

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

B E T W E E N:

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 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**

**MOTION RECORD OF THE RECEIVER
(Returnable July 19, 2023)**

July 7, 2023

**PALIARE ROLAND ROSENBERG
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Lawyers for the Receiver

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TAB 1

Court File No.: CV-22-00690513-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

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AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS
AMENDED**

NOTICE OF MOTION

THE RECEIVER, Albert Gelman Inc. (the “**Receiver**”), will make a motion before the court on July 19, 2023, at 11:00 am, or as soon after that time as the motion can be heard, at 330 University Ave., Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard via videoconference.

THE MOTION IS FOR:

1. An Order substantially in the form attached as Appendix “A” to this Notice of Motion:

- (i) authorizing the entering into of the transaction (the “**Cherrycrest Transaction**”) contemplated by an asset purchase agreement between the Receiver and 1000567934 Ontario Inc. (the “**Cherrycrest Purchaser**”) dated June 15, 2023 (the “**Cherrycrest Purchase Agreement**”), together with any further minor amendments thereto deemed necessary by the Receiver in its sole opinion;
- (ii) approving the sale of the property contemplated in the Cherrycrest Purchase Agreement (the “**Cherrycrest Purchased Assets**”) in accordance with the terms of the Cherrycrest Purchase Agreement and vesting in the Cherrycrest Purchaser all of 2244039 Ontario Inc. (“**224Co.**”)’s right, title and interest to the Cherrycrest Purchased Assets free from all Claims (as defined and described in the Order), upon closing of the Cherrycrest Transaction and the delivery of a Receiver’s certificate to the Cherrycrest Purchaser;

2. An Order substantially in the form attached as Appendix “B” to this Notice of Motion:

- (i) authorizing the entering into of the transaction (the “**Airport Road Transaction**”) contemplated by an asset purchase agreement between the Receiver and 2484460 Ontario Inc. (the “**Airport Road Purchaser**”) dated June 14, 2023 (the “**Airport Road Purchase Agreement**”), together with any further minor amendments thereto deemed necessary by the Receiver in its sole opinion;
- (ii) approving the sale of the property contemplated in the Airport Road Purchase Agreement (the “**Airport Road Purchased Assets**”) in accordance with the terms of the Airport Road Purchase Agreement and vesting in the Airport Road Purchaser all of 1526400 Ontario Inc. (“**152Co.**”)’s right, title and interest to the Airport Road Purchased Assets free from all Claims (as defined and described in the Order), upon closing of the Airport Road Transaction and the delivery of a Receiver’s certificate to the Airport Road Purchaser;

3. An Order substantially in the form attached as Appendix “C” to this Notice of Motion:

- (i) approving the First Report to the Court of the Receiver dated July 7 2023(the “**First Report**”) and the Receiver’s conduct and activities set out therein;

- (ii) authorizing, but not obligating, the Receiver to make the Interim Distributions(as defined in the First Report);
- (iii) sealing the Confidential Appendices to the First Report;
- (iv) approving the fees of the Receiver for the period to June 27, 2023;
- (v) approving the fees of Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) for the period November 9, 2022 to June 30, 2023; and
- (vi) approving the fees of Wildeboer Dellelce LLP (“**Wildeboer**”) for the period February 24, 2023 to June 30, 2023.

THE GROUNDS FOR THE MOTION ARE:

A. Background

4. 2046245 Ontario Inc., 2222228 Ontario Inc., 2473560 Ontario Inc. and 2473441 Ontario Inc. (collectively, the “**Lenders**”) commenced an application dated November 15, 2022 to appoint a receiver over 224Co. and 152Co. (collectively, the “**Debtors**”).

5. The Lenders had provided financing to the Debtors through two credit facilities totalling approximately \$14,550,000, which facilities were secured by first and second mortgages on the properties at 35 Cherrycrest Road, Brampton, Ontario (the “**Cherrycrest Property**”) and 12016 Airport Road, Caledon, Ontario (the “**Airport Road Property**”) (collectively, the “**Properties**”).

6. On December 1, 2022, the Receiver was appointed as receiver, without security, of the property, assets and undertaking of 224Co. and 152Co. pursuant to an Order of this Court (the “**Appointment Order**”).

7. The Appointment Order was stayed until 9 a.m. on December 13, 2022 pursuant to certain conditions which included, among other things, repayment of certain of the loans to the Lenders as well as amending certain lending and security agreements. The conditions were not met and, as a result, the Appointment Order went into effect as of December 13, 2022 at 9 a.m.

152Co.

8. 152Co. is the owner of the Airport Road Property.

9. The Airport Road Property is fully leased to both Shell Canada Products (“**Shell**”) who own and operate a Shell gas bar and Select retail store and The TDL Group Corp. (“**TDL**”) who own and operate a Tim Horton’s retail restaurant.

224Co.

10. 224Co. is the owner of the Cherrycrest Property.

11. 224Co. owns and operates an Esso gas bar, car wash and “On the Run” convenience store from the Cherrycrest Property.

12. 224Co. also leases portions of the Cherrycrest Property to TDL, 1280438 Ontario Ltd (“**128Co.**”) and Bell Mobility Inc. (“**Bell**”).

13. TDL owns and operates a takeout Tim Horton's coffee bar within the "On the Run" convenience store.

14. 128Co. operates a KFC/Taco Bell restaurant franchise from a stand alone building on the Cherrycrest Property

15. Bell has a wireless communications tower located on the Cherrycrest Property.

Counsel

16. The Receiver retained the firm of Paliare Roland to act as the Receiver's legal counsel and the firm of Wildeboer to act as the Receiver's corporate and real estate counsel for purposes of closing the Cherrycrest Transaction and the Airport Road Transaction.

B. The Receiver's Sales Process

17. The Receiver entered into listing agreements with Cushman & Wakefield ULC ("**C&W**") on April 15, 2023 for the purposes of listing for sale both the Cherrycrest Property and the Airport Road Property.

18. On May 1, 2023, both of the Properties were publicly listed on the Multiple Listing Service with no asking price. The listing was for a period of 46 days with the bid deadline set for June 15, 2023 at 4 p.m. (Toronto time) (the "**Bid Deadline**").

19. C&W established a virtual data room for each real property, which included information, documents and certain financial records available to the Receiver. Prior to

gaining access to the data room, a prospective purchaser was required to sign the Receiver's form of Non-Disclosure Agreement (an "**NDA**").

20. During the listing period, approximately 130 NDAs were signed for each of the Properties.

21. The Receiver received 8 offers to purchase the Cherrycrest Property and 12 offers to purchase the Airport Road Property by the Bid Deadline

22. The Receiver believes that the marketing process conducted was appropriate for the type of property in question and that the marketing process provided sufficient market exposure to the Properties.

23. The Receiver is of the view that sufficient efforts were made to obtain the best price for the Properties.

C. *Approval of the Asset Purchase Agreements*

24. The Receiver believes that the offer contained in the Asset Purchase Agreement for each Property was the most advantageous to the respective creditors of each debtor.

25. The Receiver therefore recommends that this Court approve the Asset Purchase Agreements and grant the orders vesting title in the Cherrycrest Purchased Assets to the Cherrycrest Purchaser and title to the Airport Road Purchased Assets to the Airport Road Purchaser.

D. Proposed Interim Distribution

26. Concurrent with or following the closing of the sale of the Properties, the Receiver proposes to make the following payments (the “**Interim Distribution**”) as described and defined in the First Report:

- (a) payment of the amount due on closing for any realty taxes owing on either or both of the Properties as at the closing date;
- (b) payment of the unpaid fees of the Receiver and its counsel, Paliare Roland and Wildeboer Dellelce, as approved by this Court;
- (c) payment of the sums due to the Canada Revenue Agency (“**CRA**”) in priority as follows:
 - (i) in respect of 224Co, the unpaid source deductions deemed trust in the sum of \$8,606.59 and the HST deemed trust, in full, once assessed by CRA;
 - (ii) in respect of 152Co, the HST deemed trust in the amount of \$164,555.98 and unpaid source deductions deemed trust in the amount of \$2,684.85;
- (d) payment to the Lenders up to the amount of the total indebtedness owing to such Lenders and allocated as consideration for the Cherrycrest Property and the Airport Road Property, which amounts may be adjusted at the Receiver’s discretion on receiving updated loan amounts from the Lender.

E. Statutory and other grounds

27. Rules 1.04, 2.03, 3.02(1), 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

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

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

- (a) the First Report of the Receiver dated July 7, 2023 and the appendices attached thereto; and
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 7, 2023

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Lawyers for the Receiver

TO: THE SERVICE LIST

2046245 ONTARIO INC., et al.
Applicants

-and-

2244039 ONTARIO INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Receiver

TAB A

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

THE HONOURABLE) TUESDAY THE 19TH DAY
JUSTICE) OF JULY, 2022

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 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**

APPROVAL AND VESTING ORDER

(35 Cherrycrest Drive, Brampton, ON)

THIS MOTION, made by **ALBERT GELMAN INC.** in its capacity as the receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**") for an order, among other things, approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement between the Receiver and 1000567934 Ontario Inc. (the "**Purchaser**") dated June 15, 2023 (the "**Purchase Agreement**") and vesting in the Purchaser all of 224Co.'s right, title and interest in and to the assets described in the Purchase Agreement (the "**Purchased Assets**"), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated July 7, 2023 and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved.

2. **THIS COURT ORDERS AND DECLARES** that the execution of the Purchase Agreement by the Receiver is authorized and approved, and 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.

3. **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 224Co.'s right, title and interest in and to the Purchased Assets described in the Purchase Agreement including those 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 Kimmel dated December 1, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" hereto) 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.

4. **THIS COURT ORDERS** that upon the registration in the applicable Land Registry Office of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "B" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

5. **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.

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

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 224Co.;

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 224Co., nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

Schedule A – Form of Receiver’s Certificate

Court File No.: CV-22-00690513-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

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2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

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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**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Kimmel of the Ontario Superior Court of Justice (the "**Court**") dated December 1, 2022, Albert Gelman Inc. was appointed as the receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**").

B. Pursuant to an Order of the Court dated July 19, 2023 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale between the Receiver and 1000567934 Ontario Inc. (the "**Purchaser**") dated June 15, 2023 (the "**Purchase Agreement**") and vesting in the Purchaser all of 224Co.’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 in accordance with the Purchase Agreement; (ii) that the conditions of Closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the

Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement or the Vesting Order.

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 Purchase Agreement;
2. The conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

Albert Gelman Inc., solely in its capacity as receiver and manager of 224Co. and not in its personal or corporate capacity

Per: _____
Name
Title

Schedule B – Purchased Assets

All of the 224Co.'s right, title and interest in and to the Property (as defined in the Purchase Agreement) including, without limitation, the following real property:

Municipal Address:

35 Cherrycrest Drive, Brampton, Ontario

Legal Description:

BLOCK 4, PLAN 43M1813; SUBJECT TO AN EASEMENT IN AS IN PR1659010;
SUBJECT TO AN EASEMENT AS IN PR1659012; CITY OF BRAMPTON

PIN 14021-1350 (LT)

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

The following Instruments are to be discharged upon registration of the Vesting Order:

Registration No.	Registration Date	Document Type	Party To
PR4009527	2022/03/09	Charge	2046245 Ontario Inc. 2222228 Ontario Inc. 2473441 Ontario Inc.
PR4009528	2022/03/09	No Assgn Rent Gen	2046245 Ontario Inc. 2222228 Ontario Inc. 2473441 Ontario Inc.
PR4009534	2022/03/09	Postponement	2046245 Ontario Inc. 2222228 Ontario Inc. 2473441 Ontario Inc.
PR4015838	2022/03/18	Notice	2046245 Ontario Inc. 2222228 Ontario Inc. 2473441 Ontario Inc.
PR4034965	2022/04/20	Charge	2046245 Ontario Inc. 2473560 Ontario Inc. 2222228 Ontario Inc.
PR4034991	2022/04/20	No Assgn Rent Gen	2244039 Ontario Inc.
PR4034992	2022/04/20	Postponement	2473560 Ontario Inc. 2046245 Ontario Inc. 2222228 Ontario Inc.
PR4171355	2023/02/15	APL Court Order	Albert Gelman Inc.

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

(unaffected by the Vesting Order)

Registration No.	Registration Date (Y/M/D)	Document Type	Party To
PR657137	2004/06/16	Notice of Agreement	The Regional Municipality of Peel
PR1659010	2009/06/25	Transfer Easement	The Regional Municipality of Peel
PR1659012	2009/06/25	Transfer Easement	Hydro One Brampton Networks Inc.
43M1813	2010/04/20	Plan of Subdivision	
PR1809279	20110/04/23	Notice of Subdivision Agreement	Woodspring Homes Ltd.
PR1827426	2010/04/23	Application to Annex Restrictive Covenants	Woodspring Homes Ltd.
PR1829343	2010/05/31	Transfer	2244039 Ontario Inc.
PR2485335	2014/01/09	Notice of Agreement	The Corporation of the City of Brampton
PR2941894	2016/07/04	Notice of Lease	The TDL Group Corp.
43R39599	2020/09/16	Reference Plan	
PR3765919	2021/01/18	Notice of Lease	Bell Mobility Inc.
PR3993922	2022/02/10	Notice of an Unregistered Estate, Right, Interest of Equity	Global Fuels Inc.

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-and-

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ORDER

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Lawyers for the Receiver

TAB B

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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

APPROVAL AND VESTING ORDER

(12016 Airport Road, Caledon, ON)

THIS MOTION, made by **ALBERT GELMAN INC.** in its capacity as the receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**") for an order, among other things, approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement between the Receiver and 2484460 Ontario Inc. (the "**Purchaser**") dated June 14, 2023 (the "**Purchase Agreement**") and vesting in the Purchaser all of 152 Co.'s right, title and interest in and to the assets described in the Purchase Agreement (the "**Purchased Assets**"), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated July 7, 2023 and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved.

2. **THIS COURT ORDERS AND DECLARES** that the execution of the Purchase Agreement by the Receiver is authorized and approved, and 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.

3. **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 152Co.'s right, title and interest in and to the Purchased Assets described in the Purchase Agreement including those 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 Kimmel dated December 1, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" hereto) 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.

4. **THIS COURT ORDERS** that upon the registration in the applicable Land Registry Office of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "B" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

5. **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.

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

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 152Co.;

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 152Co., nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

Schedule A – Form of Receiver’s Certificate

Court File No.: CV-22-00690513-00CL

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

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 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**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Kimmel of the Ontario Superior Court of Justice (the "**Court**") dated December 1, 2022, Albert Gelman Inc. was appointed as the receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**").

B. Pursuant to an Order of the Court dated July 19, 2023 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale between the Receiver and 2484460 Ontario Inc. (the "**Purchaser**") dated June 14, 2023 (the "**Purchase Agreement**") and vesting in the Purchaser all of 152Co.’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 in accordance with the Purchase Agreement; (ii) that the conditions of Closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the

Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement or the Vesting Order.

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 Purchase Agreement;
2. The conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

Albert Gelman Inc., solely in its capacity as receiver and manager of 152Co. and not in its personal or corporate capacity

Per: _____
Name
Title

Schedule B – Purchased Assets

All of the 152Co.'s right, title and interest in and to the Property (as defined in the Purchase Agreement) including, without limitation, the following real property:

Municipal Address:

12016 Airport Road, Caledon, Ontario

Legal Description:

PART LOT 18 CON 6 EHS CHING DES PTS 1, 6 PL 43R-31661; CALEDON; S/T EASEMNT OVER PT LT 18 CON 6 EHS DES PT 6 PL 43R-31661, AS IN PR 1409645; T/W EASEMENT OVER PT LT 18 CON 6 EHS DES PT 7 PL 43R-31661, AS IN PR 1409649; S/T EASEMENT

PIN 14347-0314 (LT)

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

The following Instruments are to be discharged upon registration of the Vesting Order:

Instrument No.	Registration Date	Instrument Type	Party To
PR4009538	2022/03/09	Charge	2046245 Ontario Inc. 2222228 Ontario Inc. 2473441 Ontario Inc.
PR4009539	2022/03/09	No Assgn Rent Gen	2046245 Ontario Inc. 2222228 Ontario Inc. 2473441 Ontario Inc.
PR4035001	2022/04/20	Charge	2046245 Ontario Inc. 2473560 Ontario Inc. 2222228 Ontario Inc.
PR4035005	2022/04/20	No Assgn Rent Gen	1526400 Ontario Inc.
PR4035006	2022/04/20	Postponement	2473560 Ontario Inc. 2046245 Ontario Inc. 2222228 Ontario Inc.
PR4171356	2023/02/15	APL Court Order	Albert Gelman Inc.

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

(unaffected by the Vesting Order)

Registration No.	Registration Date (Y/M./D)	Document Type	Party To
LT2057426	2000/03/27	Notice of Airport Zoning Regulations	Her Majesty The Queen in Right of The Department of Transport Canada
PR265430	2002/06/24	Transfer	1526400 Ontario Inc.
PR895287	2005/07/28	Notice of Lease	The TDL Group Corp.
PR1180882	2006/12/06	Notice of Lease	Shell Canada Products Limited
43R31661	2007/08/03	Reference Plan	
PR1370295	2007/11/13	Notice of Site Plan Control Agreement	The Regional Municipality of Peel
PR1370295	2017/11/13	Postponement	The Regional Municipality of Peel
PR1370298	2017/11/13	Postponement	The Regional Municipality of Peel
PR1393666	2007/12/21	Notice of Site Plan Control Amending Agreement	The Regional Municipality of Peel
PR1401718	2008/01/15	Notice of Agreement	The Corporation of the Town of Caledon
PR1409645	2008/01/31	Transfer Easement	Orchard Garden Markets Ltd.
PR1409646	2008/01/31	Postponement	Orchard Garden Markets Ltd.

PR1409648	2008/01/31	Postponement	Orchard Garden Markets Ltd.
PR1413426	2008/02/08	Application to Instrument	Shell Canada Limited
PR1531547	2008/09/12	Transfer Easement	The Corporation of the Town of Caledon

2046245 ONTARIO INC., et al.
Applicants

-and-

2244039 ONTARIO INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

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Lawyers for the Applicants

TAB C

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

THE HONOURABLE)
JUSTICE)
) TUESDAY THE 19TH DAY
) OF JULY, 2022

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 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**

ANCILLARY RELIEF ORDER

THIS MOTION, made by **ALBERT GELMAN INC.** in its capacity as the receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**") for an order, among other things, approving the sale transactions contemplated by asset purchase agreements between the Receiver and identified purchaser and various ancillary relief described in the First Report of the Receiver dated July 7, 2023 (the "**First Report**"), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and the Appendices and Confidential Appendices attached thereto, and on hearing the submissions of counsel for the Receiver and such other counsel who were present:

1. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Receiver set out therein be and are hereby approved.
 2. **THIS COURT ORDERS** 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 Receiver's report detailed in paragraph 1 above.
 3. **THIS COURT ORDERS** that Confidential Appendices A, C and E to the First Report be and are hereby sealed until the closing of the sale of Cherrycrest Purchased Assets (as defined in the First Report) and that Confidential Appendices B, D and F to the First Report be and are hereby sealed until the closing of the sale of the Airport Road Purchased Assets (as defined in the First Report).
 4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period to June 27, 2023 as set out in the First Report, be and are hereby approved.
 5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Paliare Roland Rothstein Rosenberg LLP and Wildeboer Dellelce LLP for the respective periods November 9, 2022 to June 30, 2023 and February 24, 2023 to June 30, 2023 all as set out in the First Report, be and are hereby approved.
 6. **THIS COURT ORDERS** that the Receiver is authorized, but not obligated, to make the Interim Distributions (as described and defined in the First Report).
 7. **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.
-

2046245 ONTARIO INC., et al.
Applicants

-and-

2244039 ONTARIO INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Receiver

TAB 2

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

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 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 THE RECEIVER

(Dated July 7, 2023)

I. INTRODUCTION

1. This first report ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**"), in its capacity as receiver (in such capacity, the "**Receiver**") appointed, without security, over all of the assets, undertakings and properties (together, the "**Property**") of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**" and, together with 224Co., the "**Companies**") by Order of the Ontario Superior Court of Justice, Commercial List (the "**Court**"), dated December 1, 2023 (the "**Appointment Order**"), made pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended ("**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O 1990, c. 43, as amended. The application which resulted in the Appointment Order was commenced by 2046245 Ontario Inc. ("**204**"), 2222228 Ontario Inc. ("**222**"), 2473560 Ontario Inc. ("**560**") and 2473441 Ontario Inc. ("**441**") (collectively, the "**Lenders**"). A copy of the Appointment Order along with the

endorsement of Justice Kimmel made December 1, 2022 (the “Endorsement”) is attached hereto as **Appendix “A”**.

