The 30 day period lapsed on August 2, 2018.

29. The Receiver attended at the Buckhorn Property on August 20, 2018 and again changed the locks to the convenience store and gas bar. New keys were not provided to representatives of the Debtor, as the 30 day period provided for in the July 3, 2018 Court Endorsement had expired.

### Insurance

30. The Receiver confirmed with the Debtor’s insurance broker that the existing insurance policy insuring the Buckhorn Property remains in force. However, the existing insurer has not named the Receiver as an additional insured under the policies of insurance, despite repeated requests by the Receiver. Furthermore, in the Receiver’s opinion, the amount of liability coverage included with the existing insurance policy of \$3,000,000 is inadequate.

31. The Receiver contacted its own insurance broker for the purpose of obtaining insurance. The insurance broker advised the Receiver that no insurance coverage would be available until such time as the fuel tanks, which contain approximately 10,000 of fuel/diesel, are emptied. On September 11, 2018 the Receiver advised its insurer that the fuel tanks were emptied on that day. The following day, the Receiver’s insurer confirmed that coverage was now in place.

32. The Receiver’s insurance policy specifically insures the Receiver for third party liability at an amount of \$10,000,000, which is the maximum liability coverage available under the Receiver’s insurance program.

### Appraisal

33. The Receiver has engaged Antec Appraisal to prepare an appraisal of the property. The Receiver met with representatives of Antec at the Buckhorn Property on September 10, 2018 so that they could inspect the property and commence their appraisal.

#### Other Matters

34. The Receiver has made arrangements with Access Cash to remove their ATM terminal from the Buckhorn Property, which they did on September 10, 2018.

35. The Receiver made arrangements with Jim Bilmer to remove the metal recycling bin from the Buckhorn property, which he did on or around August 22, 2018;

36. In accordance with the E-Service Protocol provisions of the Appointment Order, the Receiver created a case website at the URL <http://www.albertgelman.com/corporate-solutions/other-engagements/> on which it has posted various documents related to this Receivership proceeding.

37. On July 13, 2018 the Receiver issued its Notice and Statement of the Receiver for both OpCo and LandCo in accordance with sections 245 and 246 of the BIA. Attached hereto as **Appendices “D”** and **“E”** are copies of the notices for both OpCp and LandCo, respectively.

#### **VII. DEBTOR’S ATTEMPTS TO REFINANCE**

38. As noted earlier in this report, at the request of the Respondents, the Endorsement of Mr. Justice McEwen, dated July 3, 2018, provided that the Receiver shall not list the Buckhorn Property for sale for a period of thirty (30) days.

39. On July 19, 2018, counsel to BMO, Mr. Roger Jaipargas, received an email from Bushra Mirza (Director of both OpCo and LandCo) requesting a “pay-out” amount on the property. Mr. Dolson subsequently emailed BMO’s counsel on July 25, 2018, also requesting a discharge/pay-out statement and indicating that his clients had received a mortgage commitment.

40. On the same day, Mr. Jaipargas provided Mr. Dolson with a draft pay out statement that provided a snapshot of the secured obligations owing to BMO delivered on a without prejudice basis subject to BMO's right to deliver a final pay out statement at a later date.

41. On August 4, 2018, BMO's counsel received a letter by email from a Mr. Simeon Oyelade, barrister and solicitor which stated, among other things, the following:

*"I...have been approached by the above named borrowers in respect of their indebtedness to the Bank of Montreal with regards to the above noted mortgage/Credit Facility. The borrowers' former lawyer is currently unavoidably unavailable to attend to this matter. My clients want to payout the mortgages/credit facilities registered on the above-noted property by Bank of Montreal with a closing date scheduled for August 7, 2018. Would you therefore kindly provide my office with a mortgage statement for discharge purposes setting out all amounts payable so as to obtain a discharge of the mortgage as at such date, and confirming the balance in the tax account and your discharge fee, if applicable."*

42. On August 9, 2018, Mr. Jaipargas emailed Mr. Oyelade stating as follows:

*"I write to you further to our discussion of August 7, 2018. I have not heard back from you since our call. I have been instructed by BMO to advise you that if the obligations owing to the Bank are not repaid by the close of business tomorrow, the Receiver intends to take the steps it needs to take to market and sell the property, as the 30 days referred to in Justice McEwen's endorsement of July 3, 2018 has now expired"*.

