

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**BETWEEN:**

**BANK OF MONTREAL**

**Applicant**

- and -

**ABINGDON MEAT PACKERS LIMITED and  
DESIMONE INVESTMENTS LIMITED**

**Respondents**

**NOTICE OF MOTION  
(returnable January 26, 2016)**

Albert Gelman Inc. ("**AGI**") in its capacity as court-appointed receiver (the "**Receiver**") appointed pursuant to order of the Honourable Justice Miller dated May 26, 2015 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of Abingdon Meat Packers Limited ("**AMPL**") and Desimone Investments Limited ("**DIL**") (collectively the "**Debtors**") will make a motion to the Court on **Tuesday January 26 , 2016** at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 80 Dundas Street, London, Ontario.

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

- in writing under subrule 37.12.1(1) because it is on consent;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

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**THE MOTION IS FOR:**

Orders substantially in the form of the draft Orders attached hereto as Schedule "A" and "B", including without limitation, an Order, *inter alia*;

- a. An Order that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispenses with further service and confirmation hereof;
- b. An Order approving the Receiver's Second Report to the Court dated January 12, 2016 (the "**Second Report**") and the Confidential Second Report dated January 12, 2016 ("**Confidential Report**") and the activities and conduct of the Receiver as detailed therein;
- c. An Order and Declaration that the sale of the real property described municipally as 1607 Abingdon Road, Caistor Centre, Ontario and legally described Pt Lt 15 Con 4 Caistor Pts 1, 2, 3, 4, 30R876 Except Pts 1, 2, 3, 30R4290 & Pt 1, 30R7032; S/T CS 9886; West Lincoln (PIN 46065-0008) (the "**Real Property**") and the Debtors' equipment, trucks, trailers and office equipment (collectively with the Real Property the "**Purchased Assets**") (the "**Transaction**") contemplated by the Agreement of Purchase and Sale between a purchaser to be disclosed to the Court (the "**Purchaser**") and the Receiver dated December 23, 2016 and appended to the Confidential Report at Appendix "C" (the "**Purchase Agreement**") be approved and the execution of the Purchase Agreement by the Receiver be authorized and approved, and the Receiver be 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;
- d. An Order and Declaration that upon the delivery to the Purchaser of and the filing with this Honourable Court by the Receiver of a certificate (the "**Closing Certificate**") substantially in the form set out in the Order sought

herein at Schedule "A" hereto, that all of the Debtors' right, title and interest in and to the Purchased Assets 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 Miller dated May 26, 2015; (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" to the Order sought herein (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" to the Order sought herein) 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.

- e. An Order that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North (No. 30) of an Application for Vesting Order in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver in the Land Titles Division of Niagara North 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 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 "B" to the Order sought herein.

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- f. An Order 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.
- g. An Order that the Receiver file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
- h. An Order that, notwithstanding:
  - a. the pendency of these proceedings and the bankruptcy of AMPL;
  - b. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of DIL and any bankruptcy order issued pursuant to any such applications; and
  - c. any assignment in bankruptcy made in respect of DIL;

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 any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a 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.

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- i. An Order that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 does not apply to the Transaction and the Transaction may be completed without compliance with:
- (a) the provisions of the *Mortgages Act*, R.S.O. 1990, c. M-40 as amended;
  - (b) section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"); or,
  - (c) provisions of Part V of the *Personal Property Security Act*, RSO 1990, c. P. 10 as amended (the "**PPSA**"),
- or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtors;
- j. An Order that the Confidential Report be sealed until such a time as the Transaction is complete and funds are received by the Receiver;
- k. An Order that the Statement of Receipts and Disbursements as detailed in the Second Report (the "**Statement of Receipts and Disbursements**") be approved;
- l. An Order that the fees and disbursements of the Receiver as detailed in the Second Report (the "**Receiver's Fees**") and payment of same be approved;
- m. An Order that the fees and disbursements of counsel to the Receiver, Harrison Pensa LLP, as detailed in the Second Report (the "**Counsel Fees**") and payment of same be approved;
- n. An Order that, after payment of the Receiver's Fees and Counsel Fees herein approved, the sums due under all charges as set out in the Appointing Order and all realty taxes owing as against the Real Property (the "**Realty Taxes**") and subject to the Receiver maintaining sufficient reserves:

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- i. to satisfy all charges as set out in the Appointing Order, and
- ii. as the Receiver deems necessary to complete the administration of the Receivership proceedings;

the Receiver be authorized to make a distribution from proceeds on hand following the completion of the Transaction to:

- a) Canada Revenue Agency ("**CRA**") for sums due to CRA on Property Claims filed representing deemed trusts;
- b) O'Neil's Farm Equipment (1971) Ltd. in the sum of \$4,138.90;
- c) Bank of Montreal ("**BMO**") in a sum not to exceed the full amount of the indebtedness owing to BMO plus accruing interest and costs owed to BMO pursuant to its security and thereafter such subsequent distributions not to exceed the full amount of the indebtedness owing to BMO plus accruing interest and costs owed to BMO pursuant to its security on such dates and terms as determined by the Receiver to BMO as the Receiver deems appropriate;
- o. An Order that AGI be released and discharged from any and all liability that AGI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of AGI, prior to the date of this Order, while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, AGI be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order including any claims made as against the proceeds subject to the distribution, save and except for the Receiver's gross negligence or willful misconduct; and
- p. Such further and other relief as counsel may request and this honourable court may permit.

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**THE GROUNDS FOR THE MOTION ARE:**

Appointment

1. AGI was appointed Receiver of the Property of the Debtors pursuant to the Appointment Order.
2. AMPL carried on business as an abattoir from the Property. The Property is owned by DIL. AMPL is a wholly owned subsidiary of DIL.
3. The Applicant, the Bank of Montreal ("**BMO**") is the senior secured creditor and lender to AMPL and DIL.
4. AMPL is a bankrupt, having made an assignment on March 16, 2015. Deloitte Restructuring Inc. is the Trustee in Bankruptcy.
5. BMO holds a General Security Agreement from each of AMPL and DIL. BMO also holds a Charge/Mortgage of Land in the principal sum of \$4,300,000 over the Property.
6. BMO provided certain financing to AMPL and DIL (the "**Financing**"). Each of the Debtors have provided BMO cross-guarantees for the Financing. The Debtors are substantially indebted to BMO as of January 7, 2016 in the following sums:
  - a. Direct loans to AMPL, as guaranteed by DIL: \$2,469,478 plus accruing legal fees and interest;
  - b. Direct loans to DIL, as guaranteed by AMPL: \$2,543,548 plus accruing legal fees and interest;(the "**Indebtedness**").

Further, BMO did advance to the Receiver the sum of \$250,000 pursuant to a Receiver's Certificate.

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### The BMO Security

7. In relation to the Indebtedness, DIL, both as principal borrower and guarantor, granted to BMO an Ontario Personal Property Security Act Security Agreement and a Charge/Mortgage of Land in the principal sum of \$4,300,000 as against the Real Property and a Charge/Mortgage of Land as against the Real Property (the "**BMO Real Property Charge**").
8. In relation to the Indebtedness, AMPL, both as principal borrower and guarantor, provided BMO with an Ontario Personal Property Security Act Security Agreement and two Chattel Mortgages.

Counsel to the Receiver has provided an opinion to the Receiver concluding that, subject to the customary qualifications and certain caveats, that the security granted by the Debtors to BMO are valid first charges against the Real Property and Personal Property of the Debtors, subject to the payment of realty taxes<sup>1</sup>, the payment of any deemed trusts in favour of Crown taxing authorities of a priority nature<sup>2</sup> and the charges under the Appointment Order.<sup>3</sup>

### Receiver's Activities

9. The Receiver has previously reported to the Court by way of the First Report dated June 29, 2015 (the "**First Report**").
10. Pursuant to the Order of the Honourable Madame Justice Rady dated July 21, 2015, the Court approved the First Report and the activities of the Receiver as set out therein. Further, the Court approved the Sales Process as provided for in the First Report.

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<sup>1</sup> in relation to the Real Property

<sup>2</sup> in relation to the Personal Property

<sup>3</sup> in relation to all Property

11. The Receiver has taken additional steps as detailed in the Second Report, including the completion of the Sales Process.

Sale Process - Sale of the Property – Vesting Order

12. Pursuant to sub-paragraph 3(k) of the Appointing Order the Receiver was empowered and authorized to sell the Property with the approval of this court where the consideration for a transaction exceeds \$100,000.
13. Pursuant to sub-paragraph 3(l) of the Appointing Order, the Receiver is further authorized to apply for any Vesting Order necessary to convey the Property to a purchaser, free and clear of any liens and encumbrances affecting the Property.
14. Following the completion of the Sales Process, offers were received for the purchase of the Debtors' assets as detailed in the Second Report and the Confidential Report.
15. A Court approved, fair and thorough sales process has taken place in order to obtain the best sale price for the Purchased Assets according to the market and in the circumstances.
16. The Receiver, with the approval of BMO, has entered into the Sale Agreement for the Purchased Assets with the Purchaser, subject to Court approval.
17. The Transaction subject to the Sale Agreement results in the most provident return to the estate and BMO supports the Receiver's acceptance of same.
18. Therefore, for the reasons as set out in the Second Report and the Confidential Report, the Receiver seeks court approval for the sale of the Property pursuant to the Sale Agreement.