2. The Endorsement provided that the Appointment Order was stayed until 9 a.m. (Toronto time) on December 13, 2022 pursuant to certain conditions which included, among other things, partial and full payment of certain of the loan(s) of the Lenders as well as amending certain lending and security agreements. The conditions as set out in the Endorsement were not met and, as a result, the Appointment Order went into effect as of December 13, 2022 at 9 a.m. (Toronto time) (the “**Appointment Date**”).

3. The Receiver carried out a sales process (the “**Sales Process**”) to sell both the Cherrycrest Property and Airport Road Property (both terms defined below) which resulted in the Receiver entering into asset purchase agreements for both of the properties. The Receiver is now seeking, among other things, Court approval of both the Cherrycrest Transaction and the Airport Road Transaction (both terms defined below) as contemplated by the above noted asset purchase agreements, as more particularly set out below.

II. PURPOSE OF THIS REPORT

4. The First Report is filed to:

- a. report on the Receiver’s activities in these receivership proceedings since the Appointment Date;
- b. request an Order, among other things:
 - i. approving this First Report and the actions and activities of the Receiver described herein;
 - ii. approving and authorizing the Receiver to enter into and carry out the terms of the sale transaction (the “**Cherrycrest Transaction**”) contemplated by an Asset Purchase Agreement dated June 15, 2023 together with any further amendments thereto deemed necessary by the Receiver in its sole discretion (the “**Cherrycrest Purchase Agreement**”), entered into between the Receiver, as seller, and 1000567934 Ontario Inc. (the “**Cherrycrest Purchaser**”), as purchaser, and vesting in the Cherrycrest Purchaser, 224Co.’s right, title and interest in and to the following:
 - the real property municipally known as 35 Cherrycrest Drive, Brampton, Ontario and legally described as BLOCK 4, PLAN 43M1813; SUBJECT TO AN EASEMENT IN AS IN PR1659010; SUBJECT TO AN EASEMENT AS IN PR1659012; CITY OF BRAMPTON (the “**Cherrycrest Property**”); and,
 - the contracts, inventory and books and records, all as defined in the Cherrycrest Purchase Agreement (the “**Cherrycrest Business Assets**”)

(collectively, the “**Cherrycrest Purchased Assets**”);

- iii. approving and authorizing the Receiver to enter into and carry out the terms of the sale transaction (the “**Airport Road Transaction**”) contemplated by an Asset Purchase Agreement dated June 14, 2023 together with any further amendments thereto deemed necessary by the Receiver in its sole discretion (the “**Airport Road Purchase Agreement**”), entered into between the Receiver, as seller, and 2484460 Ontario Inc. (the “**Airport Road Purchaser**”), as purchaser, and vesting in the Airport Road Purchaser, 152Co.’s right, title and interest in and to the following:
 - The real property municipally known as 12016 Airport Road, Caledon, Ontario and legally described as: PART LOT 18 CON 6 EHS CHING DES PTS 1, 6 PL 43R-31661; CALEDON; S/T EASEMNT OVER PT LT 18 CON 6 EHS DES PT 6 PL 43R-31661, AS IN PR 1409645;T/W EASEMENT OVER PT LT 18 CON 6 EHS DES PT 7 PL 43R-31661, AS IN PR 1409649; S/T EASEMENT (the “**Airport Road Property**”); and,
 - the contracts and books and records, all as defined in the Airport Road Purchase Agreement, (the “**Airport Business Assets**”);
(collectively, the “**Airport Road Purchased Assets**”);
- iv. sealing the unredacted versions of the Cherrycrest Purchase Agreement, Airport Road Purchase Agreement, the Appraisals (defined below) as well as the summary of offers received for both properties until closing of the respective transactions;
- v. approving the fees and disbursements of the Receiver and its legal counsel, Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) and Wildeboer Dellelce LLP (“**Wildeboer Dellelce**”), as outlined herein and detailed in the supporting fee affidavits appended hereto;
- vi. approving the Interim Distributions (as defined below) to the Lenders and the Canada Revenue Agency (“**CRA**”) as outlined below; and
- vii. such further and other relief as this Honourable Court may deem just.

III. SCOPE AND TERMS OF REFERENCE

5. In preparing this First Report, the Receiver has obtained and relied upon certain unaudited financial information and records of the Companies, had discussions with Sajan Sandeep Tiwana (aka Sunny) as well as with the Companies external accountant, Anil Sharma. In addition, the Receiver has had ongoing discussions with representatives of the Lenders and their legal counsel and relied on certain loan information provided by them.

6. While the Receiver has reviewed the various documents provided, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”). Accordingly, the

Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

7. This First Report has been prepared for the purposes described above. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose.

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

9. This First Report, and all other court materials and orders issued and filed in these receivership proceedings are available on the Receiver's website at: <https://www.albertgelman.com/corporate-solutions/other-engagements/> (the "**Case Website**") and will remain available on the website for a period of six (6) months following the Receiver's discharge.

IV. BACKGROUND INFORMATION

10. 152Co. and 224Co. were incorporated in Ontario on May 29, 2002 and December 7, 2016, respectively.

11. The directors of 152Co. are Harcharan Tiwana and Jagdish Tiwana. Jagdish Tiwana is the sole director of 224Co.

12. The business of 152Co. and 224Co. was managed by Sajan Sandeep Tiwana (a.k.a. Sunny Tiwana) and Jagdish Tiwana. Sunny Tiwana is the adult son of Jagdish Tiwana ("**Father**").

Business of 1526400 Ontario Inc

13. 152Co. is the owner of the Airport Road Property. The Airport Road Property is fully leased to both Shell Canada Products ("**Shell**") who own and operate a Shell gas bar and Select retail store and The TDL Group Corp. ("**TDL**") who own and operate a Tim Horton's retail restaurant.

14. The lease with Shell commenced on March 1, 2008 for a term of twenty years, with two five-year renewal options.

15. The lease with TDL commenced on February 11, 2008 for a term of twenty years, with two five-year renewal options.

16. The lease with TDL contains a right of first refusal ("**ROFR**") granted by 152Co. to TDL. The lease with Shell also contains a ROFR granted to Shell, which is subject to the prior ROFR granted to TDL.

17. The Receiver negotiated with Shell to waive its ROFR during the Receiver's sale process, on the condition that Shell's lease is assumed by any purchaser. The Receiver also negotiated with TDL to waive its ROFR during the Receiver's sale process, on the condition that TDL could participate in the sales process and any purchaser must assume the TDL lease.

18. Set out below is a summary 152Co.'s unaudited income statement for the year ended December 31 2021.

1526400 Ontario Inc.
Summary of unaudited income statement
For the fiscal year ended December 31, 2021

Revenue (real property lease income)	\$ 272,000
Expenses	
Bank Charges	1,319
Cleaning and janitorial	3,983
Consultancy	1,200
Insurance	9,280
Landscaping and Plantation Expenses	19,990
Miscellaneous Expenses	260
Repair and Maintenance	17,759
Staff Costs	50,425
Telephone	3,587
Vehicle Repairs	2,836
Total Expenses	<u>110,639</u>
Earnings before interest, taxes and amortization	161,361
Less: Provision for income tax	4,441
Less: Mortgage and bank interest	101,718
Less: Amortization of tangible assets	23,056
Net Income	<u>\$ 32,146</u>

19. The Receiver has the following comments with respect to the above financial information:
- a. property lease revenue for 2023 is currently \$296,200;
 - b. realty taxes are paid as additional rent by the tenants and excluded from both revenue and expenses; and,
 - c. the majority of the staffing costs of \$50,425 were paid to Sunny Tiwana.

Business of 2244039 Ontario Inc.

20. 224Co. is the owner of the Cherrycrest Property.
21. 224Co. owns and operates an Esso gas bar, car wash and “On the Run” convenience store from the Cherrycrest Property.
22. 224Co. also leases portions of the Cherrycrest Property to TDL, 1280438 Ontario Ltd (“**128Co.**”) and Bell Mobility Inc. (“**Bell**”).
23. TDL owns and operates a takeout Tim Horton’s coffee bar within the “On the Run” convenience store. The lease with TDL commenced on October 25, 2013, for a term of ten years, with two five-year renewal options.

24. 128Co. operates a KFC/Taco Bell restaurant franchise from a stand alone building on the Cherrycrest Property. The lease with 128Co. was executed effective May 22, 2012 and amended effective May 7, 2016 to provide for occupancy on August 1, 2016 with a six month rent free fixturing period. The lease is for a period of ten years, with two five-year renewal options.

25. The lease with Bell allows Bell to operate a wireless communications tower. The lease was executed on January 1, 2012, for a term of five years, with three five-year renewal options.

26. Set out below is a summary 224Co's. unaudited income statement for the year ended December 31, 2021.

224039 Ontario Inc.	
Summary of unaudited income statement	
For the fiscal year ended December 31, 2021	
Revenue	\$ 10,824,166
Gross Profit	1,299,831
Rental revenue	170,831
	<u>1,470,662</u>
Expenses	
Advertising and promotion	8,777
Automobile	10,650
Bank and credit card charges	150,883
General and administrative	27,034
Insurance	11,841
Meals and entertainment	11,977
Office	10,663
Professional fees	38,720
Property taxes	75,090
Royalty fees	16,667
Repairs and maintenance	39,507
Salaries and wages	178,042
Telephone	3,005
Utilities	30,979
Canada emergency wage subsidies	(9,138)
Total operational expenses	<u>604,697</u>
Earnings before interest, taxes and amortization	865,965
Less: Provision For Income Tax	14,728
Less: Interest Expense	543,396
Less: Amortization of Tangible Assets	213,840
Net Income	<u>\$ 94,001</u>

27. The Receiver has the following comments with respect to the above financial information:

- a. revenue and gross profit relate to the gas station operations, convenience store and car wash owned and operated by 224Co.;

- b. rental revenue relates to lease income with TDL, 128Co. and Bell; and
- c. the salaries and wages were substantially paid to arm's length employees.

28. Further details about the Companies and the events leading up to the appointment of the Receiver can be found in the affidavit of Jaskunwar Gill (the "**Lenders' Representative**") sworn November 11, 2022, which was filed in support of the Lenders' application.

V. ACTIONS AND ACTIVITIES OF THE RECEIVER

29. Since the Appointment Date the Receiver undertook, among other things, the following actions and activities:

Cherrycrest Property

- a. met with Sunny Tiwana and his Father at the Cherrycrest Property on December 14, 2023, during which meeting the Receiver carried out the following:
 - i. inquired into the operations of the gas station, retail store and car wash and discussed security, key employees, cash controls, banking authorities, utilities and status of the Ontario Lottery and Gaming Corporation ("**OLG**") License;
 - ii. noted the fuel inventory levels;
 - iii. inspected and photographed the retail inventories;
- b. requested that Sunny Tiwana provide the Receiver with copies of relevant agreements and records, including:
 - i. latest statements/invoices for all utility companies;
 - ii. latest statements for all CRA accounts;
 - iii. historical sales reports from Global Fuel;
 - iv. insurance policies;
 - v. bank statements covering all transactions for the previous two weeks;
 - vi. contact information for the external accountant;
 - vii. snow removal contract; and
 - viii. summary of all creditors.
- c. authorized Sunny to continue managing daily operations, under the supervision and monitoring of the Receiver, subject to the Receiver carrying out all aspects of its mandate, including preparations for the commencement of a sales process;

- d. dismissed Sunny and his Father from the Cherrycrest Property on February 6, 2023 because, among other reasons, they were not responding satisfactorily to the Receiver's ongoing monitoring requests and to allow the Receiver to control the Cherrycrest Property and business operations for the commencement of its sales process. After the Receiver took possession of the Cherrycrest property on February 6, 2023 it undertook, among other things, the following actions and activities:
- i. retained a locksmith to change all exterior locks to the convenience store at the Cherrycrest Property;
 - ii. contacted each of: (i) the owner/operator of the KFC/Taco Bell franchise; (ii) the owner/operator of the Tim Horton's franchise; and, (iii) Bell Canada in order to advise of the appointment of the Receiver and ensure continued payment of rent as well as any rental arrears;
 - iii. attended the Bank of Nova Scotia ("**BNS**") to removed Sunny Tiwana and his Father from the banking authorities and adding a representative of the Receiver as the signing authority on 224Co.'s bank accounts;
 - iv. arranged for ongoing utility services;
 - v. retained 1753927 Ontario Inc. (the "**Cherrycrest Operator**") to operate the gas station, convenience store and car wash including, among other things, the following:
 - a. arranging for fuel deliveries;
 - b. setting daily motor fuel pump prices;
 - c. attending to any repairs and maintenance required at the property;
 - d. purchasing convenience store inventory and tobacco products;
 - e. hiring, managing and paying directly the employees needed for the operations; and,
 - f. depositing the cash sales into the BNS bank account;
 - vi. held discussions with representatives of Global Fuels Inc. ("**Global Fuels**") to advise of the appointment of the Receiver and negotiate a plan for the continued supply of fuel under the existing fuel supply agreement ("**Global Fuels Supply Agreement**");¹

¹ Global Fuels is the sole fuel supplier pursuant to a Motor Fuel Supply Agreement between 224Co. and Global Fuels dated January 1, 2018 and amended on November 9, 2020;

- vii. negotiated an agreement with Global Fuels whereby they agreed to temporarily waive their Right of First Refusal contained in the Global Fuels Supply Agreement during the Sales Process;
- viii. contacted both the Alcohol and Gaming Commission of Ontario (“AGCO”) and the OLG to activate the ‘lottery’ terminal which had been de-activated when the Receiver took possession of the Cherrycrest Property;²
- ix. applied for renewal of the expired business licenses with the City of Brampton;
- x. advised the City of Brampton of the Receiver’s appointment and requested current property tax certificates;

12016 Airport Road, Caledon

- a. attended the Bank of Nova Scotia (“**BNS**”) branch to remove Sunny Tiwana and his Father from the signing authorities and to add a representative of the Receiver as signing authority on 152Co.’s operating bank accounts;
- b. contacted both TDL and Shell to advise of the Receiver’s appointment and to confirm continuous payment of rent;
- c. negotiated with both TDL and Shell to temporarily waive their right of first refusal provisions included in their respective lease agreements during the sales process;
- d. contacted the Town of Caledon to advised of the Receiver’s appointment and requested a current property tax certificate;

Other Actions of the Receiver

- e. retained Paliare Roland (prior to its appointment) to act as the Receiver’s general counsel and Wildeboer Dellelce to act as transactional legal counsel;
- f. arranged for the mail of both 152Co. and 224Co. to be forwarded to the office of the Receiver;
- g. reviewed the existing insurance coverage for adequacy and contacted the insurance broker for the Companies to request that the Receiver be added as an additional insured and loss payee on the policies;

² OLG temporarily deactivate the ‘lottery’ terminal pending their review and acceptance of the Receiver’s application.

- h. retained Avison Young to prepare appraisals of both the Cherrycrest Property and the Airport Road Property (the “**Appraisals**”). Attached hereto as **Appendices “B” and “C”** are copies of the Appraisals which have had the capitalization rates and market values redacted. Unredacted versions of both appraisals are included as **Confidential Appendices “A” and “B”**;
- i. solicited listing proposals for the properties from three real estate brokerages and ultimately retaining Cushman & Wakefield ULC (“**C&W**”) as the listing agent for both properties;
- j. retained Fisher Engineering Limited (“**Fisher**”) to conduct current sampling and analysis of groundwater for both the Cherrycrest Property and the Airport Road Property;³
- k. prepared and issued the prescribed notices (together, the “**Receiver’s Notices**”) pursuant to Section 245(1) and 246(1) of the BIA on December 23, 2023. Copies of the Receiver’s Notices are attached hereto as **Appendix “D”**
- l. contacted the company’s external accountant to obtain certain of the books and records of the Companies and completed financial statements and tax returns;
- m. undertook the Sales Process to sell both the Cherrycrest Property and the Airport Road Property;
- n. contacted the CRA to confirm the amounts owing by the Companies for all CRA accounts;
- o. provided regular updates to the Lenders’ Representative regarding the administration of the receivership;
- p. in accordance with paragraph 25 of the Appointment Order, established the Case Website which the Receiver maintains and populates and,
- q. responded to the enquiries from various creditors and other stakeholders.

VI. ASSETS AND LIABILITIES

Assets

224Co.

30. 224Co.’s tangible assets consist of the following:

³ CSA standard Phase II ESA’s for both properties had been completed by Fisher in January/February 2022

- a. the Cherrycrest Property;
- b. the business, equipment and inventory of the gas station, retail store and car wash; and
- c. the property lease agreements with TDL, KFC/Taco Bell and Bell

152Co.

31. 152Co.'s tangible assets are the Airport Road Property and the property lease agreements with Shell and TDL.

Secured Liabilities

Mortgages over Real Property

224Co.

32. 224Co. granted certain of the Lenders the following charges on the Cherrycrest Property:

- a. a first charge in favour of 204, 222 and 560 in the amount of \$10,750,000; and
- b. a second charge in favour of 204, 222 and 441 in the amount of \$3,800,000.

33. The Receiver engaged its legal counsel, Paliare Roland, to provide an independent legal opinion in respect of the validity and enforceability of the Lenders' security over the Cherrycrest Property (the "**Security Opinion**").⁴

34. Subject to the standard assumptions and qualifications contained in the opinion, Paliare Roland is of the opinion that: (i) 204, 222 and 560 have a valid and enforceable first charge in accordance with its terms against the Cherrycrest Property; and (ii) 204, 222 and 441 have a valid and enforceable second charge in accordance with its terms against the Cherrycrest Property.

152Co.

35. 152Co. granted certain of the Lenders the following charges on the Airport Road Property:

- a. a first charge in favour of 204, 222 and 560 in the amount of \$10,750,000; and
- b. a second charge in favour of 204, 222 and 441 in the amount of \$2,000,000.

36. Subject to the standard assumptions and qualifications contained in the opinion, Paliare Roland is of the opinion that: (i) 204, 222 and 560 have a valid and enforceable first charge in accordance with its terms against the Airport Road Property; and (ii) 204, 222 and 441 have a valid and enforceable second charge in accordance with its terms against the Airport Road Property.