43. Further communications took place between Mr. Jaipargas, the Receiver's counsel and Mr. Oyelade generally in relation to the amount of BMO's indebtedness as well as the potential priority claims of CRA.

44. On August 16, 2018, the Receiver's counsel sent a letter to Mr. Oyelade by email which stated, among other things, the follows:

*"I am following up on our telephone conference of August 10, 2018. Nothing has been received from your client by way of an advance, new funding or an attempt to pay out the first secured creditor, Bank of Montreal. Consequently, the Court-appointed*

*Receiver will proceed with the administration of the Estate. If your client does obtain any new financing, and desires to purchase the bank's indebtedness and security, it remains at liberty to do so. In that regard, your correspondence should be with Mr. Jaipargas, on behalf of Bank of Montreal."*

45. A copy of this letter is attached hereto as **Appendix "F"**

46. On the same day, Mr. Oyelade responded to the Receiver's counsel and stated as follows:

*"The client decided to take the file back to Mr. Dolson (he was handling the matter before his vacation) and I thought he would have contacted you in that regard. I no longer act for the client please."*

### **VIII. PURPORTED LEASE AGREEMENT OF CONVENIENCE STORE AND GAS BAR**

47. The Receiver was provided with what is alleged to be a written lease agreement dated May 20, 2018 between LandCo, as landlord, and Petronorth Inc. ("**Petronorth**") as tenant, for the convenience store and gas bar (the "**Petronorth Lease**"). Attached hereto as **Appendix "G"** is a copy of the Petronorth Lease. The lease agreement contains the following significant terms:

- a. a lease term of 300 months (25 years) with a renewal term of an additional 300 months; and,
- b. gross rent of \$1,000 per month, with annual increases of \$200 per year for the first 25 years.

48. The lease was signed by Bushra Mirza on behalf of LandCo and by Haakem Bajwa on behalf of Petronorth. The Receiver obtained a corporation profile search of Petronorth Inc. on July 3, 2018 which indicates that this corporation was incorporated on May 17, 2018 and that its sole director is Haakem Bajwa.

49. The relationship between these two individuals, the Debtors and Petronorth are summarized as follows:

- a. The Receiver understands that Haakem Bajwa and Bushra Mirza are spouses;
- b. Haakem Bajwa is the sole director of Petronorth and a director of OpCo; and,
- c. Bushra Mirza is the sole officer and director of LandCo, a director of OpCo and an officer of OpCo.

50. Therefore, it appears to the Receiver that the Petronorth and LandCo are “related persons” as that term is defined in the BIA.

51. The Receiver has concerns that this lease was not entered into for bona-fide purposes, and was designed to hinder or delay creditors. These concerns arise from the following:

- a. The lease was entered into after BMO had issued its demands for payment and Notices of Intention to Enforce Security on December 15, 2017;
- b. BMO confirmed that it were not advised by LandCo of the existence of the lease and was not provided with a copy of same;
- c. in the Receiver’s experience it is highly unusual to enter into a lease of 25 years length with a further extension of 25 years as such a long term constrains the landlord’s use of the property;
- d. the lease is between related persons; and
- e. according to the Receiver’s counsel, the 25 year term contravenes the *Planning Act (Ontario)*.

52. In addition to the above, the lease agreement, if valid, will limit the ability of the Receiver to market the Buckhorn Property given the long term of the lease.

53. The Receiver seeks an Order declaring the lease null and void for contravening the *Planning Act (Ontario)* and the *Fraudulent Conveyances Act*.