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### Sealing Order

19. Until such time as the sale of the Property is completed and funds are received by the Receiver, the Receiver is of the view that the information and documentation contained in the Confidential Report should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have if the recommended sale of the Property failed to close for any reason. Publication of the purchase price would undermine the fairness of any future sales efforts.

### Distribution

20. The Receiver is not aware of any contractual obligations of BMO with any other creditor limiting BMO's charge or priority over the assets of the Debtors.
21. The BMO Real Property Charge is registered against the Real Property prior in time to any other charges to title.
22. BMO has requested a distribution of funds to which it is entitled to. The Receiver recommends the Distribution as detailed in its Second Report. The Receiver anticipates holding a reserve to allow it to complete the administration of the estate.

### Approval of Receiver's Accounts

23. The Appointing Order requires the Receiver and its legal counsel to pass its accounts from time to time.
24. The Receiver has properly incurred fees and disbursements as detailed in the Second Report.
25. The fees incurred by the Receiver for services provided by its legal counsel, Harrison Pensa LLP are detailed in the Second Report.

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26. The Receiver seeks the approval of the Receiver's Fees and the Counsel Fees and payment of same.
27. Section 243 of the BIA.
28. Sections 101, 137(2) and 141 of the *Courts of Justice Act*.
29. Rules 2, 3, 37 and 38 of the *Rules of Civil Procedure*.
30. The grounds as detailed in the Second Report and the Confidential Report.
31. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Appointment Order;
2. The First Report of the Receiver dated June 29, 2015;
3. The Second Report;
4. Confidential Report; and,
5. Such materials as counsel may advise and this Honourable Court may permit.

January 12, 2016

**HARRISON PENSA LLP**  
Barristers & Solicitors  
450 Talbot St. London, ON  
N6A 4K3

**Timothy C. Hogan**  
Tel: 519-679-9660  
Fax: 519-667-3362  
Solicitors for the Receiver, Albert  
Gelman Inc.

To: Service List

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**Service List:**

**TO: Miller Thomson LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

Attention: Tony Van Klink LSUC#: 29008M  
Tel: 519-931-3509  
Fax: 519-858-8511  
E-mail – [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

Lawyers for Bank of Montreal

AND

**TO: Deloitte Restructuring Inc.**  
1005 Skyview Drive, Suite 200,  
Burlington, ON, L7P 5B1

Attention: Robert Biehler  
Tel: 905-315-5785  
Fax: 905-315-6700  
E-mail: [rbiehler@deloitte.ca](mailto:rbiehler@deloitte.ca)

Trustee in bankruptcy of Abingdon Meat Packers Limited

AND

**TO: Advocates LLP**  
255 Queens Avenue, Suite 1620  
London, ON N6A 5R8

Attention: David S. Swift  
Tel: 519-858-8220 x 235  
Fax: 519-858-0687  
E-mail: [D.Swift@AdvocatesLLP.com](mailto:D.Swift@AdvocatesLLP.com)

Lawyers for the Trustee

AND

**TO: Abingdon Meat Packers Limited**  
1607 Abingdon Road  
Caistor Centre, ON L0R 1E0

Attention: Lucio DeSimone  
Antonio DeSimone  
Joseph DeSimone

AND

**TO: DeSimone Investments Limited**  
1607 Abingdon Road  
Caistor Centre, ON L0R 1E0

Attention: Lucio DeSimone  
Antonio DeSimone  
Joseph DeSimone

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AND

TO: **Simpson Wigle Law LLP**  
390 Brant Street  
Suite 501  
Burlington, Ontario  
L7R 4J4 Canada

Attention: Bart Sarsh  
Tel: 905-639-1052 x 235  
Fax: 905-333-3960  
Email: [sarshb@simpsonwigle.com](mailto:sarshb@simpsonwigle.com)

Solicitor for the Respondents and Lucio DeSimone, Antonio DeSimone and Joseph DeSimone

AND

TO: **CNH Capital Canada Ltd.**  
4475 North Service Road  
Burlington, ON L7L 4X7