⁴ A copy of the Security Opinion in respect of Lenders security is available to the Court upon request.

PPSA Security

37. The Receiver continues to take steps to ascertain the status of certain registrations under the *Personal Property Security Act* (Ontario) ("**PPSA Security**") in respect to both 152Co. and 224Co. The Receiver will report further on these registrations in its next report to the Court.

38. As described below, the Receiver's proposed Interim Distribution (as defined below) will be premised on the consideration received for the Cherrycrest Property and the Airport Road Property (but not any consideration for other purchased assets to which PPSA Security may attach).

Realty Taxes

39. The Receiver estimates the realty tax arrears for 224Co. will be approximately \$125,000 at July 31, 2023 based upon the most recent realty tax statement.

40. The Receiver estimates the realty tax arrears for 152Co. will be approximately \$40,000 at July 31, 2023 based upon the most recent realty tax statement.

Canada Revenue Agency

41. The CRA conducted an audit of the Harmonized Sales Tax ("**HST**"), payroll deductions at source ("**DAS**") and corporate income tax accounts for both 224Co. and 152Co during the receivership administration. Based upon the audit, CRA issued claims to the Receiver on June 20, 2023 as follows:

224Co.

- a. an amount of \$16,004.60 in respect of corporate income tax. This debt is an unsecured liability;
- b. an amount of \$19,082.50 in respect of unpaid DAS of which \$8,606.59 represents a deemed trust that ranks in priority to the claims, secured or otherwise, of all creditors; and
- c. the assessment for unpaid HST had not been completed by CRA at the date of this report. The Receiver's preliminary calculation is that the CRA's assessment will be approximately \$140,000 plus penalties and interest, based upon the 2022 HST returns filed by 224Co. prior to the receivership. The Receiver cautions that the HST liability ultimately assessed by CRA may be materially different from this estimate if CRA uncovered material errors or irregularities during their audit which arose during the pre-receivership period.

152Co.

- d. an amount of \$91,191.50 in respect of corporate income tax. This debt is an unsecured liability;

- e. an amount of \$9,244.32 in respect of unpaid DAS of which \$2,684.85 represents a deemed trust that ranks in priority to the claims, secured or otherwise, of all creditors; and,
- f. an amount of \$194,053.88 in respect of HST of which \$164,555.98 represents a deemed trust that ranks in priority to the claims, secured or otherwise, of all creditors.

Unsecured Liabilities

42. The Receiver is not aware of any material unsecured creditors of 224Co. or 152Co. beyond the unsecured portions of the CRA liabilities set out above. However, the Receiver notes that the sale of the Cherrycrest Property and the Airport Road Property may trigger capital gains, recapture and other tax liabilities and result in, potentially, a further unsecured liability owing to the CRA. The Receiver is not able to estimate the quantum of these potential liabilities at this time.

VII. SALES PROCESS

43. In accordance with paragraphs 3(j) and 3(k) of the Appointment Order the Receiver was empowered and authorized to market and sell any or all of the property of the Companies, subject to Court approval, if any sale exceeded the thresholds established in the Appointment Order.

44. The Receiver entered into listing agreements with C&W on April 15, 2023 for the purposes of listing for sale both the Cherrycrest Property and the Airport Road Property.

45. On May 1, 2023 both of the real properties were publicly listed on the Multiple Listing Service with no asking price. The listing was for a period of 46 days with the bid deadline set for June 15, 2023 at 4 p.m. (Toronto time) (the “**Bid Deadline**”).

46. C&W established a virtual data room for each real property, which included information, documents and certain financial records available to the Receiver. Prior to gaining access to the data room a prospective purchaser was required to sign the Receiver’s form of Non-Disclosure Agreement (“**NDA**”). During the listing period, approximately 130 NDAs were signed for each of the Cherrycrest Property and the Airport Road Property.

47. Included in the virtual data room were the Receiver’s Terms and Conditions of Sale (“**T&C**”), which are attached hereto as **Appendix “E”**. The salient items included in the T&C were as follows:

- a. a deadline to make an offer of June 15, 2023 at 4 p.m. (Toronto time) (defined above as the Bid Deadline);
- b. each offer must be accompanied by a cash deposit of 10% of the total purchase price;

- c. any party whose offer is accepted by the Receiver must enter into an agreement of purchase and sale with terms consistent with insolvency related transactions. The Receiver's preferred form of asset purchase agreement was included with the T&C;
- d. the highest or any offer for the Property will not necessarily be accepted and the Receiver;
- e. each property is being sold on an "as is, where is" basis;
- f. the Receiver will not accept any offer which is conditional on financing;
- g. all offers are irrevocable by the offeror for a period of 10 business days from the Bid Deadline;
- h. for offers to purchase the Cherrycrest Property, offerors will be required to assume the Global Fuels Supply Agreement or such other agreement as agreed upon by the Offeror and Global Fuels;
- i. for offers to purchase the Airport Road Property, offerors will be required to assume the TDL and Shell lease agreements.

48. The Receiver received 8 offers to purchase the Cherrycrest Property and 12 offers to purchase the Airport Road Property by the Bid Deadline. A summary of the offers received for both properties is included as **Confidential Appendices "C" and "D"**.

49. On June 21, 2023 the Receiver accepted the offer from the Cherrycrest Purchaser to purchase the Cherrycrest Purchased Assets. The Receiver and the Cherrycrest Purchaser subsequently executed the Cherrycrest Purchase Agreement. Attached hereto as **Appendix "F"** is the Cherrycrest Purchase Agreement which has had the purchase price redacted. An unredacted version of the Cherrycrest Purchase Agreement is included as **Confidential Appendix "E"**.

50. On June 21, 2023 the Receiver accepted the offer from the Airport Road Purchaser to purchase the Airport Road Purchased Assets. The Receiver and the Airport Road Purchaser subsequently entered into the Airport Road Purchase Agreement. Attached hereto as **Appendix "G"** is the Airport Road Purchase Agreement which has had the purchase price redacted. An unredacted version of the Airport Road Purchase Agreement is included as **Confidential Appendix "F"**.

Terms of the Purchase Agreements

51. The purchase agreements for both properties are substantially the same and both contain the following salient terms:

- a. The purchase price is to be paid in cash on closing;
- b. The purchaser has provided the Receiver with a cash deposit of 10% of the purchase price;

- c. The assets being purchased by the Cherrycrest Purchaser include the Cherrycrest Property, the Contracts, the Inventory and the Books and Records, as those terms are defined in the purchase agreement;
- d. The assets being purchased by the Airport Road Purchaser include the Airport Road Property, the Contracts and the Books and Records, as those terms are defined in the purchase agreement;
- e. The purchasers are purchasing the property on an “as is, where is” basis and the Receiver is providing no representations or warranties in respect of these assets, as is typical for transactions of this nature;
- f. The Cherrycrest Purchase Agreement is conditional only upon this Court approving the Cherrycrest Transaction and vesting in the Cherrycrest Purchaser 224Co.’s right, title and interest in and to the Cherrycrest Purchased Assets free and clear of any and all encumbrances; and
- g. The Airport Road Purchase Agreement is conditional only upon this Court approving the Airport Road Transaction and vesting in the Airport Road Purchaser 152Co.’s right, title and interest in and to the Airport Road Purchased Assets free and clear of any and all encumbrances.

Court Approval

52. In accordance with paragraph 3(k) of the Appointment Order, the Receiver is not permitted to sell any of the property of the Companies if the aggregate consideration exceeds \$100,000. Accordingly, the Receiver requires Court approval to complete both the Cherrycrest Transaction and the Airport Road Transaction.

Cherrycrest Transaction

53. The Receiver believes that the Cherrycrest Transaction as contemplated by the Cherrycrest Purchase Agreement is fair and reasonable for the following reasons:

- a. The quantum of the purchase price is higher than the appraised amount set out in the Cherrycrest Property appraisal (the unredacted version of the Cherrycrest Property appraisal is included a Confidential Appendix “B”);
- b. The Cherrycrest Property was listed publicly for a period of 46 days which, in the Receiver’s opinion, provided adequate market exposure;
- c. The Cherrycrest Purchaser has provided a non-refundable deposit of 10 percent of the purchase price;

- d. The Cherrycrest Purchase Agreement is conditional only upon the Court's approval of the Cherrycrest Transaction and vesting in the Cherrycrest Purchaser the Cherrycrest Purchased Assets free and clear of any and all encumbrances;
- e. The Cherrycrest Purchase Agreement contemplates that the Cherrycrest Purchaser shall purchase the Cherrycrest Property on an "as is, where is" basis and that the Receiver is providing no representations or warranties in respect of the Cherrycrest Property; and
- f. Subject to obtaining Court approval, the Receiver anticipates closing the Cherrycrest Transaction forthwith after Court approval, which reduces the inherent risks associated with remaining in possession and control of the Cherrycrest Purchased Assets.

54. For the reasons stated above, the Receiver believes that the Cherrycrest Transaction, as contemplated in the Cherrycrest Purchase Agreement, is fair and reasonable and represents the highest and best realization for the Cherrycrest Purchased Assets.

Airport Road Transaction

55. The Receiver believes that the Airport Road Transaction as contemplated by the Airport Road Purchase Agreement is fair and reasonable for the following reasons:

- g. The quantum of the purchase price is higher than the appraised amount set out in the Airport Road Property appraisal (the unredacted version of the Airport Road Property appraisal is included a Confidential Appendix "C");
- h. The Airport Road Property was listed publicly for a period of 46 days which, in the Receiver's opinion, provided adequate market exposure;
- i. The Airport Road Purchaser has provided a non-refundable deposit to the Receiver in the amount of 10 percent of the purchase price;
- j. The Airport Road Purchase Agreement is conditional only upon the Court's approval of the Airport Road Transaction and vesting in the Airport Road Purchaser the Airport Road Purchased Assets free and clear of any and all encumbrances;
- k. The Airport Road Purchase Agreement contemplates that the Airport Road Purchaser shall purchase the Airport Road Property on an "as is, where is" basis and that the Receiver is providing no representations or warranties in respect of the Airport Road Property; and
- l. Subject to obtaining Court approval, the Receiver anticipates closing the Airport Road Transaction forthwith after Court approval, which reduces the inherent risks associated with remaining in possession and control of the Airport Road Property.

56. For the reasons stated above, the Receiver believes that the Airport Road Transaction, as contemplated in the Airport Road Purchase Agreement, is fair and reasonable and represents the highest and best realization for the Airport Road Purchased Property in the circumstances.

57. The sale proceeds generated from the Cherrycrest Transaction and the Airport Road Transaction are expected to result in a full payout of the secured claims of the Lenders with an expected surplus available for the unsecured creditors and shareholders of one or both Companies. The Receiver will provide a further report to the Court in due course with its recommendation for the distribution of any available surplus for the unsecured creditors and shareholders.

58. Accordingly, the Receiver recommends that (i) this Court approve both the Cherrycrest Transaction and the Airport Road Transaction as contemplated by the Cherrycrest Purchase Agreement and the Airport Road Purchase Agreement; (ii) authorize completion of both transactions; and (iii) grant Orders: (a) vesting title of the Cherrycrest Purchased Assets in and to the Cherrycrest Purchaser; and (b) vesting title of the Airport Road Purchased Assets in and to the Airport Road Purchaser.

VIII. INTERIM SRD

59. The Receiver will provide a full accounting of the receipts and disbursements for both 224Co. and 152Co. in a subsequent report to Court. As of July 5, 2023 the balance of funds in the Receiver's estate trust bank accounts for 224Co. and 152Co. are \$201,851.16 and \$4,513.94, respectively.

IX. RECEIVER'S AND ITS COUNSEL'S ACCOUNTS

60. The fees of the Receiver for the period to June 27, 2023 are detailed in the affidavit of Joe Albert, a copy of which is attached as **Appendix "H"**.

61. The Receiver's fees encompass 727.9 hours at an average hourly rate of approximately \$458 for a total of \$333,385 and applicable taxes. The Receiver is therefore requesting that this Court approve total fees inclusive of applicable taxes in the amount of \$376,725.

62. The fees and disbursements of Paliare Roland for the period November 9, 2022 to June 30, 2022 are detailed in the affidavit of Beatrice Loschiavo affirmed July 6, 2023, a copy of which is attached as **Appendix "I"**.

63. Paliare Roland's fees encompass 45.6 hours at an average hourly rate of approximately \$743 for total fees of \$33,889.50 and accounts totalling \$40,080.71 inclusive of disbursements and applicable taxes. The Receiver is therefore requesting that this Court approve Paliare Roland's total fees and disbursements inclusive of applicable taxes in the amount of \$40,080.71.

64. The fees and disbursements of Wildeboer Dellelce for the period February 24 to June 30, 2023 are detailed in the affidavit of Cassidy Doherty a copy of which is attached as **Appendix "J"**.

65. Wildeboer Dellelce fees encompass 36.9 hours at an average hourly rate of approximately \$617 for a total of \$22,759.00 prior to disbursements of \$577.10 and applicable taxes. The Receiver is therefore requesting that this Court approve Wildeboer Dellelce's total fees and disbursements inclusive of applicable taxes in the amount of \$26,330.92.

66. The Receiver is of the view that the hourly rates charged by Paliare Roland and Wildeboer Dellelce are consistent with the rates charged by law firms practising in the area of insolvency in the Toronto market and that the fees charged are reasonable and appropriate in the circumstances.

X. RECEIVER'S PROPOSED DISTRIBUTION

67. The Receiver proposes the following distribution of the sale proceeds from the Cherrycrest Transaction and Airport Road Transaction (collectively the "**Interim Distributions**"):

- a. payment of the amount due on closing for any realty taxes owing on either or both of the Cherrycrest Property and the Airport Road Property as at the closing date;
- b. payment of the charges due under the Appointment Order and, specifically, the unpaid fees of the Receiver and its counsel, Paliare Roland and Wildeboer Dellelce, as approved by this Court;
- c. Payment of the sums due to the CRA in priority as follows:
 - i. 224Co: unpaid source deductions deemed trust in the sum of \$8,606.59;
 - ii. 224Co: HST deemed trust in full, once assessed by CRA;
 - iii. 152Co.: HST deemed trust in the sum of \$164,555.98;
 - iv. 152Co.: unpaid source deductions deemed trust in the sum of \$2,684.85
- d. payment of the amounts due to the Lenders up to the amount of the total indebtedness owing to such Lenders and allocated as consideration for the Cherrycrest Property and the Airport Road Property which amounts may be adjusted at the Receiver's discretion on receiving updated loan amounts from the Lenders.

XI. RECEIVER'S CONCLUSION AND RECOMMENDATION

68. Based on the foregoing, the Receiver respectfully submits this First Report to the Court in support of the Receiver's motion for an Order:

- a. approving this First Report and the Receiver's activities as outlined herein;
- b. authorizing and directing the Receiver to complete the Cherrycrest Transaction as contemplated by the Cherrycrest Purchase Agreement, with such minor amendments as the Receiver may deem necessary or appropriate, and take all steps necessary to give effect to the Cherrycrest Transaction;
- c. vesting the Cherrycrest Purchased Assets in the Cherrycrest Purchaser free and clear of all encumbrances pursuant to approval and vesting orders in a form consistent with the one

approved by the Commercial List User's Committee of the Ontario Superior Court of Justice, to be effective upon the Receiver filing the Receiver's Certificate attached thereto;

- d. authorizing and directing the Receiver to complete the Airport Road Transaction as contemplated by the Airport Road Purchase Agreement, with such minor amendments as the Receiver may deem necessary or appropriate, and take all steps necessary to give effect to the Airport Road Transaction;
- e. vesting the Airport Road Purchased Assets in the Airport Road Purchaser free and clear of all encumbrances pursuant to approval and vesting orders in a form consistent with the one approved by the Commercial List User's Committee of the Ontario Superior Court of Justice, to be effective upon the Receiver filing the Receiver's Certificate attached thereto;
- f. sealing the unredacted versions of the Appraisals, Cherrycrest Purchase Agreement, Airport Road Purchase Agreement as well as a summary of offers until the closing of the respective transaction;
- g. distributing the amounts as proposed in this First Report following the closing of the Cherrycrest Transaction and the Airport Road Transaction; and
- h. approving the fees and disbursements of the Receiver and its counsel, Paliare Roland and Wildeboer Dellelce, as outlined herein.

All of which is respectfully submitted this 7th day of July 2023

**ALBERT GELMAN INC., solely in its
capacity as Court-Appointed Receiver
of each of the Companies, and not in
any other capacity**



Per: _____

Joe Albert, CPA, CIRP, LIT

TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) THURSDAY, THE 1ST
JUSTICE KIMMEL)
DAY OF DECEMBER, 2022

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicants 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 Albert Gelman Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2244039 Ontario Inc. and 1526400 Ontario Inc. (the

"Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at via videoconference.

ON READING the affidavit of Jaskunwar Gill sworn November 4, 2022, and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, Respondents and those parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the affidavit of service of Shahista Afroze sworn November 11, 2022 and on reading the consent of Albert Gelman Inc. to act as the Receiver, and upon being advised of the consent of the parties as set forth in the court's endorsement of today's date,

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 application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Albert Gelman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, 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 Debtors, 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 Debtors;
- (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 Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors, 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 Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed

shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, 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 Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their 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

Debtors, 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 DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors 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 Debtors 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 Debtors, 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 Debtors 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 Debtors 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 Debtors' 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 Debtors 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 Debtors, 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 \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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 Debtors.

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 Debtors' 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.



Digitally signed by Jessica
Kimmel
Date: 2022.12.01 15:43:32
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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00690513-00CL DATE: 1 December 2022

NO. ON LIST: 6
12 PM

TITLE OF PROCEEDING: 2046245 ONTARIO ET AL -v- 2244039 ONTARIO ET AL

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
BOTA McNAMARA	Applicants' Counsel	bmcnamara@kmlaw.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
PAUL MAND	Respondents' Counsel	pmand@mandlaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
BRYAN GELMAN	Proposed Receiver	jalbert@albertgelman.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. The parties have come to an agreement on the terms of an order for the appointment of a receiver on the condition that it be stayed. Counsel advise that no other person served with this application has responded or taken any position and that there are no other known creditors or persons who would have cause to object to the order and the terms and conditions herein.
2. The below endorsement was drafted by the parties and has been jointly submitted by them for the court's approval. It is approved. Order to go in the form signed by me today, subject to the following terms and conditions:
 1. The application to appoint a receiver is granted in the terms of the draft order set out in the application record herein ("the Appointing Order").
 2. The Appointing Order is stayed until 9am on December 13th, 2022 to permit the Respondents to:
 - a. discharge and pay in full the debt due and owing under The Second 224 and 152 Loan and Security Documents, as defined in the Notice of Application herein; and
 - b. paydown the principal debt due and owing under The First 224 and 152 Loan and Security Documents, as defined in the Notice of Application herein, in the amount of \$1,000,000.00 together with all outstanding interest and fees due and owing under The First 224 and 152 Loan and Security Documents; and
 - c. enter into an agreement in a form reasonable satisfactory to the Applicants to amend The First 224 and 152 Loan and Security Documents that provides:
 - i. to secure a debt of \$9,750,000.00 with a maturity of January 30th, 2023 pursuant to and in accordance with the updated terms and conditions outlined and set out in the new Mortgage Loan Commitment agreed between the parties dated November 30th, 2022 ("New Commitment").
 - ii. the payment of the renewal fee of \$292,500.00.
 - iii. to the extent agreed to by the New Commitment discharge the First 152 Mortgage, the First 152 Assignment, both as defined in the Notice of Application herein, and any other security granted by 1526400 Ontario Inc. to the Applicants.
3. Should the Respondents fulfil the requirements of clauses 2(a), 2(b) and 2(c) above, on or before December 12th, 2022 the Appointing Order is further stayed until 9am on January 31st, 2022.
4. Should the Respondents fail to fulfil the requirements of clauses 2(a), 2(b) and 2(c) above, on or before December 12th, 2022 the Appointing Order shall be of full force and effect as of 9am December 13th, 2022 without need for further order of the court and this endorsement shall have no further effect.
5. Should the Respondents fail to discharge and pay in full the debt due and owing under the amendment to The First 224 and 152 Loan and Security Documents as provide for by clause 2(c) above on or before January 30th, 2023 the Appointing Order shall be of full force and effect as

of 9am January 31st January, 2023 without need for further order of the court and this endorsement shall have no further effect.