## **IX. DEBTOR'S REQUEST TO OPERATE BUSINESS**

54. On September 6, 2018 Mr. David Dolson, again acting as counsel to the Debtors, sent an email to the Receiver's counsel requesting that the Receiver consider allowing "[his] clients" to operate the convenience store and gas bar located at the Buckhorn Property by entering into an "arrangement" with the Receiver. Attached hereto as **Appendix "H"** is a copy of the September 6, 2018 email.

55. On September 12, 2018 the Receiver's counsel wrote to Mr. Dolson advising that, for various reasons, the Receiver is not prepared to turn over possession of the gas bar to his clients. Attached hereto as **Appendix "I"** is a copy of the September 12, 2018 letter.

56. No further communication has been received by the Receiver or its counsel in respect of this matter as of the date of this First Report.

## **X. ENVIRONMENTAL MATTERS**

57. The Receiver engaged Pinchin Ltd. ("**Pinchin**") to prepare a Phase I environmental site assessment (the "**Phase I ESA**") of the Buckhorn Property. On July 23, 2018 the Receiver met with representatives of Pinchin at the property. In the Receiver's opinion this study is necessary to determine whether there is a possibility of existing environmental contamination or ongoing environmental contamination occurring whilst the Receiver is in possession and control of the property. Pinchin provided the Receiver with its Phase I ESA on September 14, 2018 which recommended that a Phase II environmental site assessment ("**Phase II ESA**") be completed at the property. The Receiver has requested that Pinchin provide it with a proposal for the Phase II ESA. The Receiver has not yet received the proposal from Pinchin.

58. The Receiver engaged Revolution Environmental Solutions LP ("**Terrapure**") to remove and properly dispose of the remaining fuel from the three underground tanks located at the Buckhorn Property. On September 10, 2018 Terrapure attended at the Buckhorn Property and removed approximately 8,000 litres of fuel and diesel from the

three tanks which are now empty. As was noted above, it was also a requirement of placing the alternative insurance that the underground fuel and diesel tanks be emptied.

## **XI. SALES PROCESS**

59. The Receiver has not taken any steps as of the date of this First Report to market the Buckhorn Property for sale.

## **XII. SECURED CREDITORS**

### Canada Revenue Agency

60. The Receiver contacted the CRA and requested details regarding amounts owing to the CRA, if any, from OpCo and LandCo as well as the status of the tax filings for both entities. The CRA advised as follows:

- a. LandCo is in arrears of HST in the amount of \$329. CRA subsequently filed a proof of claim in this amount. However, LandCo has not made any HST filings since June 30, 2015 and, therefore, this amount is likely to increase once the tax filings have been prepared and assessed, as HST has been collected from the commercial tenant;
- b. LandCo does not have a payroll tax account with CRA;
- c. OpCo is in arrears of HST in the amount of \$8,898.60, of which the CRA is claiming that \$4,030.48 represent deemed trust amounts. CRA subsequently filed a proof of claim in these amounts. However, OpCo has not made any HST filings since September 30, 2016 and, therefore, the amounts above are likely to increase; and,
- d. OpCo has unpaid source deductions owing to the CRA in the amount of \$14,262.43 of which the CRA is claiming that \$8,795.90 represents deemed trust amounts. CRA subsequently filed a proof of claim in these amounts.

61. Copies of the proofs of claim filed by the CRA with the Receiver are attached hereto as **Appendix "J"**.

## PPSA

62. Pursuant to a PPSA search conducted by the Receiver on October 4, 2018 (with a file currency date of October 3, 2018), the following creditors have registered financing statements against OpCo:

Registration Date	Creditor	Collateral Classification
December 4, 2013	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle
November 9, 2017	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle
June 21, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle
June 21, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle
June 27, 2018	Ford Credit Canada Company	Equipment, Other, Motor Vehicle
June 27, 2018	Ford Credit Canada Company	Equipment, Other, Motor Vehicle
September 18, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle
September 18, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle

63. Attached hereto as **Appendix “K”** is a copy of the PPSA search.

64. Pursuant to a PPSA search conducted by the Receiver on May 28, 2018 (with a file currency date of May 27, 2018), the following creditors have registered financing statements against LandCo:

Registration Date	Creditor	Collateral Classification
December 4, 2013	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle
November 9, 2017	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle

65. Attached hereto as **Appendix “L”** is a copy of the PPSA search.

### Bank of Montreal

66. BMO is the senior secured lender to both OpCo and LandCo.

67. OpCo is a borrower of BMO and is indebted to BMO in the outstanding sum of \$7,075. This balance includes accrued interest to June 7, 2018. As security for the loans, OpCo granted BMO a General Security Agreement granting a security interest in all of its assets, property and undertaking.

68. LandCo is a borrower of BMO and is indebted to BMO in the outstanding sum of \$706,012. This balance includes accrued interest to June 7, 2018. As security for the

loans, LandCo granted BMO a General Security Agreement granting a security interest in all of its assets, property and undertaking and a mortgage in respect of the Buckhorn Property.

69. The Receiver’s independent legal counsel, Fred Tayar & Associates Professional Corporation, has provided the Receiver with a legal opinion which affirms the validity and enforceability (subject to certain standard assumptions and qualifications) of BMO’s security over Debtors’ property including the Buckhorn Property (the “**Legal Opinion**”). Attached as **Appendix “M”** is a copy of the Legal Opinion.

Township of Selwyn

70. Pursuant to a tax certificate dated July 24, 2017 from the Township of Selwyn obtained by the Receiver, LandCo is in arrears in respect of property tax in the amount of \$54,841.51. The Receiver has not made any payments to the Township of Selwyn in respect of property taxes.

Ford Credit Canada Company (“**Ford**”)

71. The PPSA search of OpCo shows that there were two registrations of financing statements made by Ford seven days prior to the date of the Appointment Order. Both registrations relate to specific vehicles with VIN’s identified in the “Motor Vehicle Description” section of the PPSA search which vehicles are set out below.

Make / Model	Year	VIN
Ford Escape	2018	1FMCU9GD4JUB77137
Ford Escape	2018	1FMCU9GD3JUB00422

72. These vehicles were not disclosed by the Debtors and were not delivered to the Receiver in accordance with the Appointment Order. The Receiver does not have possession of or knowledge of the whereabouts of these vehicles.

Nissan Canada Financial Services Inc. (“**Nissan**”)

73. The PPSA search of OpCo shows that there were two registrations of financing statements made by Nissan 13 days prior to the Appointment Order and two additional

registrations of financing statements made by Nissan more than two months subsequent to the date of the Appointment Order. All four of the registrations relate to specific vehicles with VIN's identified in the "Motor Vehicle Description" section of the PPSA search which vehicles are set out below.

Make / Model	Year	VIN
Nissan Sentra	2018	3N1AB7APXJY262220
Nissan Sentra	2018	3N1AB7AP2JY279092
Nissan Rogue	2018	5N1AT2MT1JC823799
Nissan Rogue	2018	5N1AT2MT8JC833455

74. These vehicles were not disclosed by the Debtors and were not delivered to the Receiver in accordance with the Appointment Order. The Receiver does not have possession of or knowledge of the whereabouts of these vehicles.

75. If the purchases or leases were made after the date of the Appointment Order, the Debtors were not empowered to enter into these agreements with Nissan.

### **XIII. VEHICLES**

76. As noted in the preceding paragraphs, OpCo appears to be the owner of six motor vehicles which have not been delivered to the Receiver in accordance with the Appointment Order. The Receiver does not know whether these vehicles are or whether they continue to be driven. Nor does the Receiver know whether there is any/or adequate insurance enforceable in place.

77. Originally the Receiver became aware of three of these vehicles when it received a redirected letter from Service Ontario to OpCo advising that these three vehicles registered to OpCo required new licence plate stickers.

78. On September 21, 2018 counsel to the Receiver wrote to counsel to the Debtors requesting copies of the ownership and insurance documents for these three vehicles (the existence of the other three vehicles was not yet known). Counsel for the Receiver did not receive a response and, therefore, followed up again on October 1, 2018. As of the date of this report counsel for the Receiver has not received a response from the Debtors or their counsel in respect of its September 21, 2018 letter.