AND

TO: **O'Neil's Farm Equipment (1971 Ltd.)**  
2461 Hwy 56  
Box 340  
Binbrook, ON L0R 1C0

AND

TO: **Penske Truck Leasing Canada Inc.**  
Rt. 10 Green Hills, PO Box 791  
Reading, PA 19603  
USA

AND

TO: **GE Canada Equipment Financing G.P.**  
2300 Meadowvale Blvd.  
Mississauga, ON L5N 5P9

Attention: Jennifer Beatty  
Tel: 905-288-3734  
Fax: 877-886-6699  
Email: [jennifer.beatty@ge.com](mailto:jennifer.beatty@ge.com)

AND

TO: **Canada Revenue Agency**  
c/o Department of Justice  
Ontario Regional Office  
The Exchange Tower, Box 36  
130 King Street West, Suite 3400  
Toronto, ON M5X 1K6  
Attention: Diane Winters  
Tel: 416-973-3172  
Fax: 416-973-0810  
E-mail: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

Attention: Peter Zevenhuizen  
E-mail: [peter.zevenhuizen@justice.gc.ca](mailto:peter.zevenhuizen@justice.gc.ca)

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AND

TO: **Ministry of Environment and Climate Change**  
Niagara District Office  
301 St. Paul Street  
St. Catharines, ON L2R 7R4

Attention: John Markarian, Senior environmental officer  
E-mail: [John.Markarian@ontario.ca](mailto:John.Markarian@ontario.ca)

AND

TO: **Ministry of Finance**  
777 Bay Street, 11<sup>th</sup> Floor  
Toronto, ON M5G 2C8

Attention: Kevin J. O'Hara  
E-mail: [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

AND

TO: **Yachetti, Lanza & Restivo LLP**  
Barristers & Solicitors  
154 Main Street E., Suite 100  
Hamilton, ON L8N 1G9

Attention: Roger Yachetti  
Tel: 289-768-6518  
Fax: 905-528-5275  
Email: [yachetti@ylrlawyers.com](mailto:yachetti@ylrlawyers.com)

Solicitor for Barbara DeSimone

AND

TO: **White Veal Meat Packers**  
5136 9 Line,  
Cookstown, ON L0L 1L0

Email: [marcello@whiteveal.com](mailto:marcello@whiteveal.com)

AND

TO: **Martin Sheppard Fraser LLP**  
Barristers & Solicitors  
4701 St. Clair Avenue, 2<sup>nd</sup> Floor  
PO Box 900  
Niagara Falls, ON L2E 6V7

Attention: Mr. Josh Bond  
Tel: 905-354-1611  
Fax: 905-354-5540  
Email: [bond@MSFLawyers.com](mailto:bond@MSFLawyers.com)

Solicitor for the Purchaser

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# APPENDIX A



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

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

B E T W E E N:

**BANK OF MONTREAL**

Applicant

- and -

**ABINGDON MEAT PACKERS LIMITED and**  
**DESIMONE INVESTMENTS LIMITED**

Respondents

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Albert Gelman Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Abingdon Meat Packers ("AMPL") Limited and Desimone Investments Limited ("DIL") (collectively the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and a purchaser to be disclosed to the Court (the "Purchaser") dated December 23, 2015 and appended to the Confidential Second Report of the Receiver dated January 12, 2016 (the "Confidential Second Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 80 Dundas Street, London, Ontario.

ON READING the Second Report of the Receiver dated January 12, 2016 and the Confidential Second Report and on hearing the submissions of counsel for the Receiver, [ ], no one appearing for any other person on the service list, although properly served as appears from the affidavit of Cathy Coleiro sworn January 13, 2016 filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and the Real Property 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 Miller dated May 26, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North (No. 30) of an Application for Vesting Order in the form

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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.

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

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

6. THIS COURT ORDERS that, notwithstanding:

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

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

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7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and the Transaction may be completed without compliance with:

- (a) the provisions of the Mortgages Act, R.S.O. 1990, c. M-40 as amended;
- (b) section 244(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA"); or,
- (c) provisions of Part V of the Personal Property Security Act, RSO 1990, c. P. 10 as amended (the "PPSA"),

or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtors.