6. Should the Respondents discharge and pay in full the debt due and owing under the amendment to The First 224 and 152 Loan and Security Documents as provide for by clause 2(c) above on or before January 30th, 2023 the Appointing Order is withdrawn and dismissed and the Notice of Application is withdrawn and dismissed with no costs payable to either of the parties.

A handwritten signature in black ink, appearing to read "Kimmel J.", written in a cursive style.

KIMMEL J.

TAB B

Appraisal Report

GAS STATION

**35 Cherrycrest Drive,
Brampton, ON**

Effective Date: January 19, 2023

Prepared for:

ALBERT  GELMAN

Prepared by:

Avison Young Valuation & Advisory Services, LP

55 Commerce Valley Drive West, Suite 501,

Mailbox #7, Markham, ON L3T 7V9

T 905 474 1155 **F** 905 886 5744

www.avisonyoung.ca

April 27, 2023

Albert Gelman Inc.

60 Shaftesbury Avenue
Toronto, ON
M4T 1A3

Attention: Joe Albert and Bryan Gelman

Re: 35 Cherrycrest Drive, Brampton, Ontario

At your request, we have examined the above-referenced property for the purpose of estimating the current market value, as of January 19, 2023. It is our understanding this report is being prepared for internal valuation purposes to assist in potential sale of the site under court ordered procedures. This report satisfies appropriate industry and client standards.

The property under appraisal is located on the south of Ebenezer Road, north of Queen Street East, along Cherrycrest Drive in the City of Brampton and Province of Ontario. Most of the site not structurally improved is used as asphalt-based parking and vehicular access. The subject site is improved with an Esso gas bar consisting of ten pumps with ten petrol nozzles and one diesel nozzle, a one-storey, 2,496 square foot commercial used as an On the Run convenience store together with a Tim Hortons kiosk equipped with a drive through. The 565 square foot Tim Hortons kiosk is located along the building's southerly elevation. A 2,557 square foot (excluding waster enclosure) commercial building houses a KFC/Taco Bell fast food restaurant. The building is equipped with a drive-through. The subject property is also improved with a one-storey, 1,130 square foot concrete block, automatic car wash building.

The highest and best use of the property is the current gas station and ancillary retail use. The Income and Direct Comparison Approaches are developed and have been relied upon in reconciling a final market value estimate. The Cost Approach is deemed not to provide any additional insight and is not developed in this report. An exposure and marketing period of six to twelve months is forecast at our estimate of market value.

Based upon our investigation of the real estate market and after considering all of the pertinent facts as set forth in the body of this appraisal report, as of January 19, 2023, the subject property is estimated to have a current market value of:



Extraordinary Assumptions

- We were not provided with a breakdown of the convenience store sales allocated towards goods, lottery, car wash, propane, tobacco etc. Therefore, we have relied on the 2022 ‘total sales’ information (January to October) provided by the client to assess the convenience store total revenue. This information is considered to be factually correct, and the appraiser reserves the right to make changes to the analysis if contradictory information is made available at a later stage.
- As per lease agreement, Tim Hortons pays a percentage rent to the landlord i.e., at 6.00% of Tim’s annual sales revenue. This sale revenue is the best indicator for estimating the appropriate income from the leased space. However, we were not provided with Tim Hortons sale revenue for 2022. We have relied on the rental income provided by the client for our analysis (Jan – Oct 2022). This information is considered to be factually correct, and the appraiser reserves the right to make changes to the analysis if contradictory information is made available at a later stage.
- No cross-lease agreement was provided, however Appraiser has relied on information provided by client i.e., the cross lease rebate is 3.5 cents per litre. This information is considered to be factually correct, and the appraiser reserves the right to make changes to the analysis if contradictory information is made available at a later stage.

The full narrative appraisal report that follows sets forth the pertinent data and analyses leading to the conclusions presented herein. The appraisal requirements section of this report sets out the basis of the appraisal, definitions and the valuation methodology and must be read to gain a full understanding of the process.

Respectfully submitted,
Avison Young Valuation & Advisory Services, LP

Handwritten signature of Siddharth Durani in black ink.

Siddharth Durani, MRICS, AACI, P. App.
siddharth.durani@avisonyoung.com

Handwritten signature of Graham Morrison in black ink.

Graham Morrison, HBA, AACI, P. App.
graham.morrison@avisonyoung.com

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Executive Summary

Subject Property Photo

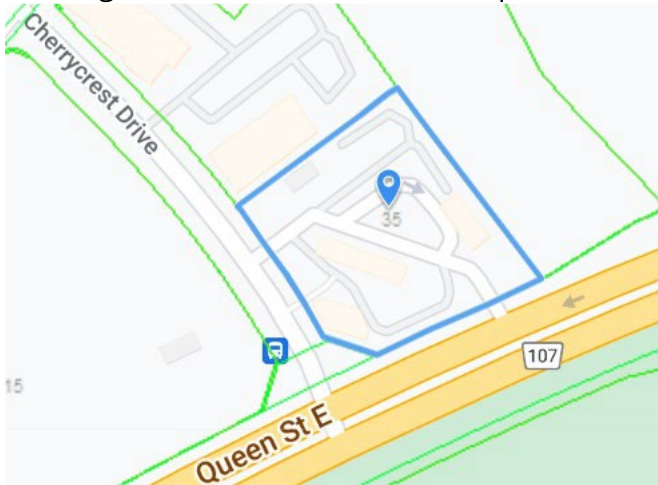


Property Type	Gas Station and Ancillary Retail (comprising of a convenience store, a car wash and quick service restaurant)
Municipal Address	35 Cherrycrest Drive, Brampton, Ontario
Owner of Record	2244039 ONTARIO INC (Current Owner)
Sale History	The subject property has not sold in the past three years nor is it currently available on the open market.
Purpose	Estimate the current market value.
Intended Use	Internal valuation purposes to assist in potential sale of the site under court ordered procedures
Intended User	Albert Gelman Inc.
Property Rights Appraised	Fee Simple and Leased Fee Interest
Date of Inspection	January 19, 2023
Date of Valuation	January 19, 2023
Zoning	Highway Commercial - HC2-1489 Zone
Land Area	2.00 acres (MPAC)
Gross Building Area	6,176 sq. ft. (provided by client)
Number of Pumps/Nozzles	10 petrol pumps with 10 petrol nozzles and 2 diesel nozzles
Number of Litres/Annum (2023)	7,353,648 litres/annum Estimated by applying a 3.00% growth rate assumption on 2022 gas sales volume provided by client
Highest and Best Use	Current gas station and retail use
Estimated Exposure Marketing Time	6 – 12 months

Property Data

Site Description

Municipal Address	35 Cherrycrest Drive, Brampton, Ontario
Location	South of Ebenezer Road, north of Queen Street East, along Cherrycrest Drive in the City of Brampton and Province of Ontario
Land Area	2.00 acres (MPAC)
Shape	Rectangular (see Geowarehouse map below)



Site Coverage	Approximately 7.72% (excluding gas bar area)
Topography	The site is at grade with Cherrycrest Drive and Queen Street East

Site Improvements

Access	Vehicle access is provided from Queen Street East and Cherrycrest Drive
Services	All municipal services are available to the subject site.
Landscaping	Adequate for the current use.
Condition	All site improvements are considered to be in average physical condition.
Easements / Restrictions	None that would have a negative impact on the value or marketability of the subject property.

Property Data

Soil Conditions

We have not undertaken a detailed soil analysis, and as we are not qualified to comment on soil conditions, we have assumed that there are not contaminants affecting the site. The sub-soil is assumed to be similar to other lands in the area and suitable in drainage qualities and load bearing capacity to support the existing or additional development.

Commentary

Overall, the subject site is capable of supporting development consistent with the current gas station and retail use.

Property Data

Description of Physical Improvements

The subject property is located at the northwest corner of Cherrycrest Drive and Queen Street (Highway 7) in the City of Brampton.

The majority of the site not structurally improved is used as asphalt-based parking and vehicular access. The subject is improved with a gas bar with a canopy. The subject property is also improved with a one-storey, 2,496 square foot commercial building with a brick and commercial stone exterior. The building is used as an On the Run convenience store together with a Tim Hortons kiosk equipped with a drive through. The 565 square foot Tim Hortons kiosk is located along the building's southerly elevation. A 2,557 square foot (excluding waster enclosure) commercial building houses a KFC/Taco Bell fast food restaurant. The building is equipped with a drive-through. Further, the subject property is improved with a one-storey, 1,130 square foot concrete block, automatic car wash building. It has a pre-cast concrete panel roof deck. A cell phone tower leased to Bell Mobility is located at the northeasterly corner of the subject site.

The convenience store i.e., On-the-Run is leased under a non-arm's length transaction.

GENERAL INFORMATION

Use Gas Station & Ancillary Retail

Source of Measurements MPAC & Lease Agreements

Gross Building Area 6,183 square feet

No. of Stories One

Year Built 2016 (MPAC)

STRUCTURAL

Foundation Poured concrete pad

Structure Structural steel frame

Exterior Walls Brick and stone veneer exterior

Roof Flat (not inspected)

Property Data

FINISH & SYSTEMS

Gas Bar Use	Esso Gas Bar consisting of ten petrol pumps with 12 nozzles
Retail Use	<p>2,496 square foot commercial building used as an On the Run convenience store together with a Tim Hortons kiosk equipped with a drive through. The 565 square foot Tim Hortons kiosk is located along the building's southerly elevation.</p> <p>2,557 square foot (excluding waster enclosure) commercial building houses a KFC/Taco Bell fast food restaurant. The building is equipped with a drive-through.</p>
Car Wash Use	One-storey, 1,130 square foot concrete block, automatic car wash building.
Floors	Ceramic tile
Ceilings	T-Bar Ceilings with fluorescent lighting throughout the convenience store. Fluorescent and pot lighting in restaurants.
Electrical	Adequate
HVAC	Rooftop mounted HVAC
Fire Safety	Fire Extinguishers
Renovations	None noted
Deferred Maintenance	None noted

SUBJECT PROPERTY PHOTOGRAPHS



SUBJECT PROPERTY PHOTOGRAPHS



Property Data

INTERIOR & EXTERIOR PHOTOGRAPHS



Convenience Store



Gas Pump



KFC/Taco Bell



KFC/Taco Bell



Car Wash



Convenience Store

Property Data

Municipal Data

Official Plan

Business Corridor – This designation permits a broad range of commercial uses. The uses as a gas bar, convenience store, car wash and fast-food restaurant is considered to be consistent with the Official Plan for the City of Brampton.

Zoning Classification

HC2: Highway Commercial – The site is designated as Highway Commercial Two - HC2-1489 Zone. This designation allows a number of commercial uses including: a service station or gas bar, convenience store, convenience restaurant, take-out restaurant and a motor vehicle washing establishment. The use of the subject property as a gas bar with a convenience store, car wash and fast-food restaurants are considered to be legally permissible and conforming for the purposes of this report.

Real Estate Tax

We were supplied with the financial statement that indicated real estate taxes at 73,464 in 2020 and \$60,705 in 2022. We have taken an average and estimated real estate taxes at \$67,080 for the forecast year.

Assessed Value as per MPAC:

Roll Number: 211012000313306

Assessed Value (as of January 1, 2016): \$3,145,000

Market Overview

Gasoline & Diesel Market Overview (Kalibrate Canada Inc. Q4' 2022)

Although crude prices declined in the fourth quarter, retail gasoline prices decreased by 11.7 cents per litre compared to the third quarter, while retail diesel prices increased by 26.2 cents per litre.

Canadian retail gasoline prices declined in the fourth quarter as crude prices weakened and refining margins contracted. Conversely, retail diesel prices increased in the same period as refining margins widened upon distillate shortages across the planet. Crude prices declined from the previous quarter as recession fears grew. Ongoing high inflation into the fourth quarter led many central banks to raise prime lending rates, further contributing to fears of an impending global recession. Unplanned refinery outages in the U.S. and labour strikes at French refineries also supported falling crude oil prices. Likewise, Chinese demand for crude declined as the government implemented severe lockdowns to reduce COVID19 infections. Although in response to the Organization of Petroleum Exporting Countries and its allies (OPEC+) instituting a production cut to raise crude prices, the U.S. government countered by releasing crude oil from its Strategic Petroleum Reserves, the effect on crude prices was negligible. Record high refined product margins in part due to falling crude prices, especially for distillate fuels, incentivized refineries in the U.S. to run at a robust average of 91.1 percent utilization rate in the fourth quarter, while in Canada, refineries ran at a 90.6 percent utilization rate. However, refining capacity constraints and strong diesel export demand, particularly to Europe, hindered refiners from building product inventories, which remained unseasonably low. Consequently, Canadian diesel prices remained high in the fourth quarter.

Gasoline inventories in North America were 2.1 percent lower than in the same quarter last year (EIA). North American gasoline demand averaged 7.3 percent lower in the fourth quarter than the previous year. Gasoline inventories remained low as refiners favored diesel production. Gasoline refining margins marginally declined in the fourth quarter, falling nearly four cents per litre (cpl) from the previous quarter. However, lower gasoline inventories have kept gasoline refining margins elevated, averaging 9.6 cpl higher than the previous five-year average for the quarter. Consequently, Canadians experienced higher fourth quarter pump prices compared to a year ago by an average of 16.4 cpl.

North American distillate inventories showed signs of balancing towards the end of the quarter due to lower continental demand but remained unseasonably low due to rising exports. Diesel demand was 6.1 percent lower this past quarter than the previous year. Diesel stocks were 4.2 percent lower in the fourth quarter year-over-year (EIA). As a result of ongoing shortages, Canadian diesel refining margins were a record 51.9 cpl above the previous five-year average for the quarter, and retail diesel prices averaged \$2.14 per litre for the quarter.

Figure 1: Canadian Average Regular Gasoline and Component Prices

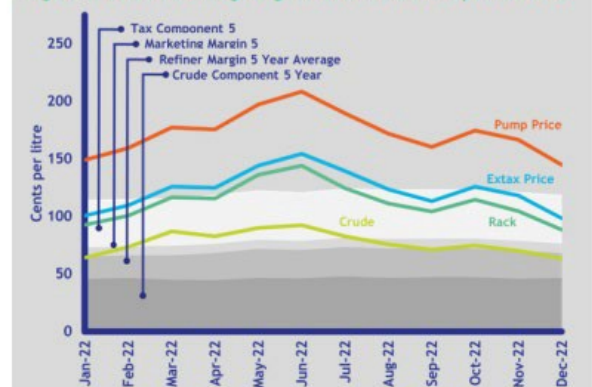
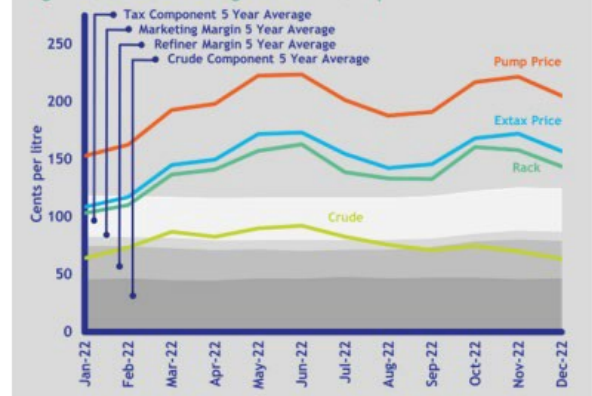


Figure 2: Canadian Average Diesel and Component Prices



Market Overview

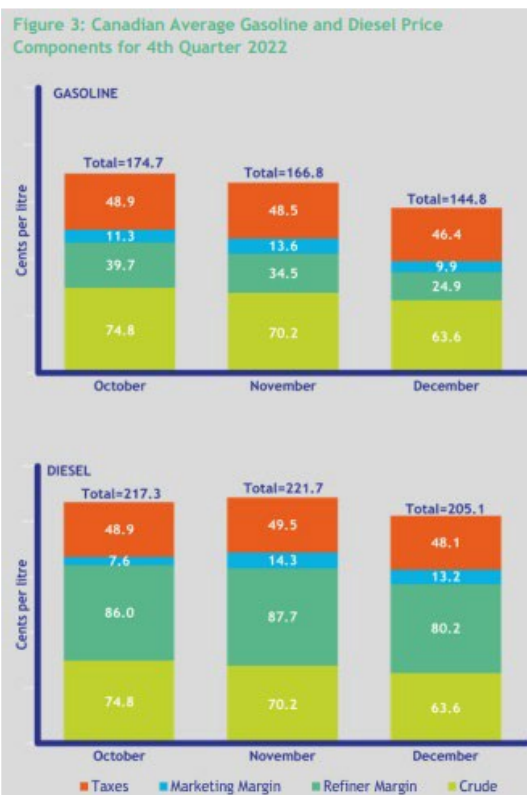
Although volatility in crude prices was common in the fourth quarter as recession fears, production cuts, refinery outages, and demand drop-offs weighed against supply concerns, overall crude prices declined throughout the fourth quarter. The price of Brent crude (a global benchmark) began the quarter at 93.33 \$US/BBL before falling and ending at 80.92 \$US/BBL, a 13.3 percent decline. Similarly, the North American benchmark, WTI, began the quarter at 87.55 \$US/BBL before declining, ending at 76.44 \$US/BBL, a 12.7 percent decline. Brent's premium to WTI averaged 5.93 \$US/BBL, down 0.21 \$US/BBL from the previous quarter, after reaching as high as 9.31 \$US/BBL in mid-November. A strong U.S. dollar due to rising interest rates made oil priced in U.S. dollars more expensive, increasing the demand for Brent.

Gasoline and Diesel Market Overview

Canadians found some relief from high inflation at the pumps this past quarter as gasoline prices decreased, largely upon lower crude prices. By December, the crude component had fallen 7.7 cpl lower than at the end of the last quarter. Refining margins also declined, down 8.1 cpl upon lower seasonal demand for gasoline. Overall, retail gasoline prices fell 15.4 cpl over the quarter and ended the year just 2.7 cpl higher than a year ago. Regional retail gasoline prices varied substantially in the fourth quarter, particularly along the West Coast of Canada, as wholesale rack prices declined by 41.5 cpl from the end of October to the end of December. Increased refinery output along the North American West Coast and falling crude oil prices led to a steep decline in price disparity compared to the rest of Canada.