79. The Receiver subsequently received a second letter from Service Ontario indicating that there were a further two vehicles registered in the name of OpCo which required new licence plate stickers.

### Insurance

80. Unsure as to whether the six vehicles are currently insured, the Receiver undertook the following activities:

- a. contacted the Debtors' insurance broker to enquire as to whether the existing corporate insurance policy included coverage for motor vehicles. It advised the Receiver that it did not; and
- b. contacted its own insurance broker for the purpose of obtaining motor vehicle insurance. It advised the Receiver that no insurance coverage would be available due to the fact that the vehicles were not in the custody and control of the Receiver.

81. The Receiver does not know whether the vehicles carry any enforceable insurance coverage and is unable to obtain its own insurance with respect to the six vehicles.

82. The Receiver is requesting that the Court make an Order permitting the Receiver to examine the officers and/or directors of the Debtors for the purposes of determining the status and whereabouts of the vehicles.

## **XIV. OTHER PROPERTY OWNED BY LANDCO**

83. In conducting a search of adjoining lands, the Receiver's counsel discovered that LandCo also owns real property that was not disclosed to BMO. This is the real property defined as the Additional Parcel in the June 5, 2018 letter prepared by Meyer, Wassenaar & Banach LLP (the "**Banach Letter**"). Attached hereto as **Appendix "N"** is a copy of the Banach Letter.

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

84. Attached hereto at **Appendix “O”** is the Receiver’s Interim Statement of Receipts and Disbursements dated October 4, 2018 (“**Interim R&D**”).

**XVI. ACCOUNTS OF THE RECEIVER AND ITS COUNSEL**

85. Attached hereto as **Appendix “P”** is the Affidavit of Joe Albert regarding the Receiver’s fees to September 30, 2018 accompanied by supporting time docket.

86. In accordance with paragraph 21 of the Appointment Order BMO has advanced \$100,000 to the Receiver under the Receiver’s Borrowing Charge (defined in the Appointment Order) to fund the Receiver’s fees and disbursements. This amount is set out in the Interim SRD. Copies of the certificates issued to BMO dated July 19, 2018 and September 17, 2018 in respect of this advance are attached hereto as **Appendix “Q”**.

87. Attached hereto as **Appendix “R”** is the Affidavit of Mindy Tayar regarding the fees and disbursements of the Receiver’s counsel, Fred Tayar & Associates Professional Corporation, to September 5, 2018 accompanied by supporting time docket, as well as the Affidavit of Joseph Fried relating to real estate legal services provided to the Receiver by MWB.

88. The Receiver believes that its fees and disbursements, as well as the fees and disbursements of its legal counsel are fair and reasonable.

**XVII. RECEIVER’S REQUEST FOR RELIEF**

89. The Receiver respectfully requests an Order of this Honourable Court:

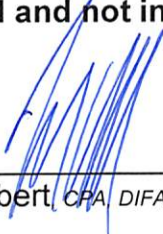
- a. approving this First Report, as well as the actions and activities of the Receiver described herein, including the Interim SRD;
- b. approving the professional fees and disbursements of the Receiver to September 30, 2018;

- c. approving the professional fees and disbursements of the Receiver's counsel to September 5, 2018;
- d. declaring that the Petronorth Lease is null and void and unenforceable;
- e. providing leave to examine under oath the officers and/or directors of the Debtors in relation to the property and assets of the Debtors, including, in relation to the motor vehicles referenced above; and
- f. such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted this 5th day of October, 2018.

**ALBERT GELMAN INC., solely in its  
capacity as the Court-Appointed Receiver of  
2380630 Ontario Inc. and 2386174 Ontario  
Incorporated and not in its Personal Capacity**

Per:

  
\_\_\_\_\_  
Joe Albert, CPA, DIFA, Licensed Insolvency Trustee