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

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

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

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

**BANK OF MONTREAL**

Applicant

- and -

**ABINGDON MEAT PACKERS LIMITED and  
DESIMONE INVESTMENTS LIMITED**

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Miller of the Ontario Superior Court of Justice (the "Court") dated May 28, 2015, Albert Gelman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Abingdon Meat Packers ("AMPL") Limited and Desimone Investments Limited ("DIL") (collectively the "Debtors").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of December 23, 2015 (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been

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

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

THE RECEIVER CERTIFIES the following:

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

**Albert Gelman Inc., in its capacity as Receiver  
of the undertaking, property and assets of  
Abingdon Meat Packers Limited and Desimone  
Investments Limited , and not in its personal  
capacity**

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

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**Schedule B – Purchased Assets**

Real Property

Pt Lt 15 Con 4 Caistor Pts 1, 2, 3, 4, 30R876 Except Pts 1, 2, 3, 30R4290 & Pt 1, 30R7032; S/T CS 9886;  
West Lincoln (PIN 46065-0008)

All equipment, trucks and trailers, and office equipment as described in the Sale Agreement

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

### **Real Property Claims**

Instrument NR125214 - Charge registered in favour of the Bank of Montreal on December 5, 2006.

Instrument NR125217 - Notice of General Assignment of Rents registered in favour of the Bank of Montreal on December 5, 2006

Instrument NR382218 - Court Order registered in favour of Albert Gelman Inc. on May 28, 2015

### **Personal Property Security Act Registrations**

Reference File No. 629821098 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included

Reference File No. 629847153 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included - collateral description: General Assignment of Rents – 1607 Abingdon Road, Caistor Centre, Ontario L0R 1E0

Reference File No. 630101358 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included - general collateral description: Corporate Guarantee of Indebtedness of Abingdon Meat Packers Ltd.

Reference File No. 685002744 registration in favour of CNH Capital Canada Ltd. with respect to equipment and motor vehicle - motor vehicle description: 2012 CaseIH 110 Pro bearing VIN ZCBE03474. With a general collateral description: 2012 CaseIH L745 Loaders, serial number YCWLH5136

Reference File No. 701630469 in favour of O'Neil's Farm Equipment (1971) Ltd. with respect to equipment - general collateral description: CaseIH 2012 Maxxum 110 bearing serial number ZCBE03474. Work Order Number 43661A repair tractor damage from truck backing into it as well as supply rental tractor while their tractor was in for repair

Reference File No. 701630478 in favour of O'Neil's Farm Equipment (1971) Ltd. with respect to equipment - general collateral description: John Deere 1518 Rotary Cutter Mower bearing serial number 1518F009899. Work Order Number 43998A to repair drive line and gear box per customer and replace damaged gear box

Reference File No. 629821107 registration in favour of Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle

Reference File No. 629845038 registration in favour of Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle – Corporate Guarantee of Indebtedness of Desimone Investments Limited

Reference File No. 682623441 registration in favour of Penske Truck Leasing Canada Inc. with respect to equipment, other, motor vehicle (2013 Freightliner M2, VIN 1FVACYDT7DHFJ2089; 2013 Freightliner M2, VIN 1FVHCYBS2DHFJ2090) (together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, including, but not limited to, Xata and Qualcomm systems,

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and all proceeds in any form derived directly or indirectly from any sale and or dealing with the collateral and a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral)

Reference File No. 683126991 registration in favour of Penske Truck Leasing Canada Inc. with respect to equipment, other, motor vehicle (2013 Freightliner X12564ST, VIN 1FUJGEDR1DLFF3385) (together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, including, but not limited to, Xata and Qualcomm systems, and all proceeds in any form derived directly or indirectly from any sale and or dealings with the collateral and a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral)

Reference File No. 690994917 registration in favour of GE Canada Equipment Financing G.P. with respect to Equipment (2013 new Lacaal meat processing machine power unit – LTXZSBWOE Lamb V conveyor – LT5874B101 EXIT CONVEYOR– LT5874B100, the goods described herein, wherever situated, and all present and after-acquired intellectual property, intangibles, attachments, accessories and accessions thereto and spare parts, replacements, substitutions, exchanges and trade-ins therefor, and all rights, receivables and chattel paper derived from or evidencing the lease or rental thereof by the debtor to third parties, and all proceeds relating thereto. Proceeds – all of the debtor's present and after-acquired personal property which is derived directly or indirectly from any dealing with or disposition of the above-described collateral, including, without limiting the generality of the foregoing, all insurance and other payments payable as indemnity or compensation for loss or damage thereto and all chattel paper, documents of title, goods, instruments, intangibles, money and securities REF 9720958001

**Bank Act Registrations**

Registration dated January 3, 2012 in favour of Bank of Montreal;

Registration dated November 8, 2012 in favour of Bank of Montreal

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

**(unaffected by the Vesting Order)**

Instrument CS9886 - Easement in favour of the Hydro Electric Power Comm of Ontario registered March 18, 1952

Instrument 30R876 - Reference Plan registered June 27, 1974

Instrument RO657597 - Site Plan Agreement registered in favour of the Township of West Lincoln on November 5, 1992.