Although crude prices declined in Canada in the fourth quarter, diesel refining margins remained elevated. Ongoing inventory shortages in North America and increased demand from European markets incentivized refiners to produce distillate fuels. As a result, refiner margins in the fourth quarter averaged 26.2 cpl higher than the previous quarter. Refiner margins contracted in December, indicating that supplies could begin to balance.

In addition to lower refinery capacity along the North American East Coast coupled with increased seasonal demand for distillate fuels used for heating during winter months, higher volumes of distillate exports to European markets have caused diesel pump prices across Eastern Canada to average 36.2 cpl higher than Western Canada at the end of December. Severe winter storms across much of North America and a pipeline outage in mid-December limited production, resulting in limited inventory builds along the East Coast, contributing to higher refining margins.



Market Overview

Next Quarter Market Outlook

Crude oil prices will likely decline heading into 2023 as global crude oil inventories are expected to build upon lower demand from a probable economic recession due to constrictive monetary policies as governments attempt to curb high global inflation. With crude oil prices declining and lower seasonal demand, gasoline prices will trend lower. Refining margins for diesel fuel could continue to contract upon lower demand as the need for heating fuel declines as spring approaches. Additionally, distillate fuel consumption is an indicator of economic activity; with a recession on the near-term horizon, a drop-in economic activity will cause a decline in demand and, therefore, prices. However, any reductions in diesel refining margins and prices could be partially offset by continued European demand due to upcoming economic sanctions on Russian refined petroleum products coming into effect in February 2023.

Fuel prices such as gasoline and diesel have long been a part of the news cycle as well as topics of discussion between people, particularly when comparing regional prices. 2022 was no exception as retail gasoline prices were incredibly high, outpacing the previous ten-year monthly average and setting price records. Diesel prices were even higher than their ten-year monthly average, mainly due to widening refining margins. In 2022, the average Canadian low point for retail gasoline prices occurred in mid-December at 140.7 cpl, while the highest price occurred in early June at 215.1 cpl, a difference of 74.4 cpl, or 52.9 percent. For diesel prices, the average Canadian low point occurred at the beginning of January at 147.1 cpl, while the highest price occurred in mid-October at 234.2 cpl. This was a difference of 87.1 cpl, or 59.2 percent. Fuel prices have recovered from price levels seen during the COVID-19 pandemic, but price hikes far outpaced expectations as fuel demand returned. Rising crude oil prices throughout 2022 and global distillate shortages were the main culprits in driving up diesel prices, while rising demand as society returned to somewhat normal consumption patterns were the main factors in high gasoline prices experienced earlier in the year.

Gasoline prices usually follow a seasonal pattern of rising in the spring and summer and declining in the fall and winter months. This is because people travel more in the warmer months of spring and summer and stay closer to home in the fall and winter. What's interesting to note in 2022 is uncharacteristic spikes in March and October. Crude oil costs are components in fuel pricing; however, with crude oil being a globally traded commodity, it is subject to macroeconomic events. In March, as a result of the Russian invasion of Ukraine, Canada and the U.S. announced a ban on Russian oil and energy imports, while other countries, such as the U.K., committed to phasing out Russian oil by year-end. In October, OPEC+ announced aggregate crude oil production cuts of two million barrels per day in a strategic policy to prop up global crude oil prices.

For diesel fuel, prices are also seasonal, but follow a different pattern than gasoline. As seen in the ten-year monthly average retail pump price, diesel prices rise in the fall and winter when diesel use increases to assist with crop drying following the fall harvest season and for use as residential heating oil. However, diesel prices in 2022 had months that diverged from these historical trends, with elevated prices occurring in spring and early summer. Similar to gasoline prices, rising crude oil prices due to economic sanctions and production cuts impacted diesel pump prices. However, unlike gasoline, diesel prices were further impacted by historically low inventories for distillates (which include diesel fuels) due to lower North American refinery capacity and increased exports, particularly to Europe, due to sanctions against Russia.

Market Overview

The main influencing components to higher diesel pricing in 2022 were higher crude oil prices and refiner margins, prompting refiners to respond to low supply and increased crack spreads. Crude oil input costs in 2022 were 28.8 cpl higher than the previous ten-year average, or 59.2 percent. Refiner margins in 2022 were 35.3 cpl higher than the previous ten-year average, or 129.3 percent.

On average, weekly distillate stocks in 2022 were 19.0 percent below the previous five-year monthly averages, with distillate stocks typically ebbing and flowing along historical patterns. Distillate stock levels typically decline in spring and fall as the agricultural activity ramps up, along with inventory building of heating fuel oil in anticipation of winter. Refiners also choose to conduct maintenance operations each year during the spring and fall as the weather allows operations to occur more smoothly. With slightly increased demand from the agricultural industry and refinery utilization at decreased levels, it is normal to see distillate stocks decrease during the spring and fall seasons. However, these two recurring events cannot explain the unseasonably low levels of distillate stocks seen in 2022.

A factor that has contributed more to falling distillate stocks is the decline in North American refining capacity. As seen in Table 1, U.S. refining capacity has fallen in the past several years as several unprofitable refineries were closed. Similarly, in Canada, 2020 saw the closure of the Newfoundland Come By Chance Refinery, reducing Canada's refining capacity by 6.2 percent. U.S. atmospheric crude oil distillation capacity declined by 5.4 percent in 2022 compared to 2020 levels. It is unlikely to increase again as no new refineries are expected to be built in the U.S. or Canada.

However, the primary factor for distillate stocks to be below average is the Russian invasion of Ukraine and the resulting cutoff of Russian imports. Before the war began, the U.S. was importing approximately 700,000 barrels per day of Russian crude oil and petroleum products, and along with its own production, it would consume domestically or export to markets such as Canada. The loss of Russian imports added to the growing vacuum that was difficult for refineries to fill. As 2022 progressed, refiner margins increased to incentivize refiners to produce more distillate fuels and boost stock levels. However, as the war in Ukraine progressed and European nations and others implemented sanctions against Russia, many countries began seeking refined petroleum products ahead of the bans. This led to increased exports from North America, further contributing to lower distillate stocks, higher refiner margins, and higher diesel pump prices.

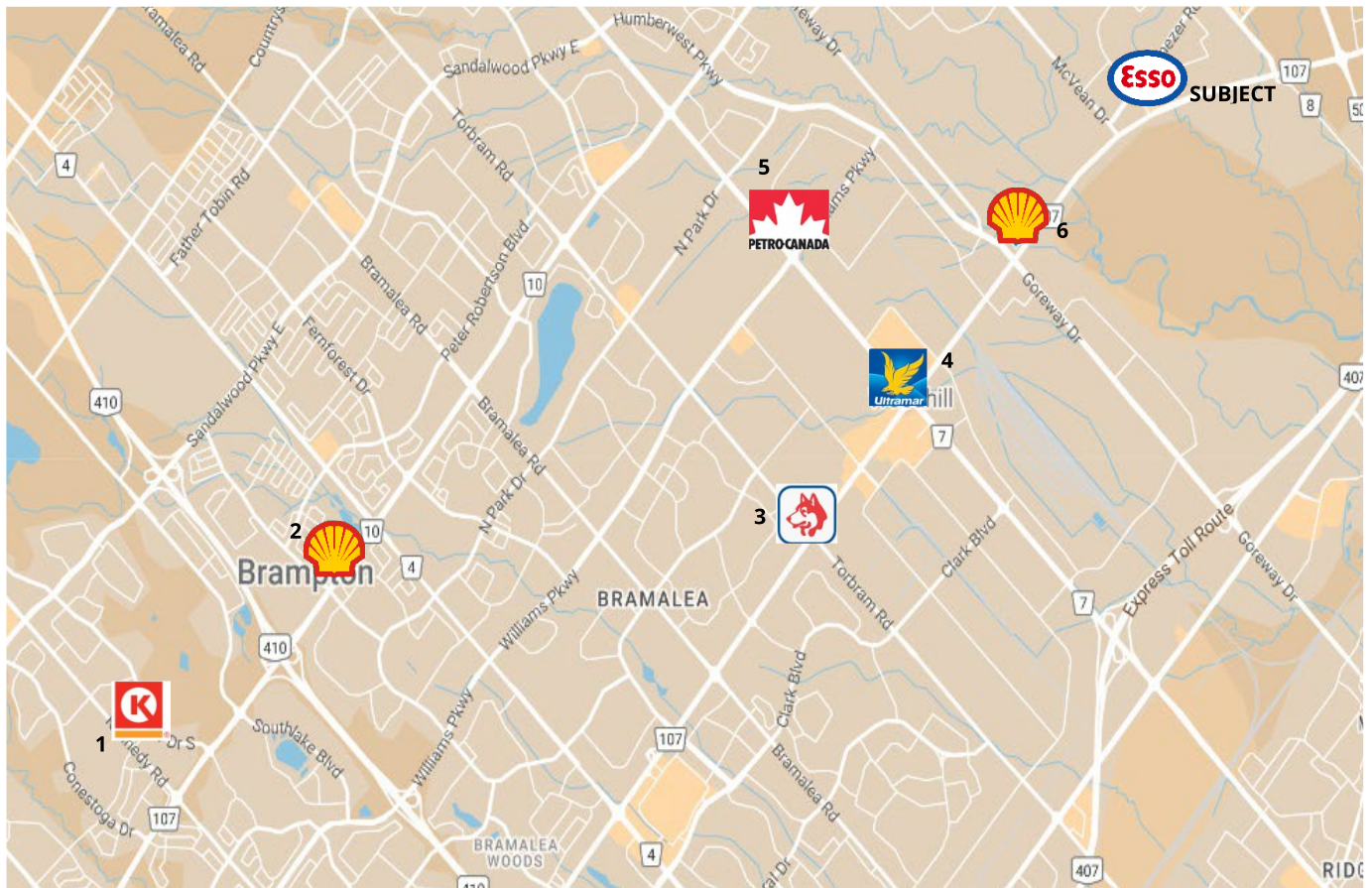
Market Overview

Summary

In summary, 2022 saw retail gasoline and diesel prices climb to record levels, with diesel refiner margins reaching extreme levels. The effect of macroeconomic events on crude prices (Russian oil import ban and OPEC+ production cuts) were the main contributing factors to higher retail prices. In particular, lower refining capacity and increased exports to Europe propped up refiner margins and prices for distillate fuels, including diesel. However, there were signs of distillate supply balancing towards the end of 2022 as demand declined amid fears of an economic recession. Looking ahead to 2023, global economic growth will likely slow in 2023, and thus, gasoline and diesel prices will likely decline as the recession kicks in. Rising interest rates will strengthen the U.S. dollar, making the acquisition of crude oil by other nations more costly, adding to recession woes. Upcoming European sanctions on Russian refined petroleum products will take effect in February 2023, which may provide an offset to falling prices in the first few months of the year. China's economic restart after exiting severe COVID-19 lockdowns should have a negligible impact on crude oil prices, as China is expected to continue purchasing discounted Russian crude oil for their needs. In short, near-term volatility is expected due to lower refining capacity across North America and increased export demand; however, we'll likely not experience the same supply constraints in 2023 as experienced in 2022, and therefore temper further record retail prices.

Market Overview

Competitive Set – 35 Cherrycrest Drive, Brampton



The subject property is situated on the south of Ebenezer Road, north of Queen Street East (Highway 7), along Cherrycrest Drive in the City of Brampton and Province of Ontario. The subject property has six competitors in the immediate area. Details with respect to the competitive set provided in map, have been listed below –

COMPARABLE NO.	FUEL SUPPLIER	ANCILLARY RETAIL USES	ADDRESS
Subject	Esso (Subject)	Convenience Store with KFC/Taco Bell and Car Wash	35 Cherrycrest Drive, Brampton
Comp 1	Circle K	Convenience Store / Premium Coffee (Quick service)	10187 Kennedy Rd - Notre Dame, Brampton
Comp 2	Shell	Convenience Store with Tim Hortons and Car Wash	5 Great Lakes Dr - Bovaird, Brampton
Comp 3	Husky	Convenience Store and Car Wash	2182 Queen St E - West Of Torbram, Brampton
Comp 4	Ultramar	Convenience Store with Navigators Café and Money Mart	2956 Queen St E - Airport, Brampton
Comp 5	PetroCanada	Convenience store	9495 Airport Rd - Williams Pkwy E, Brampton
Comp 6	Shell	Select Convenience store	3550 Queen St E - Humberwest, Brampton

Market Overview

The following table shows the number of litres sold as of February 2022 reading date (apart from Comp 1 and 2 for which the last reading date was November 2021) for the subject property's direct competitors.

COMPARABLE NO.	FUEL SUPPLIER	ADDRESS	LAST READING DATE	SUPEREME	PREMIUM	MIDGRADE	UNLEADED	DIESEL	TOTAL*	DAYS	Share
Subject	Esso (Subject)	35 Cherrycrest Drive, Brampton**	6-Dec-22	259,459	679,505	302,355	4,307,621	163,200	5,712,140	365	11%
Comp 1	Circle K	10187 Kennedy Rd - Notre Dame, Brampton	6-Dec-22	0	379,635	177,903	4,456,351	264,421	5,278,310	365	10%
Comp 2	Shell	5 Great Lakes Dr - Bovaird, Brampton	6-Dec-22	0	1,243,267	471,282	8,489,525	516,941	10,721,015	365	21%
Comp 3	Husky	2182 Queen St E - West Of Torbram, Brampton	6-Dec-22	0	509,813	285,136	7,570,765	0	8,365,714	365	17%
Comp 4	Ultramar	2956 Queen St E - Airport, Brampton	6-Dec-22	0	281,732	79,630	2,642,348	719,125	3,722,835	365	7%
Comp 5	Petrocanada	9495 Airport Rd - Williams Pkwy E, Brampton	6-Dec-22	430,043	721,792	307,160	7,044,760	594,630	9,098,385	365	18%
Comp 6	Shell	3550 Queen St E - Humberwest, Brampton	6-Dec-22	0	966,042	299,833	5,654,248	806,263	7,726,386	365	15%
TOTAL				689,502	4,781,786	1,923,299	40,165,618	3,064,580	50,624,785		100%

*All volume is in litres

**Total sales volume for Subject Property (Esso Gas Station) have been provided by Kalibrate and contain some estimates

Competitive Set – Conclusions

The subject property is located along Highway 7 (Queen Street East) and faces direct competition from three gas stations along the highway namely, Husky, Ultramar, and Shell (Comp 3, 4 and 6 respectively). The subject property is considered to have a moderate to superior location. The subject property is also superior in terms of physical characteristics as it houses a freestanding KFC/Taco Bell, has a car wash and ample parking space (i.e. low site coverage ratio). As presented in the report above, there is increased demand for gasoline and diesel compared to prior years due to more mobility and slowdown of COVID. The sales volume for subject gas station are expected to increase gradually to meet the increase in demand in 2023.

Market Overview

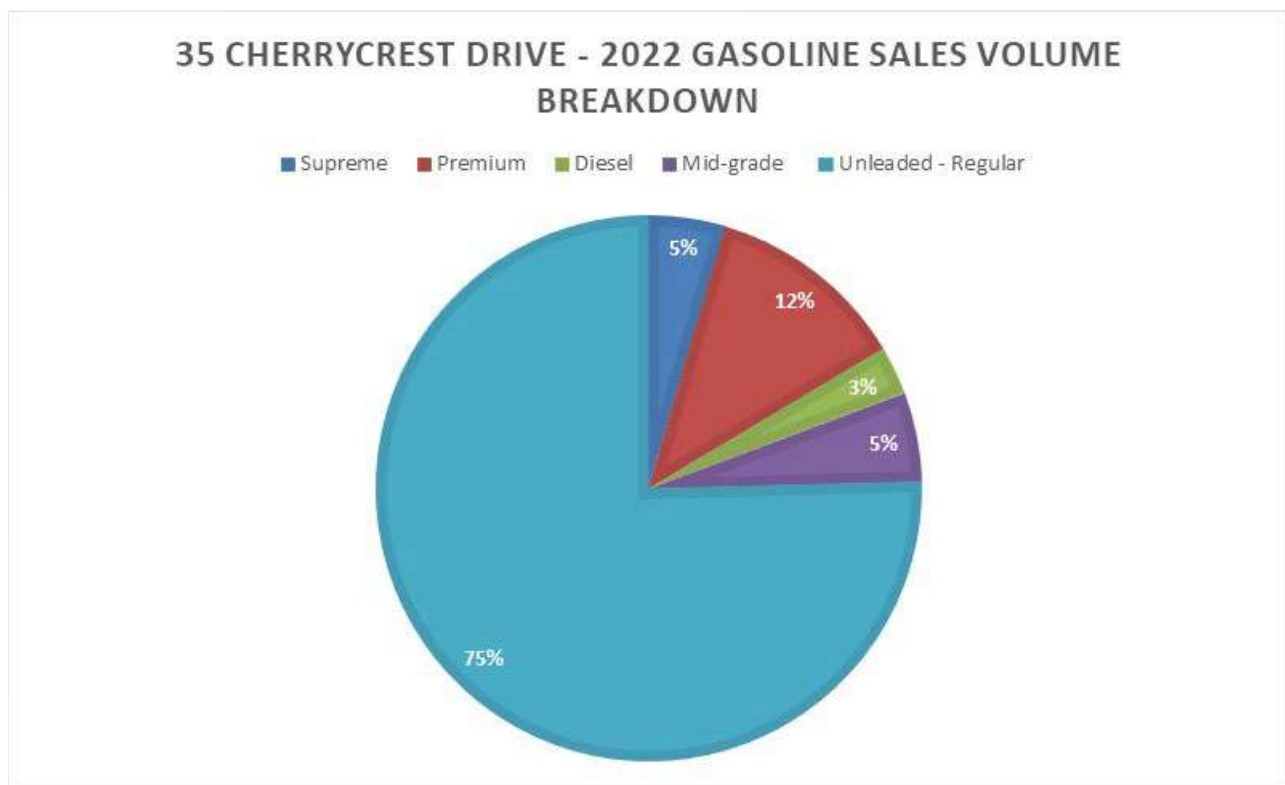
Number of Litres Sold Per Annum – Subject Property

We were provided with subject site’s gasoline sale volume from December 7, 2020 to December 6, 2022 (reading dates) by Kalibrate Canada Inc.

Kalibrate Canada Inc. - Yearly Sales Data									
RETAILER	ADDRESS	DATE OF READING	DAYS	SUPREME	PREMIUM	MIDGRADE	UNLEADED	DIESEL	TOTAL*
Esso	35 Cherrycrest Drive, Brampton**	December 6, 2022	365	259,459	679,505	302,355	4,307,621	163,200	5,712,140
		December 5, 2021	365	287,410	707,650	331,139	4,156,990	183,432	5,666,621
		December 7, 2020	365	308,498	750,797	350,840	4,366,692	177,157	5,953,984

*All volume is in litres

**Total sales volume for Subject Property (Esso Gas Station) have been provided by Kalibrate and contain some estimates



The owner also provided us with gasoline sales volume and sales figures for the subject property from January 2020 to December 2022. The following chart shows the monthly litres sold, sales amount and price per litre sold for the year ending December 31, 2022:

Market Overview

Gasoline Sales - Owner Provided (Jan - Dec 2022)			
Month	Litres Sold	Sales	Price per litre sold
Jan-22	534,371	\$660,735	\$1.24
Feb-22	596,484	\$793,397	\$1.33
Mar-22	527,198	\$769,117	\$1.46
Apr-22	532,687	\$789,330	\$1.48
May-22	647,296	\$1,097,543	\$1.70
Jun-22	642,564	\$1,133,168	\$1.76
Jul-22	639,036	\$979,882	\$1.53
Aug-22	578,677	\$813,099	\$1.41
Sep-22	575,684	\$729,769	\$1.27
Oct-22	642,301	\$911,329	\$1.42
Nov-23	641,758	\$889,432	\$1.39
Dec-23	581,408	\$714,893	\$1.23
Sum (Annualized 2021)	7,139,464	10,281,692	\$1.44

**Jan to Dec sale report provided by client.*

The subject's site price per litre sold ranged from a low of \$1.23 to a high of \$1.76 in 2022. Based on the average annual litres sold of 7,139,464 and annual gasoline sales of \$10,281,692, the average price per litre sold at the subject site is \$1.44.

Annual gasoline sales volume provided by the client appear to be higher than the sales volume provided by Kalibrate Canada Inc. However, as mentioned above, Kalibrate's sales volume for the subject property contain some estimates, therefore we have relied on the sales volume information provided by the client.

Market Overview

Regional Overview

- Brampton is the ninth largest city in Canada and the second fastest growing. It is an integral part of the GTA representing the third largest local economy within the GTA regional centre. The City contains approximately 8,500 businesses, a workforce of about 280,000 people and has emerged as a key industrial location. Over 30% of Brampton's workforce is employed in manufacturing activities with the major economic sectors being automotive/aerospace, retail administration/logistics, food and beverage and life sciences and business services
- Brampton's economy generates two major activities: exports to the international marketplace and consumption of consumer manufactured products in domestic markets. Major businesses in Brampton include Chrysler's LH family of vehicles, SPAR's Aeronautic equipment, Siemens Energy Automation Equipment, and Bacardi-Martini's beverage production.
- In 2013, Brampton was the 8th largest construction market in Canada and 2nd largest in the Toronto Census Metropolitan Area.

Infrastructure

Brampton is located on the west side of the GTA and is bordered on the south by Lester B. Pearson International Airport. Brampton is within a 90-minute drive to the State of New York and a 3.5-hour drive to the State of Michigan, both major U.S. border points. The major north-south arterials are Highways 410 and 10, Dixie Road and Airport Road, while the major east-west routes are Highways 401, 407 and 7. GO Transit and the Brampton Transit Authority provides public bus service on most of the City's arterial roadways.

Market Overview

REGIONAL MAP



Economic and Demographic Profile – City of Brampton

Population	669,000 (2021)
Total Private Dwellings	173,428 (2016 Statistics Canada)
Median Household Income	\$87,290 (2016 Statistics Canada)
Labour Force	319,620 (2016 Statistics Canada)
Unemployment Rate	8.3% (2016 Statistics Canada)
Tax Rates (2022)	<ul style="list-style-type: none">– Residential – 0.980781%– Multi-Residential – 1.564367%– New Multi-Residential – 0.980781%– Commercial – 1.953715%– Industrial – 2.096838%

Source of Information - City of Brampton 2022 & Statistics Canada

Market Overview

NEIGHBOURHOOD MAP



Market Overview

AERIAL MAP



Market Overview

Neighbourhood Overview

The Subject Property is located on the north side of Queen Street East (Highway 7), east of Cherrycrest Drive. The neighbourhood is generally bound by Queen Street East on south, The Gore Road to the east, Ebenezer Road to the north and McVean Drive to the west. The neighbourhood is comprised of low and medium density residential uses on the interior streets and commercial uses confined to the arterial roadways.

The site is well serviced by public transit with bus stops located at The Gore Road north of Queen Street along Queen Street East. Brampton GO station is located approximately 12 kms southwest of the subject. The site is located along Highway 7, providing convenient access to north-south transportation as well as connection to major highways such as Highways 401 & 407, which provides access to the rest of the GTA.

Adjacent Land Use	North	Commercial uses
	South	Queen Street East
	East	Vacant
	West	Vacant

Commentary

The subject is in an established residential and commercial neighbourhood of Brampton. The arterial roadways are generally improved with single family dwellings. The area is well serviced by public transit routes and is near various commercial/retail uses. The subject clearly occupies a strong location for a gas station.

Method of Valuation

The three traditional approaches to value, Cost, Direct Comparison, and Income Capitalization, have been considered in estimating the current market value for the subject property. Based on the likely motivations of the typical purchaser the Direct Comparison and the Income Approach using Direct Capitalization are considered in the reconciliation of a final estimate of value.

The Cost Approach is not developed in this report due to the difficulties in estimating accrued depreciation. While investors are generally aware of replacement cost, they place little reliance on the fully developed Cost Approach when determining a value for acquisition purposes.

The Direct Comparison Approach is presented first followed by the Income Approach, which is in turn followed by Reconciliation and a Final Estimate of Value.

Direct Comparison Approach

A search for sales of gas bars with service stations and similar ancillary improvements produced seven comparable sales. The number of litres sold per annum is one of the contributing factors in determining acquisition prices for operating gas bars coupled with the size of the site and the existing improvements. The information regarding litres sold per annum was supplied by Kalibrate Canada Inc., a research firm specializing in the retail gasoline industry in Canada.

The unit of comparison relied upon in this section is expressed on a price per litre sold basis. Following is a summary of comparable gas bar sales as well as an analysis of the data and a conclusion as to an estimate of the current market value.

Adjustments to Sale Data

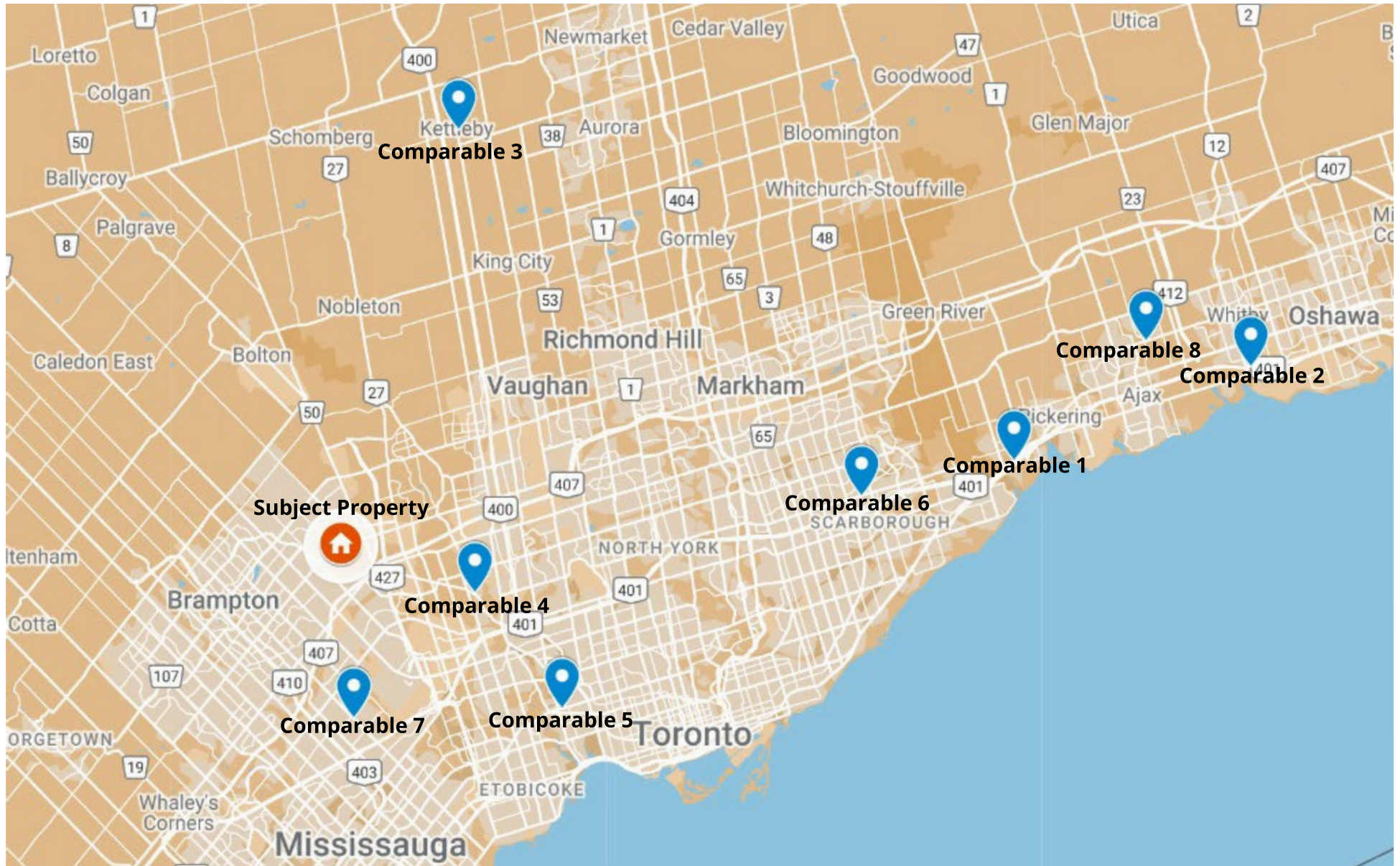
The sales selected for this analysis are compared to the subject property and appropriate adjustments for the elements of comparison are considered. Elements of comparison analysed in this valuation include conditions of sale, market conditions, location, physical characteristics, economic characteristics and use/zoning considerations.

Valuation

Summary of Comparable Gas Station Sales								
Sale No.	Address	Sale Date	Sale Price	No. of Litres Sold per Annum*	Land Area (Acres)	Total Bldg Size (sq. ft.)	Tenants	Price Per Litre Sold
1	478 Kingston Road, Ajax	09-Aug-22	\$7,300,000	3,089,599	0.85	8,805	Esso Gas Bar + Convenience Store + Tim Hortons	\$2.36
2	1 Paisley Court, Whitby	12-Jul-22	\$12,800,000	7,132,176	2.14	8,051	Petro Canada Gas Station + Convenience Store + Multitenant commercial building with Tim Hortons, Wendys, Popeyes	\$1.79
3	16380 Jane St, King	20-May-22	\$5,700,000	3,965,712	0.50	4,024	Esso Gas Bar + Convenience Store	\$1.44
4	920 Albion Road, Etobicoke	21-Apr-22	\$5,350,000	4,471,219	0.23	420	Ultramar Gas Bar + Convenience Store	\$1.20
5	2580 St Clair Avenue West, York	06-Oct-21	\$5,950,000	5,724,042	0.03	2,767	RaceTrac Gas Bar + Convenience Store	\$1.04
6	4901 Sheppard Avenue East, Scarborough	28-Jun-21	\$6,100,000	5,033,623	0.47	4,488	Mobil Gas Bar + Convenience Store + Car Wash	\$1.21
7	1520 Courtneypark Drive, Mississauga	11-Jun-21	\$3,800,000	4,950,764	1.48	7,418	Ultramar Gas Bar + Convenience Store + Triple O's quick service restaurant	\$0.77
8	290 Rossland Road East, Ajax	03-May-21	\$11,900,000	6,000,000	2.00	6,895	ESSO gas bar + convenience store + car wash + multitenant commercial building (Pizza Hut, Dental Office)	\$1.98
Subject Property as of January 19, 2023			\$12,190,000	7,353,648	2.00	6,183	Esso gas bar, Convenience store, Car Wash and KFC/Tacobell	\$1.66

* Retail sales volume obtained from Kalibrate Canada Inc. based on actual sales volume from the trailing twelve months from each sale date.

Valuation



Valuation

Comparable 1

478 Kingston Road, Ajax

Address	478 Kingston Road, Ajax
Sale Price	\$7,300,000
Sale Date	August 9, 2022

Transaction Details

Vendor	BDO Canada Limited
Purchaser	Equity Services Corp.
Interest Transferred	100%
Cash	\$7,300,000
Chattels	N/A
Other Considerations	N/A

Building Details

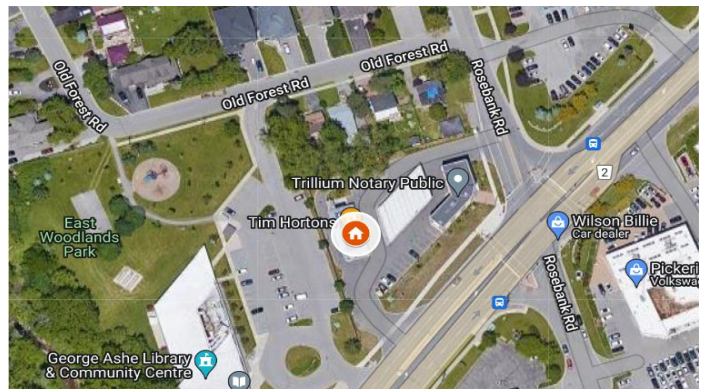
Size	8,805 sq. ft.
Condition	Average
Construction Date	2017
Tenants	Esso Gas Bar + Convenience Store + Tim Hortons

Site Details

Land Area in Acres	0.85
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Income Details

Litres sold per annum	3,098,599
Unadjusted Price per litre sold	\$2.36



General Comments

The property is located on the northwest corner of Kingston Road and Rosebank Road in Ajax, Ontario. The site is improved with an Esso gas bar, a convenience store and a Tim Hortons, with the rest of the property being comprised of a small asphalt surface parking lot. As per Kalibrate Canada Inc., in the year prior to August 4, 2022 (last reading date), this gas station reported a total sales volume of 3,098,599 litres which translates into \$2.36 per litre sold.

Valuation

Comparable 2

1 Paisley Court, Whitby

Address	1 Paisley Court, Whitby
Sale Price	\$12,800,000
Sale Date	July 12, 2022

Transaction Details

Vendor	Pioneer Hospitality Inc.
Purchaser	1000199269 Ontario Inc.
Interest Transferred	100%
Cash	\$12,800,000
Chattels	N/A
Other Considerations	N/A

Building Details

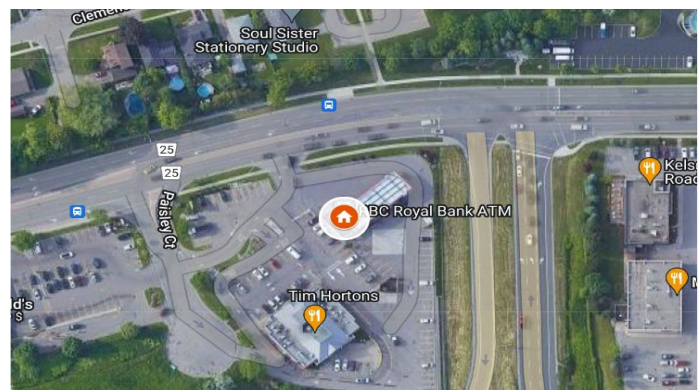
Size	8,051 sq. ft.
Condition	Good
Construction Date	1995
Tenants	Petro Canada Gas Station + Convenience Store + Multi-tenant commercial building with Tim Hortons, Wendy's, Popeyes

Site Details

Land Area in Acres	2.14
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Income Details

Litres sold per annum	7,132,176
Unadjusted Price per litre sold	\$1.79



General Comments

The property is south of Consumer's Drive, east of Brock Street South in Whitby, Ontario. The site is improved with a Petro Canada Gas Station, a convenience store, and a multi-tenant commercial building with a Tim Hortons, Wendy's, and a Popeyes. As per Kalibrate Canada Inc., in the year prior to August 7, 2022 (last reading date), this gas station reported a total sales volume of 7,132,176 litres which translates into \$1.79 per litre sold.

Valuation

Comparable 3

16380 Jane Street, King

Address	16380 Jane Street, King
Sale Price	\$5,700,000
Sale Date	May 20, 2022

Transaction Details

Vendor	2682859 Ontario Inc.
Purchaser	GK Global Inc.
Interest Transferred	100%
Cash	\$2,600,000
Chattels	\$2,800,000
Other Considerations	\$300,000

Building Details

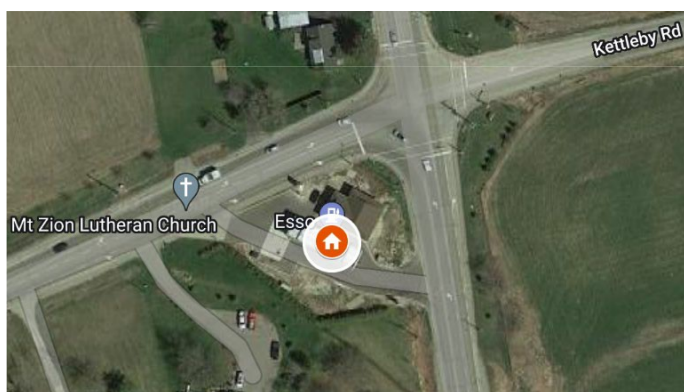
Size	4,024 sq. ft.
Condition	Average
Construction Date	1965, 2018
Tenants	Esso Gas Bar + Convenience Store

Site Details

Land Area in Acres	0.50
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Income Details

Litres sold per annum	3,965,712
Unadjusted Price per litre sold	\$1.44



General Comments

The property is located on the southwest corner of Jane Street and Kettleby Road in King, Ontario. The site is improved with an Esso gas bar and a convenience store with the rest of the property being comprised of a small asphalt surface parking lot. As per Kalibrate Canada Inc., in the year prior to May 10, 2022 (last reading date), this gas station reported a total sales volume of 3,965,712 litres which translates into \$1.44 per litre sold.

Valuation

Comparable 4

920 Albion Road, Etobicoke

Address	920 Albion Road, Etobicoke
Sale Price	\$5,350,000
Sale Date	April 21, 2022

Transaction Details

Vendor	2263095 Ontario Inc.
Purchaser	1190067 Ontario Limited
Interest Transferred	100%
Cash	\$2,500,000
Chattels	\$1,350,000
Other Considerations	\$1,500,000

Building Details

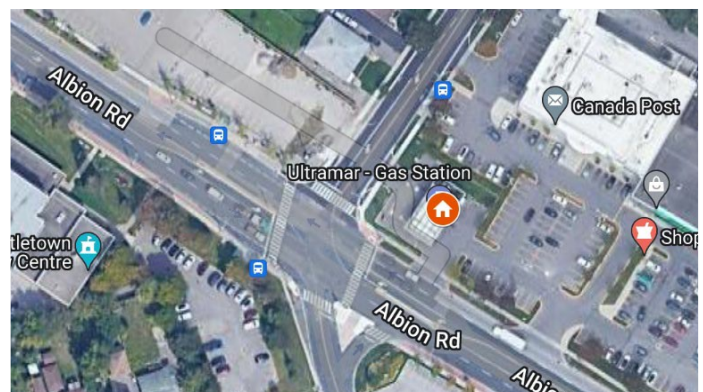
Size	420 sq. ft.
Condition	Good
Construction Date	2012
Tenants	Ultramar Gas Bar + Convenience Store

Site Details

Land Area in Acres	0.23
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Income Details

Litres sold per annum	4,471,219
Unadjusted Price per litre sold	\$1.20



General Comments

The property is located on the north side of Albion Road, east of Islington Avenue in Etobicoke, Ontario. The site is improved with an Ultramar gas bar and a convenience store. As per Kalibrate Canada Inc., in the year prior to April 5, 2022 (last reading date), this gas station reported a total sales volume of 4,471,219 litres which translates into \$1.20 per litre sold.