Instrument RO695089 - Site Plan Agreement registered in favour of the Corporation of the Township of West Lincoln on April 27, 1995.

Instrument NR50469 - Notice registered in favour of Desimone Investments Limited on December 21, 2004

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# APPENDIX A *2*

Revised: January 21, 2014

Court File No. 35-1799420T

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LISTIN BANKRUPTCY AND INSOLVENCY

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

BETWEEN:

BANK OF MONTREAL PLAINTIFF

Plaintiff/Applicant

- and -

DEFENDANT ABINGDON MEAT PACKERS LIMITED and

DESIMONE INVESTMENTS LIMITED

Defendant/Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Albert Gelman Inc. [RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Abingdon Meat Packers ("AMPL") Limited and Desimone Investments Limited ("DIL") (collectively the "Debtors") [DEBTOR] (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and a purchaser to be disclosed to the Court [NAME OF PURCHASER] (the "Purchaser") dated September [DATE] December 23, 2015 and appended to the Confidential Second Report [Confidential Supplement] of the Receiver dated [DATE] January <\*>12, 2016 (the "Confidential Second Report"), and vesting in the Purchaser the Debtors's right, title and

interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 80 Dundas Street, London~~330 University Avenue, Toronto~~, Ontario.

ON READING the Second Report of the Receiver dated January <\*>12, 2016 and the Confidential Second Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME]Cathy Coleiro sworn [DATE]January <\*>13, 2016 filed<sup>1</sup>:

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

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

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

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

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

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

whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME] Miller~~ dated ~~[DATE] May 26, 2015~~; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION} Niagara North (No. 30)~~ of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property 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.

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

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

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

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

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

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

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

~~7.6.~~ THIS COURT ORDERS that, notwithstanding:

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

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

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

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

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and the Transaction may be completed without compliance with:

- (a) the provisions of the *Mortgages Act*, R.S.O. 1990, c. M-40 as amended;
- (b) section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"); or,
- (c) provisions of Part V of the *Personal Property Security Act*, RSO 1990, c. P. 10 as amended (the "PPSA");
- (d) or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtors.

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

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Revised: January 21, 2014

Schedule A – Form of Receiver’s Certificate

Court File No. \_\_\_\_\_

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

BANK OF MONTREAL PLAINTIFF

Plaintiff/Applicant

- and -

ABINGDON MEAT PACKERS LIMITED and  
DESIMONE INVESTMENTS LIMITED DEFENDANT

Defendant/Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Miller of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~ May 28, 2015, ~~[Albert Gelman Inc.]~~ ~~NAME OF RECEIVER~~ was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Abingdon Meat Packers ("AMPL") Limited and Desimone Investments Limited ("DIL") (collectively the "Debtors") ~~[DEBTOR]~~ (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ December 23, 2015 (the "Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the

Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~●~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

Albert Gelman Inc. ~~{NAME OF RECEIVER}~~,  
in its capacity as Receiver of the undertaking,  
property and assets of Abingdon Meat Packers  
Limited and Desimone Investments Limited  
~~{DEBTOR}~~, and not in its personal capacity

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

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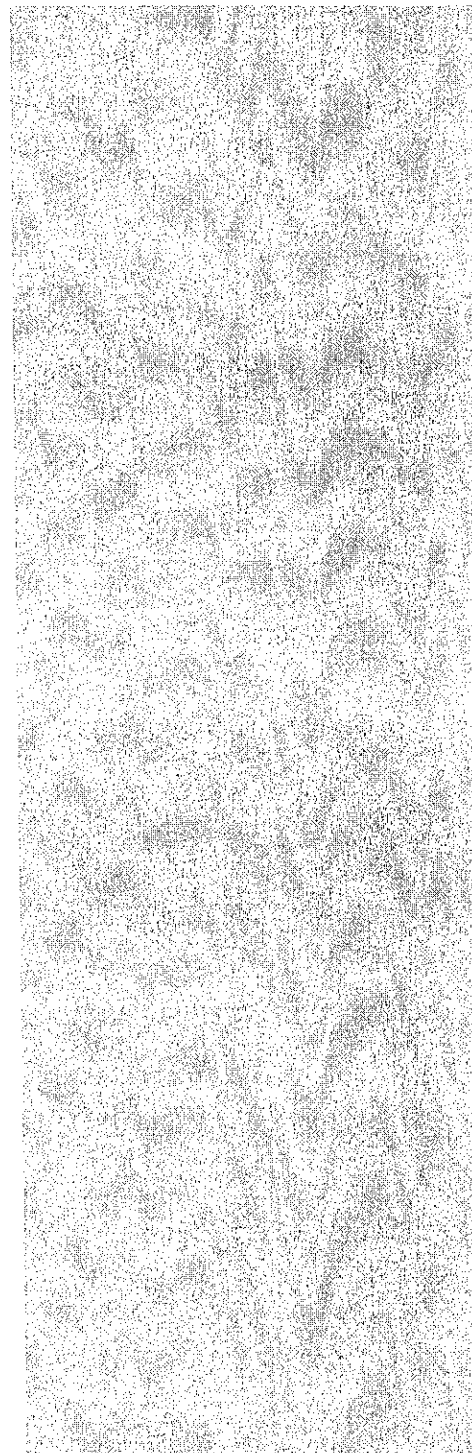
Revised: January 21, 2014