Valuation

Comparable 5

2580 St Clair Avenue West, York

Address	2580 St Clair Avenue West, York
Sale Price	\$5,950,000
Sale Date	October 6, 2021

Transaction Details

Vendor	1777178 Ontario Inc.
Purchaser	2846055 Ontario Limited
Interest Transferred	100%
Cash	\$2,000,000
Chattels	\$3,950,000
Other Considerations	N/A

Building Details

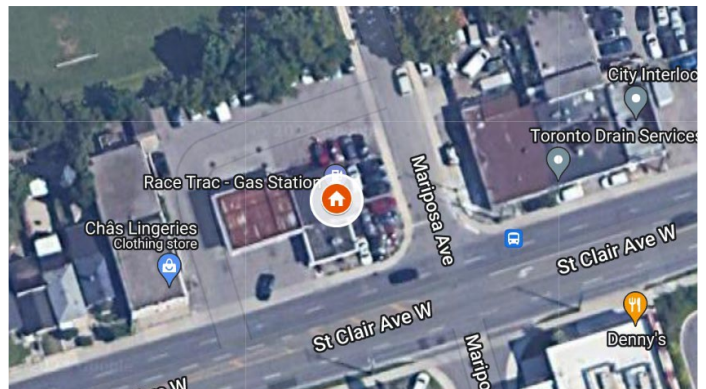
Size	2,767 sq. ft.
Condition	Average
Construction Date	2004, 2012
Tenants	Race Trac Gas Bar + Convenience Store

Site Details

Land Area in Acres	0.03
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Income Details

Litres sold per annum	5,724,042
Unadjusted Price per litre sold	\$1.04



General Comments

The property is located on the north side of St Claire Avenue West, east of Jane Street in York, Ontario. The site is improved with a Race Trac gas bar, a and a convenience store. As per Kalibrate Canada Inc., in the year prior to October 3, 2021 (last reading date), this gas station reported a total sales volume of 5,724,042 litres which translates into \$1.04 per litre sold.

Valuation

Comparable 6

4901 Sheppard Avenue East, Scarborough

Address	4901 Sheppard Avenue East, Scarborough
Sale Price	\$6,100,000
Sale Date	Jun 28, 2021

Transaction Details

Vendor	2604287 Ontario Ltd.
Purchaser	4901 Sheppard Limited
Interest Transferred	100%
Cash	N/A
Chattels	\$6,100,000
Other Considerations	N/A

Building Details

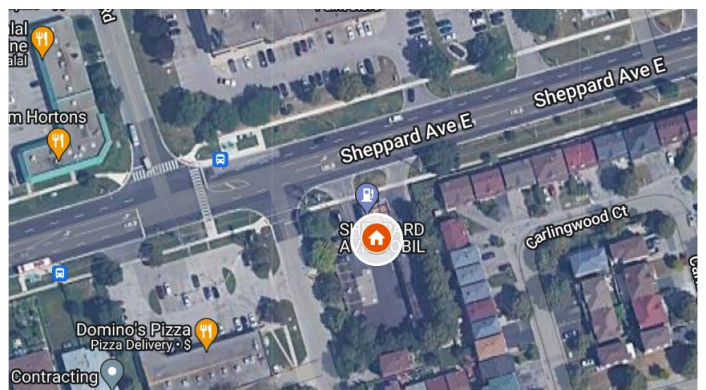
Size	4,488 sq. ft.
Condition	Average
Construction Date	1989
Tenants	Mobil Gas Bar + Convenience Store + Car Wash

Site Details

Land Area in Acres	0.47
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Income Details

Litres sold per annum	5,033,623
Unadjusted Price per litre sold	\$1.21



General Comments

The property is located on the south side of Sheppard Avenue East, east of McCowan Road in Scarborough, Ontario. The site is improved with a Mobil gas bar, a convenience store, and a car wash. As per Kalibrate Canada Inc., in the year prior to June 4, 2021 (last reading date), this gas station reported a total sales volume of 5,033,623 litres which translates into \$1.21 per litre sold.

Valuation

Comparable 7

1520 Courtneypark Drive, Mississauga

Address	1520 Courtneypark Drive, Mississauga
Sale Price	\$3,800,000
Sale Date	June 11, 2021

Transaction Details

Vendor	Salpam Investments Limited
Purchaser	Ernmag Investments Limited
Interest Transferred	100%
Cash	\$3,800,000
Chattels	N/A
Other Considerations	N/A

Building Details

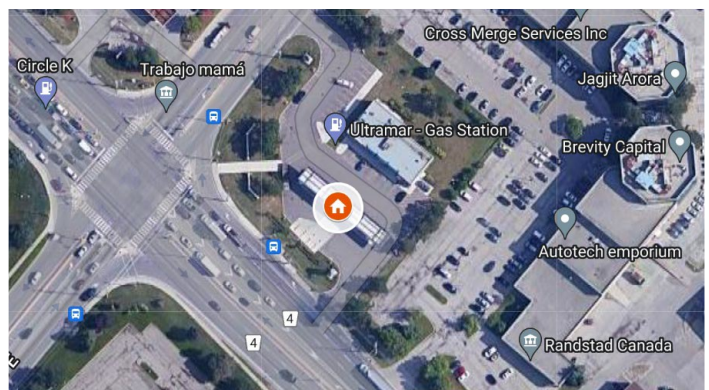
Size	7,418 sq. ft.
Condition	Good
Construction Date	2016
Tenants	Ultramar Gas Bar + Convenience Store + Triple O's Quick Service Restaurant

Site Details

Land Area in Acres	1.48
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Income Details

Litres sold per annum	4,950,764
Unadjusted Price per litre sold	\$0.77



General Comments

The property is located on the southeast corner of Courtneypark Drive East and Dixie Road in Mississauga, Ontario. The site is improved with an Ultramar Gas Bar, a convenience store and a Triple O's quick service restaurant. As per Kalibrate Canada Inc., in the year prior to June 9, 2021 (last reading date), this gas station reported a total sales volume of 4,950,764 litres which translates into \$0.77 per litre sold.

Valuation

Comparable 8

290 Rossland Road East, Ajax

Address	290 Rossland Road East, Ajax
Sale Price	\$11,900,000
Sale Date	May 3, 2021

Transaction Details

Vendor	2554977 Ontario Inc.
Purchaser	JJ Petroleum Plus Limited
Interest Transferred	100%
Cash	\$4,000,000
Chattels	\$4,000,000
Other Considerations	\$3,900,000

Building Details

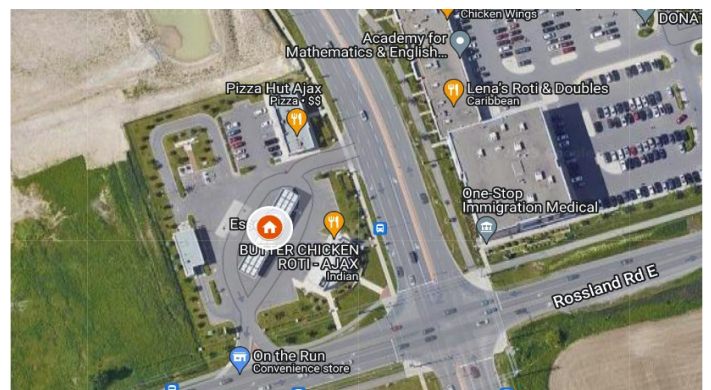
Size	6,895 sq. ft.
Condition	Good
Construction Date	2015
Tenants	ESSO gas bar + convenience store + car wash + multitenant commercial building (Pizza Hut, Dental Office)

Site Details

Land Area in Acres	2.00
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Income Details

Litres sold per annum	6,000,000
Unadjusted Price per litre sold	\$1.98



General Comments

The property is located on the northwest corner of Rossland Road East and Salem Road North in Ajax, Ontario. The site is improved with an ESSO gas bar, a convenience store, a car wash, and a multi-tenant commercial building with a Pizza Hut, and a Dental Office. As per Kalibrate Canada Inc., in the year prior to May 2, 2021 (last reading date), this gas station reported a total sales volume of 6,000,000 litres which translates into \$1.98 per litre sold.

Valuation

Direct Comparison Approach - Analysis

We have documented eight sales of gas stations with ancillary retail uses in the subject's immediate and surrounding areas since May 2021. The transactions range in price from **\$5,350,000** to **\$12,800,000**, and from **\$0.77** to **\$2.36** on a price per litre sold basis. The improvements were found to range in quality, but generally they comprise the gas station, retail buildings with convenience stores and/or restaurants and/or car wash buildings.

Sale No. 1, 478 Kingston Road, Alax, is located on the northwest corner of Kingston Road and Rosebank Road in Ajax, Ontario. The site is improved with an Esso gas bar, a convenience store and a Tim Hortons, with the rest of the property being comprised of a small asphalt surface parking lot. The property was acquired on **August 9, 2022**, for a total consideration of **\$7,300,000**. As per Kalibrate Canada Inc., in the year prior to August 4, 2022 (last reading date), this gas station reported a total sales volume of **3,089,599 litres** which translates into **\$2.36 per litre sold**.

Sale No. 2, 1 Paisley Court, Whitby is located south of Consumer's Drive, east of Brock Street South in Whitby, Ontario. The site is improved with a Petro Canada Gas Station, a convenience store, and a multi-tenant commercial building with a Tim Hortons, Wendy's, and a Popeyes. The property was acquired on **July 12, 2022**, for a total consideration of **\$12,800,000**. As per Kalibrate Canada Inc., in the year prior to August 7, 2022 (last reading date), this gas station reported a total sales volume of **7,132,176 litres** which translates into **\$1.79 per litre sold**.

Sale No. 3, 16380 Jane Street, King is located on the southwest corner of Jane Street and Kettleby Road in King, Ontario. The site is improved with an Esso gas bar and a convenience store with the rest of the property being comprised of a small asphalt surface parking lot. The property was acquired on **May 20, 2022**, for a total consideration of **\$5,700,000**. As per Kalibrate Canada Inc., in the year prior to May 10, 2022 (last reading date), this gas station reported a total sales volume of **3,965,712 litres** which translates into **\$1.44 per litre sold**.

Sale No. 4, 920 Albion Road, Etobicoke is located on the north side of Albion Road, east of Islington Avenue in Etobicoke, Ontario. The site is improved with an Ultramar gas bar and a convenience store. The property was acquired on **April 21, 2022**, for a total consideration of **\$5,350,000**. As per Kalibrate Canada Inc., in the year prior to April 5, 2022 (last reading date), this gas station reported a total sales volume of **4,471,219 litres** which translates into **\$1.20 per litre sold**.

Sale No. 5, 2580 St Clair Avenue West, York is located on the north side of St Claire Avenue West, east of Jane Street in York, Ontario. The site is improved with a Race Trac gas bar, a and a convenience store. The property was acquired on **October 6, 2021**, for a total consideration of **\$5,950,000**. As per Kalibrate Canada Inc., in the year prior to October 3, 2021 (last reading date), this gas station reported a total sales volume of **5,724,042 litres** which translates into **\$1.04 per litre sold**.

Sale No. 6, 4901 Sheppard Avenue East, Scarborough is located on the south side of Sheppard Avenue East, east of McCowan Road in Scarborough, Ontario. The site is improved with a Mobil gas bar, a convenience store, and a car wash. The property was acquired on **June 28, 2021**, for a total consideration of **\$6,100,000**. As per Kalibrate Canada Inc., in the year prior to June 4, 2021 (last reading date), this gas station reported a total sales volume of **5,033,623 litres** which translates into **\$1.21 per litre sold**.

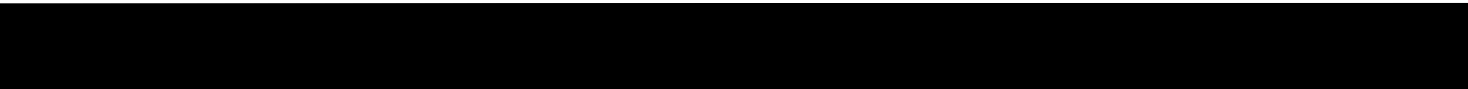
Valuation

Sale No. 7, 1520 Courtneypark Drive, Mississauga is located on the southeast corner of Courtneypark Drive East and Dixie Road in Mississauga, Ontario. The site is improved with an Ultramar Gas Bar, a convenience store and a Triple O's quick service restaurant. The property was acquired on **June 11, 2021**, for a total consideration of **\$3,800,000**. As per Kalibrate Canada Inc., in the year prior to June 9, 2021 (last reading date), this gas station reported a total sales volume of **4,950,764 litres** which translates into **\$0.77 per litre sold**.

Sale No. 8, 4901 Sheppard Avenue East, Scarborough is located on the northwest corner of Rossland Road East and Salem Road North in Ajax, Ontario. The site is improved with an ESSO gas bar, a convenience store, a car wash, and a multi-tenant commercial building with a Pizza Hut, and a Dental Office. The property was acquired on **May 3, 2021**, for a total consideration of **\$11,900,000**. As per Kalibrate Canada Inc., in the year prior to May 2, 2021 (last reading date), this gas station reported a total sales volume of **6,000,000 litres** which translates into **\$1.98 per litre sold**.

Direct Comparison Approach - Conclusion

Sale No. 1 to 4 are more recent sales and we have given a higher weightage to these comparables and are of the opinion that price per litre sold for the subject gas station would range between **\$1.20 and \$2.36, Average \$1.70 per litre**. The subject property is located along Highway 7 (Queen Street East) and faces direct competition from three gas stations along the highway namely, Husky, Ultramar, and Shell, therefore its price per litre sold is the lowest out of market comparables considered. The subject property is considered to have a moderate to superior location and is also superior in terms of physical characteristics as it houses a freestanding KFC/Taco Bell, has a car wash and ample parking space (i.e., low site coverage ratio).



Valuation

Income Approach

The Income Approach includes an analysis of the market for similar comparable properties that have leased within a meaningful timeframe, and a pro forma estimation of a Year 1 stabilized net operating income is developed.

The Direct Capitalization Approach is developed, which typically converts an estimate of a single year's income expectancy into an indication of value using an appropriate capitalization rate. After an analysis of pertinent data to select an appropriate capitalization rate, the net operating income is stabilized and capitalized to an estimation of current market value.

Occupancy Summary



Esso is a trading name for ExxonMobil. Originally, the name was primarily used by its predecessor Standard Oil of New Jersey after the breakup of the original Standard Oil company in 1911. Standard Oil of New Jersey started marketing its products under the Esso brand in 1926. In 1972, the name Esso was largely replaced in the U.S. by the Exxon brand after the Standard Oil of New Jersey bought Humble Oil, while the Esso name remained widely used elsewhere. In most of the world, the Esso brand and the Mobil brand are the primary brand names of ExxonMobil, while the Exxon brand is used only in the United States alongside Mobil. Today, the Esso™ and Mobil™ network consists of more than 2,000 stations across Canada.

Tim Hortons Inc., is a Canadian multinational coffeehouse and restaurant chain. Based in Toronto, Tim Hortons serves coffee, doughnuts, and other fast-food items. It is Canada's largest quick-service restaurant chain, with 5,352 restaurants in 15 countries, as of June 30, 2022



KFC (Kentucky Fried Chicken) is an American fast food restaurant chain headquartered in Louisville, Kentucky, that specializes in fried chicken. It is the world's second-largest restaurant chain (as measured by sales) after McDonald's, with 22,621 locations globally in 150 countries as of December 2019. The chain is a subsidiary of Yum! Brands, a restaurant company that also owns the Pizza Hut and Taco Bell chains.

Taco Bell is an American-based chain of fast food restaurants founded in 1962 by Glen Bell (1923–2010) in Downey, California. Taco Bell is a subsidiary of Yum! Brands, Inc. The restaurants serve a variety of Mexican-inspired foods, including tacos, burritos, quesadillas, nachos, novelty and specialty items, and a variety of "value menu" items. As of 2018, Taco Bell serves over two billion customers each year, at 7,072 restaurants, more than 93% of which are owned and operated by independent franchisees and licensees. PepsiCo purchased Taco Bell in 1978, and later spun off its restaurants division as Tricon Global Restaurants, which later changed its name to Yum! Brands.



Valuation

Revenue Estimate - Projected Annual Number of Litres Sold

The subject property is located along Highway 7 (Queen Street East) and faces direct competition from three gas stations along the highway namely, Husky, Ultramar, and Shell. The subject property is considered to have a moderate to superior location. The subject property is also superior in terms of physical characteristics as it houses a freestanding KFC/Taco Bell, has a car wash and ample parking space (i.e., low site coverage ratio). Further based on research it is understood that there is increased demand for gasoline and diesel compared to prior years due to more mobility and slowdown of COVID. The sales volume for subject gas station are expected to increase gradually to meet the increase in demand in 2023.

As per Kalibrate Canada Inc. it is understood that the sales volume for the subject gas station was 5,712,140 litres as of the reading date of December 6, 2022 (trailing 12 months). The owner also provided us with gasoline sales volume and sales figures for the subject property from January 2020 to December 2022.

As per client information provided, the price per litre sold ranged from a low of \$1.23 to a high of \$1.76 in 2022. Based on the average annual litres sold of 7,139,464 and annual gasoline sales of \$10,281,692, the average price per litre sold at the subject site is \$1.44.

Annual gasoline sales volume provided by the client appear to be higher than the sales volume provided by Kalibrate Canada Inc. However, it should be noted that Kalibrate's sales volume for the subject property contain some estimates, therefore we have relied on the sales volume information provided by the client. We have assumed a 3.00% increase in volume in 2023 (the forecast year) which translates into **7,353,648 litres**.

Valuation

Cross Lease Summary

Based on information provided by client, the Dealer Payment (“cross lease”) was increased in November 2020 and stands at 3.5 cents per litre as of the effective date of this appraisal. This information is considered to be factually correct, and the appraiser reserves the right to make changes to the analysis if contradictory information is made available at a later stage.

Projected Annual Fuel Sales Revenue

Based on the subject’s projected fuel sales volume of **7,353,648 litres** and the retrospective cross lease rebates per litre, we have estimated the annual fuel sales revenue over the next twelve months.

Cross Lease Rebate -

Fuel Sales - Revenue Breakdown				
35 Cherrycrest Drive, Brampton, ON				
Fuel Type	% of Projected Fuel Sales	Litres sold	Retrospective Rebate Per Litre	Annual Revenue
Gas + Diesel	100%	7,353,648	\$0.035	\$257,378

Additional Margin

In addition, the similar sites in the submarket are currently realizing an average margin of 7.0 to 9.0 cents per litre over and above the cross-lease rebate. We have considered an annual margin of 8.00 cents on top of the retrospective rebate per litre to arrive at the total annual revenues for the gas station component.

Fuel Sales - Total Revenue		
35 Cherrycrest Drive, Brampton, ON		
Type	Margin	Revenue
Gas + Diesel Revenue (Cross Lease Rebate)	-	\$257,378
Gas + Diesel Revenue (Annual margin)*	\$0.080	\$588,292
Total		\$845,670

**Based on annual projected 7,353,648 litres sold by volume*

Valuation

Projected Annual Convenience Store Revenues (includes Lottery and Car Wash)

The convenience store (excluding the Tim Hortons kiosk) comprises of 1,930 square feet of gross floor area. The 2022 total store sales revenues provided by the client have been presented below –

Convenience Store Sales - Owner Provided (Jan - Oct 2022)	
Month	Total
Jan-22	\$170,000
Feb-22	\$140,091
Mar-22	\$161,274
Apr-22	\$151,567
May-22	\$175,848
Jun-22	\$187,498
Jul-22	\$170,177
Aug-22	\$168,069
Sep-22	\$183,480
Oct-22	\$196,837
Sum (Annualized 2022)	\$2,045,809

Source: 2022 Sales Report Cherrycrest

We were not provided breakup of total sales allocated towards C-store goods, lottery, car wash. Therefore, we have relied on the 2022 sales information (January to October) provided by the client. A 3.00% growth rate is assumed to estimate the total store sales for the forecast year (includes lottery and car wash sales) which equates to \$2,107,183.

Profit margins typically range from 70% – 80% for car wash, 2.00% to 6.00% for lotteries, tobacco, branded food products and 30.00% to 40.00% for other C-store sales. We have considered an average **profit margin of 35.00%** in our analysis.

Valuation

Market Rent – Tim Hortons

Tim Hortons occupies 565 sq. ft. portion within the convenience store. As per lease agreement the lease started on October 25, 2013, and is in place for a duration of 10 years. Tim Hortons also has two 5-year options to renew the lease on expiry. The lease is signed at a percentage rent of 6.00% of annual gross sales. Tim Hortons sales for 2022 were not provided by the client. However, rental income on a monthly basis was provided and has been presented below –

Tim Hortons Rent - Owner Provided (Jan - Oct 2022)	
Month	Rental Income
Jan-22	\$8,490
Feb-22	\$7,079
Mar-22	\$6,654
Apr-22	\$7,845
May-22	\$7,627
Jun-22	\$9,168
Jul-22	\$9,098
Aug-22	\$8,890
Sep-22	\$9,140
Oct-22	\$8,876
Sum (Annualized 2022)	\$99,441

Source: 2022 Sales Report Cherrycrest

Market Rent - Conclusions

Due to the unique nature of the lease agreement, i.e., rental income is generated from Tim Hortons on Percentage Rent basis, the sale revenue of Tim's is the best indicator for estimating the appropriate rental income for the space (at 6.00% of sales). Tim Hortons sales for 2022 were not provided by the client. However, rental income was provided which ranged from \$6,654 to \$9,168 per month (an average rent of \$8,287 per month). We have considered an average rental income of \$9,000 per month for the forecast year in our analysis. This translates into an annual rental income of **\$108,000** or \$191.15 per sq. ft. This is deemed to be reasonable and appropriate.

Valuation

Market Rent – KFC/Taco Bell

KFC/Taco Bell occupy 2,557 sq. ft. of rentable area plus a drive thru lane. As per lease agreement the lease started on May 22, 2012, and is in place for a duration of 10 years. KFC/Taco Bell have two 5-year options to renew the lease on expiry. Current contract rent paid by the tenant is \$30.50 per sq. ft. which is expected to increase to \$32.50 on May 22, 2027.

We have also analyzed market rents for similar spaces at comparable properties. We conducted a survey of recent lease transactions in the subject's submarket and surrounding areas. Rental rates for fast food retail units range from \$22.00 to \$50.00 per square foot on a net rental basis. TMI's for such spaces typically range between \$10.00 - \$15.00 per sq. ft. Variances in these transactions appear to be largely a result of location, unit size and degree and quality of interior finish and structure of the lease.

Retail Lease Transactions - Fast Food						
Address	Sq. Ft.	Tenant	Sold Date	Net Rent	T.M.I.	Gross Rent
6585 Airport Road, Mississauga	5,800	Vacant (Previously Wendy's)	Listing	\$50.00	\$15.00	\$65.00
4320 Tecumseh Road East, Windsor	2,000	KFC	Oct-20	\$22.00	N/A	N/A
221 Henry Street, Brantford	2,865	Burger King	Oct-20	\$28.00	N/A	N/A
212 King Street South, Waterloo	660	Dairy Queen	Jul-20	\$35.00	N/A	N/A
725 Tecumseh Road East, Windsor	1,350	Pizza Hut	Mar-20	\$25.00	N/A	N/A
247 King Street North, Waterloo	1,226	Starbucks	Jul-19	\$45.00	N/A	N/A
1737 Richmond Street, London	2,500	The Great Canadian Bagel	Jan-19	\$42.00	N/A	N/A

Market Rent - Conclusions

Having regard to this set of market data and to the subject's location, unit sizes, and condition and quality of improvements, it is our opinion the current contract rent lies within the market rent data presented above. Therefore, a rental assumption of **\$30.50 per sq. ft. on net basis** is reasonable for the 2,557 sq. ft. space occupied by the fast-food tenants.

Valuation

Expenses

Item	Expense Assumptions Comments
Vacancy & Credit Loss	We have assigned a vacancy and credit loss factor of 2.00% of total revenue to account for potential vacancy. This allowance is made in the event there is a temporary closure of the operation for circumstances such as the repair or servicing of underground storage tanks, pumps, etc. A 2.00% vacancy loss assumption is also reasonable for retail tenants such as Tim Horton's, KFC and Tacobell
Property Taxes	We were supplied with the financial statement that indicated real estate taxes at 73,464 in 2020 and \$60,705 in 2022. We have taken an average and estimated real estate taxes at \$67,080
Insurance	We were supplied with the financial statement that indicated insurance at 11,918 in 2020 and \$11,841 in 2021. We have taken an average and estimated insurance taxes at \$11,880
Repair & Maintenance	Estimated at \$25,000 (which accounts to 0.50% of the Effective Gross Income) based on repair and maintenance expense at similar properties.
Other Operating Expenses	All other operating expenses (listed in the income approach table) related to wages, advertising, bank/credit card charges, office supplies, utilities etc. have been assumed based on comparable market data and historical financial statements of subject property

Valuation

Market Data – Overall Capitalization

Comparable Investment Sales				
Sale No.	Address	Sale Date	Use	Cap Rate
1	159 Dundurn Street South, Hamilton	Sep-21	ell Gas Bar, Convenience Store and Car Wa	10.53%
2	5949 Highway 89, Alliston	May-21	Ultramar Gas Bar and Convenience Store	10.33%
3	333 Upper Centennial Parkway, Stoney Creek	Oct-20	Pioneer Gas Bar and Convenience Store	6.57%
4	3279 Kingston Road, Toronto	Jan-20	Pioneer Gas Bar and Convenience Store	10.38%
5	321 Saint Paul Avenue, Brantford	Nov-19	Shell Gas Bar and Convenience Store	10.00%
6	5267 Aurora Road, Stouffville	Jun-17	Ultramar Gas Bar and Convenience Store	10.59%
7	3172 Highway 115, Clarington	Jul-16	Ultramar Gas Bar and Convenience Store	10.77%
8	13094 Yonge Street, Richmond Hill	Feb-16	Pioneer Gas Bar and Convenience Store	10.98%
9	12891 Yonge Street, Richmond Hill	Jan-16	Ultramar Gas Bar and Convenience Store	10.09%

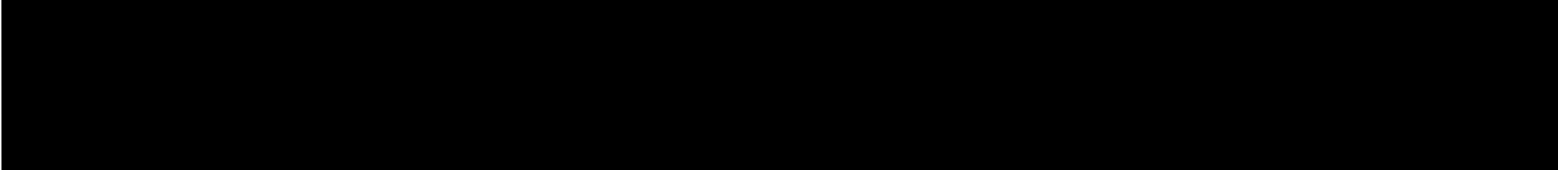
Most often gas bars with convenience stores and ancillary retail uses are purchased for owner occupancy with the revenues from the business operations including gasoline margins and ancillary retail sales flowing to the owner/operator. Under this type of occupancy, the gas bar, if nationally flagged, will be subject to a cross lease where the owner receives a base rent or revenue from the supplier and additional income is derived from the margin produced by the difference between the wholesale price of the gas and the retail price at the pumps.

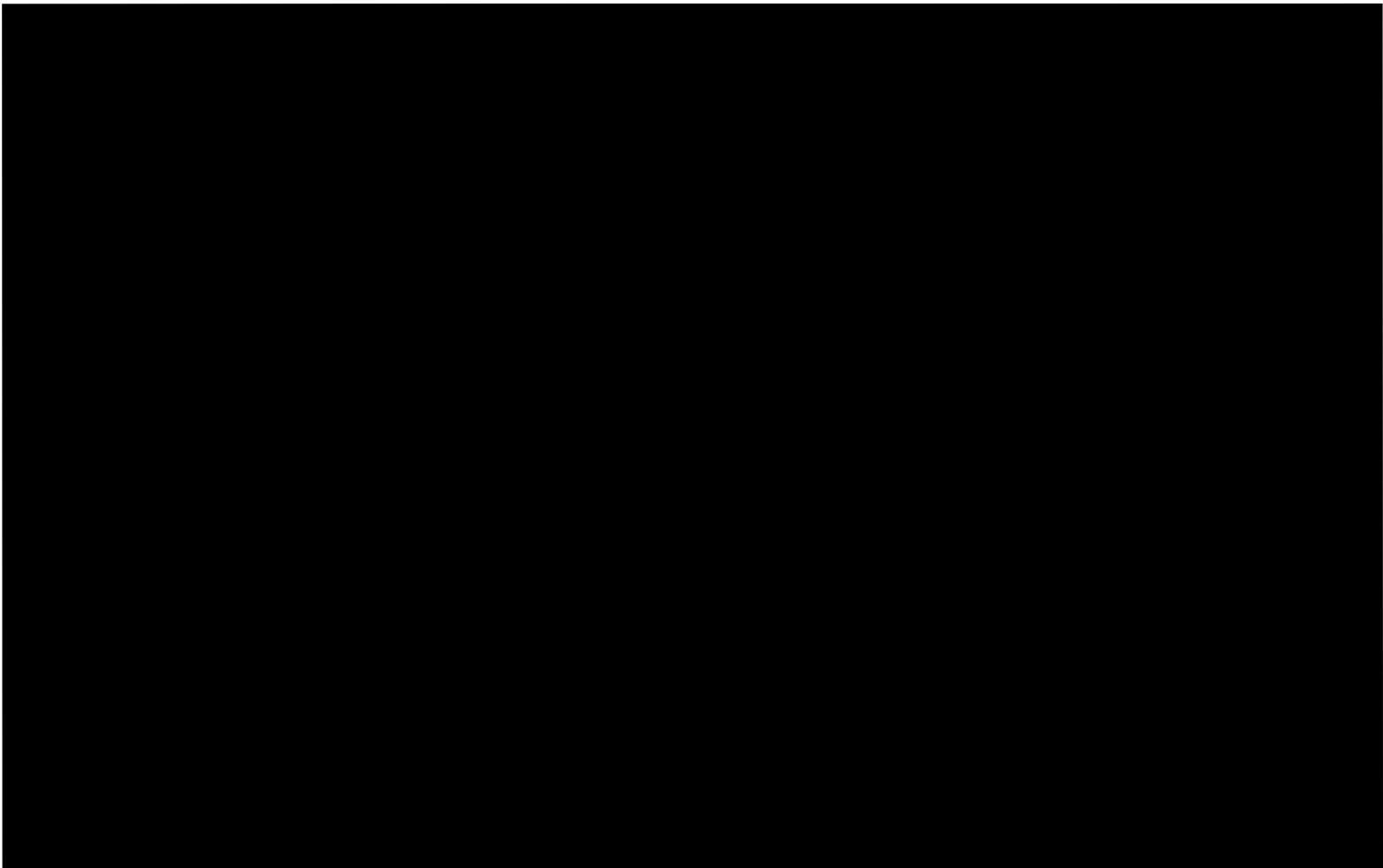
A survey of Gas Station sales in the GTA and Southwestern Ontario since January 2016 shows capitalization rates ranging from 6.57% to 10.98% depending on location, quality of the asset and strength of the tenancy. Capitalization rates for gas stations generally reflect the type of amenities associated with the operation. Those with added amenities such as a car wash and/or a separate food facility tend to hover around the lower end of the range while those gas stations with only a convenience store being at the upper end.

There have been limited investment transactions since the last interest rate hikes and we are of the opinion that rising interest rates will place an upward pressure on cap rates in near future. Interest rate increases can have a direct impact on cap rates as they increase the cost of borrowing for real estate investors. When interest rates rise, it becomes more expensive for investors to borrow money to purchase properties. This, in turn, reduces the amount of money that investors are willing to pay for a property, leading to a decrease in its value. As the value of a property decreases, the cap rate increases, reflecting the lower value and the higher risk associated with the investment.

Valuation

Higher interest rates also have a significant impact on the net operating income of a property. Net operating income is the amount of money generated by a property after accounting for all operating expenses. As interest rates increase, the cost of borrowing increases, leading to an increase in the cost of financing. This, in turn, results in a decrease in the net operating income, which in turn leads to an increase in the cap rate. In addition to direct impacts, interest rate increases can also have indirect impacts on cap rates. For example, when interest rates rise, inflation tends to follow. Inflation reduces the purchasing power of money, which can result in higher operating expenses for a property. This, in turn, leads to a decrease in the net operating income and an increase in the cap rate.





Appraisal Requirements

- This appraisal is predicated on the assumption the land is not contaminated and hazardous substances do not exist at the subject property. Members of this appraisal office are not qualified to determine the existence of, nor is any certification made as to the presence or absence of, any hazardous substances. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. Any outstanding cost associated with the removal of any hazardous materials or repairs to the existing pumps or underground tanks should be deducted from the estimated current market value reported herein. This report is subject to the contingent and limiting conditions contained herein.

Property Identification Number	140211350
History of the Subject Property	The subject property has not sold in the past three years nor is it currently available on the open market.
Soil Conditions	We have not undertaken a detailed soil analysis, and as we are not qualified to comment on soil conditions, we have assumed that there are no contaminants affecting the site. However, a full environmental audit is required for certainty and any cost to remedy the site should be deducted from the value estimate reported herein. The sub-soil is assumed to be similar to other lands in the area and suitable in drainage qualities and load bearing capacity to support the existing or additional development.

Contingent and Limiting Conditions

12. The contents of this report are confidential and will not be disclosed by the author to any party except as provided for by the provisions of the CUSPAP and/or when properly entered into evidence of a duly qualified judicial or quasi-judicial body. The author acknowledges that the information collected herein is personal and confidential and shall not use or disclose the contents of this report except as provided for in the provisions of the CUSPAP and in accordance with the author's privacy policy. The client agrees that in accepting this report, it shall maintain the confidentiality and privacy of any personal information contained herein and shall comply in all material respects with the contents of the author's privacy policy and in accordance with the PIPEDA.
13. The author has agreed to enter into the assignment as requested by the client named in this report for the use specified by the client, which is stated in this report. The client has agreed that the performance of this report and the format are appropriate for the intended use.
14. This report, its content and all attachments/addendums and their content are the property of the author. The client, authorized users and any appraisal facilitator are prohibited, strictly forbidden, and no permission is expressly or implicitly granted or deemed to be granted, to modify, alter, merge, publish (in whole or in part) screen scrape, database scrape, exploit, reproduce, decompile, reassemble or participate in any other activity intended to separate, collect, store, reorganize, scan, copy, manipulate electronically, digitally, manually or by any other means whatsoever this appraisal report, addendum, all attachments and the data contained within for any commercial, or other, use.
15. If transmitted electronically, this report will have been digitally signed and secured with personal passwords to lock the appraisal file. Due to the possibility of digital modification, only originally signed reports and those reports sent directly by the author can be reasonably relied upon.
16. Where the intended use of this report is for financing or mortgage lending or mortgage insurance, it is a condition of reliance on this report that the authorized user has or will conduct lending, underwriting and insurance underwriting and rigorous due diligence in accordance with the standards of a reasonable and prudent lender or insurer, including but not limited to ensuring the borrower's demonstrated willingness and capacity to service his/her debt obligations on a timely basis, and to conduct loan underwriting or insuring due diligence similar to the standards set out by the Office of the Superintendent of Financial Institutions (OSFI), even when not otherwise required by law. Liability is expressly denied to those that do not meet this condition. Any reliance on this report without satisfaction of this condition is unreasonable.
17. Values contained in this appraisal are based on market conditions as at the time of this report. This appraisal does not provide a prediction of future values. In the event of market instability and/or disruption, values may change rapidly and such potential future events have been NOT been considered in this report. As this appraisal does not and cannot consider any changes to the property appraised or market conditions after the effective date, readers are cautioned in relying on the appraisal after the effective date noted herein.

Contingent and Limiting Conditions

18. In the event that a party entitled to do so, makes a claim against Avison Young Valuation & Advisory Services, LP or any of its affiliates or any of their respective officers or employees in connection with or in any way relating to this engagement of the Appraisal, the maximum damages recoverable from Avison Young Valuation & Advisory Services, LP or any of its parent companies or their respective officers or employees shall be the amount of the monies actually collected by us for this assignment and under no circumstances shall any claim for consequential damages be made. In the event that our invoice remains unpaid and we must enlist the assistance of a collection agency, you agree to pay the fees for collection in addition to attorney's fees.
19. As of the date of this report Canada and the Global Community is experiencing unprecedented measures undertaken by various levels of government to curtail health related impacts of the Covid-19 Pandemic. The duration of this event is not known. While there is potential for negative impact with respect to micro and macro-economic sectors, as well as upon various real estate markets, it is not possible to predict such impact at present, or the impact of current and future government countermeasures. There is some risk that the Covid-19 Pandemic increases the likelihood of a global recession, however without knowledge of further anticipated government countermeasures at the national and global levels it is not possible to predict any impact at this point in time. Accordingly, this point-in-time valuation assumes the continuation of current market conditions, and that current longer-term market conditions remain unchanged. Given the market uncertainties of the Covid-19 pandemic, a force majeure event, we reserve the right to revise the value estimation set out in this report for a fee, with an update appraisal report under a separate appraisal engagement, incorporating market information available at that time.

Certification

We certify that, to the best of our knowledge and belief that:

1. The statements of fact contained in this report are true and correct;
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my impartial and unbiased professional analyses, opinions and conclusions;
3. We have no past, present or prospective interest in the property that is the subject of this report and no personal and/or professional interest or conflict with respect to the parties involved with this assignment.
4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;
5. Our engagement in and compensation is not contingent upon developing or reporting predetermined results, the amount of value estimate, a conclusion favouring the client, or the occurrence of a subsequent event.
6. Our analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the CUSPAP.
7. We have the knowledge and experience to complete this assignment competently, and where applicable this report is co-signed in compliance with CUSPAP;
8. Except as herein disclosed, no one has provided significant professional assistance to the person(s) signing this report;
9. As of the date of this report the undersigned has fulfilled the requirements of the AIC's Continuing Professional Development Program;
10. The undersigned are all members in good standing of the Appraisal Institute of Canada.

CO-SIGNING AIC APPRAISER'S CERTIFICATION If an AIC appraiser has co-signed this appraisal report, he or she certifies and agrees that "I directly supervised the appraiser who prepared this appraisal report and, having reviewed the report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certification and am taking full responsibility for the appraisal and the appraisal report."

PROPERTY IDENTIFICATION

Address: 35 Cherrycrest Drive

Town: Brampton

Province: Ontario

Postal Code: L6P 3W4



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Platinum member