**Schedule B – Purchased Assets**

Real Property

Pt Lt 15 Con 4 Caistor Pts 1, 2, 3, 4, 30R876 Except Pts 1, 2, 3, 30R4290 & Pt 1, 30R7032; S/T CS 9886;  
West Lincoln (PIN 46065-0008)

All equipment, trucks and trailers, and office equipment as described in the Sale Agreement



Revised: January 21, 2014

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

**Real Property Claims**

Instrument NR125214 - Charge registered in favour of the Bank of Montreal on December 5, 2006.

Instrument NR125217 - Notice of General Assignment of Rents registered in favour of the Bank of Montreal on December 5, 2006

Instrument NR382218 - Court Order registered in favour of Albert Gelman Inc. on May 28, 2015

**Personal Property Security Act Registrations**

Reference File No. 629821098 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included

Reference File No. 629847153 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included - collateral description: General Assignment of Rents – 1607 Abingdon Road, Caistor Centre, Ontario L0R 1E0

Reference File No. 630101358 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included - general collateral description: Corporate Guarantee of Indebtedness of Abingdon Meat Packers Ltd.

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substitutions, additions and improvements thereto, including, but not limited to, Xata and Qualcomm systems, and all proceeds in any form derived directly or indirectly from any sale and or dealing with the collateral and a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral)

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Reference File No. 690994917 registration in favour of GE Canada Equipment Financing G.P. with respect to Equipment (2013 new Lactal meat processing machine power unit – LTXZSBWOE Lamb V conveyor – LT5874B101 EXIT CONVEYOR – LT5874B100, the goods described herein, wherever situated, and all present and after-acquired intellectual property, intangibles, attachments, accessories and accessions thereto and spare parts, replacements, substitutions, exchanges and trade-ins therefor, and all rights, receivables and chattel paper derived from or evidencing the lease or rental thereof by the debtor to third parties, and all proceeds relating thereto. Proceeds – all of the debtor's present and after-acquired personal property which is derived directly or indirectly from any dealing with or disposition of the above-described collateral, including, without limiting the generality of the foregoing, all insurance and other payments payable as indemnity or compensation for loss or damage thereto and all chattel paper, documents of title, goods, instruments, intangibles, money and securities REF 9720958001

**Bank Act Registrations**

Registration dated January 3, 2012 in favour of Bank of Montreal

Registration dated November 8, 2012 in favour of Bank of Montreal

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

**(unaffected by the Vesting Order)**

Instrument CS9886 is an Easement in favour of the Hydro Electric Power Comm of Ontario registered March 18, 1952

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Instrument NR50469 is a Notice registered in favour of Desimone Investments Limited on December 21, 2004

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# **APPENDIX B**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE ) THURSDAY THE \_\_\_\_<sup>th</sup> DAY  
 )  
JUSTICE ) OF JANUARY, 2016

BETWEEN:

**BANK OF MONTREAL**

**Applicant**

- and -

**ABINGDON MEAT PACKERS LIMITED and  
DESIMONE INVESTMENTS LIMITED**

**Respondents**

**ANCILLARY ORDER**

**THIS MOTION**, made by Albert Gelman Inc. ("**AGI**"), in its capacity as court appointed Receiver (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Abingdon Meat Packers ("**AMPL**") Limited and Desimone Investments Limited ("**DIL**") (collectively the "**Debtors**") appointed pursuant to the order of the Honourable Justice Miller dated May 26, 2015 (the "**Appointment Order**") for an Order for the following relief:

- a) An order that the time for service, filing and confirmation of the Notice of Motion and Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;

- b) An Order approving the Receiver's Second Report to the Court dated January 12, 2016 (the "**Second Report**") and the Confidential Second Report dated January 12, 2016 (the "**Second Confidential Report**");
- c) An Order sealing the Confidential Report until the Transaction, as defined in the Second Report, is complete and funds are received by the Receiver;
- d) An Order that the Statement of Receipts and Disbursements as detailed in the Second Report (the "**Statement of Receipts and Disbursements**") be approved;
- e) An Order that the fees and disbursements of the Receiver as detailed in the Second Report (the "**Receiver's Fees**") and payment of same be approved;
- f) An Order that the fees and disbursements of counsel to the Receiver, Harrison Pensa LLP, as detailed in the Second Report (the "**Counsel Fees**") and payment of same be approved;
- a. An Order that, after payment of the Receiver's Fees and Counsel Fees herein approved, the sums due under all charges as set out in the Appointing Order and all realty taxes owing as against the Real Property (the "**Realty Taxes**") and subject to the Receiver maintaining sufficient reserves:
  - i. to satisfy all charges as set out in the Appointing Order, and
  - ii. as the Receiver deems necessary to complete the administration of the Receivership proceedings;

the Receiver be authorized to make a distribution from proceeds on hand following the completion of the Transaction to:

- a) Canada Revenue Agency ("**CRA**") for sums due to CRA on Property Claims filed representing deemed trusts;
- b) O'Neil's Farm Equipment (1971) Ltd. in the sum of \$4,138.90;
- c) Bank of Montreal ("**BMO**") in a sum not to exceed the full amount of the indebtedness owing to BMO plus accruing interest and costs owed to BMO pursuant to its security and thereafter such

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subsequent distributions not to exceed the full amount of the indebtedness owing to BMO plus accruing interest and costs owed to BMO pursuant to its security on such dates and terms as determined by the Receiver to BMO as the Receiver deems appropriate.

- g) An Order that AGI be released and discharged from any and all liability that AGI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of AGI, prior to the date of this Order, while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, AGI be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order including any claims made as against the proceeds subject to the distribution, save and except for the Receiver's gross negligence or willful misconduct;
- h) Such further and other relief as counsel may request and this honourable court may permit.

was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the Notice of Motion, the Second Report and the Second Confidential Report with Appendices, Affidavit of Service of Cathy Coleiro sworn January 13, 2016 and on hearing submissions from all counsel in attendance,

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;
2. **THIS COURT ORDERS** that the Second Report, the Second Confidential Report and the activities and conduct of the Receiver as detailed therein are hereby approved.

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3. **THIS COURT ORDERS** that the Second Confidential Report be sealed until such time that the Transaction is complete and funds are received by the Receiver.
4. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements is hereby approved.
5. **THIS COURT ORDERS** that the Receiver's Fees and payment of same are hereby approved.
6. **THIS COURT ORDERS** that the Counsel Fees and payment of same are hereby approved.
7. **THIS COURT ORDERS** that, after payment of the Receiver's Fees and Counsel Fees herein approved, the sums due under all charges as set out in the Appointing Order and all realty taxes owing as against the Real Property (the "**Realty Taxes**") and subject to the Receiver maintaining sufficient reserves:

iii. to satisfy all charges as set out in the Appointing Order, and

iv. as the Receiver deems necessary to complete the administration of the Receivership proceedings;

the Receiver be authorized to make a distribution from proceeds on hand following the completion of the Transaction to:

- a) Canada Revenue Agency ("**CRA**") for sums due to CRA on Property Claims filed representing deemed trusts;
- b) O'Neil's Farm Equipment (1971) Ltd. in the sum of \$4,138.90;
- c) Bank of Montreal ("**BMO**") in a sum not to exceed the full amount of the indebtedness owing to BMO plus accruing interest and costs owed to BMO pursuant to its security and thereafter such subsequent distributions not to exceed the full amount of the indebtedness owing to BMO plus accruing interest and costs owed to BMO pursuant to its security on such dates and terms as

determined by the Receiver to BMO as the Receiver deems appropriate;

8. **THIS COURT ORDERS** that AGI be released and discharged from any and all liability that AGI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of AGI, prior to the date of this Order, while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, AGI shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order including any claims made as against the proceeds subject to the distribution herein, save and except for the Receiver's gross negligence or willful misconduct.

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Justice, *Ontario* Superior Court of Justice